The Double Standard in the English Divorce Laws, 1857–1923

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The Divorce and Matrimonial Causes Act of 1857 included a double standard in its provisions. While a wife's adultery was sufficient cause to end a marriage, a woman could divorce her husband only if his adultery had been compounded by another matrimonial offense. The Matrimonial Causes Act of 1923 granted a wife the right to divorce her husband for adultery alone and thus removed the double standard with respect to the grounds for divorce from English statutes. Although the 1923 act was contemporaneous with other reforms extending the legal rights of women, an analysis of the public debates regarding divorce reform indicates that the statute was not based solely on a desire to provide equitable matrimonial relief for husbands and wives. The belief that male adultery contributed to such social problems as prostitution, illegitimacy, and the spread of venereal disease was as significant in the passage of the 1923 act as the demand for equal access to divorce for men and women.

A double moral standard, based on the belief that a woman's adultery was a more serious offense than a man's, was a dominant cultural assumption in mid-Victorian England. For centuries the idea had pervaded matrimonial customs and laws. In 1857 Parliament incorporated the double standard into the Divorce and Matrimonial Causes Act, the first statute to empower a secular court to dissolve a marriage.1 Only adultery was grounds for such a divorce, and the 1857 act drew an important distinction between men and women. While a wife's adultery was sufficient cause to end a mar-

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1. 20 & 21 Vict., c. 85.

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riage, a woman could divorce her husband only if his adultery had been compounded by another matrimonial offense, such as cruelty or desertion.²

The 1857 act appeared to be revolutionary because, for the first time in English history, a secular court could dissolve a marriage without any action on the part of the Church. The legislation was conservative, however, in that Parliament strictly limited the grounds for divorce. Indeed, the provisions of the 1857 act were so restrictive that the legislation was inadequate from its very inception. Dissatisfaction with the statute finally led in 1909 to the appointment of a Royal Commission on Divorce and Matrimonial Causes to consider proposed amendments to the divorce laws. One of the Commission's recommendations in its Report of 1912 was that the grounds for divorce should be the same for men and women. Parliament implemented that recommendation with the Matrimonial Causes Act of 1923, which granted a wife the right to divorce her husband for adultery alone.³

Divorce laws based on the double standard were apparently no longer acceptable in 1912 and certainly not in 1923. Divisions in Parliament and testimony before the Royal Commission constitute gauges for measuring the strength of the belief. In 1857 the vote approving a distinction between men and women in the divorce laws was 71 to 20 in the House of Lords and 126 to 65 in the House of Commons.⁴ Fifty years later, the Royal Commission's Minutes of Evidence revealed the development of substantial opposition to the double standard. In examining witnesses, the commissioners would often ask, "Do you think that the grounds for divorce should be the same for both men and women?" Of the 94 witnesses who replied to a version of this question, 76 replied affirmatively that they would favor granting a woman the right to divorce her husband on the ground of his adultery alone.⁵ In 1923 the rejection of the double standard was even more overwhelming. The act ending the distinction between men and women regarding the grounds for divorce passed the House of Lords by a vote of 95 to 8 and the Commons by a vote of 257 to 26.⁶

². According to the 1857 Act, sec. 27:
   It shall be lawful for any Husband to present a Petition to the said Court, praying that his Marriage may be dissolved, on the Ground that his Wife has since the Celebration thereof been guilty of Adultery; and it shall be lawful for any Wife to present a Petition to the said Court, praying that her Marriage may be dissolved, on the Ground that since the Celebration thereof her Husband has been guilty of incestuous Adultery, or of Bigamy with Adultery, or of Rape, or of Sodomy or Bestiality, or of Adultery coupled with . . . Cruelty . . . or of Adultery coupled with Desertion, without reasonable Excuse, for Two Years or upwards.
³. 13 & 14 Geo. 5, c. 19.
⁶. Parl. Deb., Lords, 5th ser., 54 (26 June 1923): 610; Commons, 164 (8 June 1923): 2658.
Thus, the double moral standard, which had been legally sanctioned in 1857, was officially rejected in 1912 and 1923. Apart from the numerical divisions on the question, the parliamentary debates of 1857 and 1923 and the testimony of witnesses appearing before the Royal Commission in 1910 provide a means of analyzing prevailing attitudes toward the double standard. These sources are useful in examining the ideological origins of the belief that a woman’s adultery was a more serious offense than a man’s and in identifying the developments that undermined the idea. In short, the public debates regarding the grounds for divorce illuminate both the factors that influenced Parliament to accept the double moral standard as a legitimate basis for English divorce laws in 1857 and the reasons for the rejection of the belief in 1923. The sources indicate that it was conservative arguments, rather than a desire to improve the legal status of women, that were decisive in the passage of the 1923 statute.

In *Road to Divorce: England, 1530–1987*, Lawrence Stone has noted that women had won the right to vote not long before Parliament passed the 1923 act. He has commented, “Afraid of offending this large new constituency, most of the opponents of the bill ran for political cover, and it easily passed both Houses and became law.” The evidence indicates, however, that the opposition to the removal of the double standard in the divorce laws had begun to evaporate long before 1923. The Royal Commission’s *Report* of 1912 and parliamentary debates in 1914 indicate that the reform had won widespread support before World War I. Also, the change was not viewed solely as a “woman’s issue.” The parliamentary debates demonstrate that proponents of the 1923 act wanted to endorse high standards of morality for both men and women as well as to end a form of legal discrimination against wives.

In 1857 those arguments against preservation of the double standard were not as significant as they were in 1923. Indeed, in the middle of the 19th century, the double standard was well established as a legal principle by both English statutes and judicial decisions. Parliamentary practice supplied precedents for distinguishing between the adultery of a husband and that of a wife. Divorce was not unknown in England before 1857, but only an Act of Parliament could legally end a marriage.

After the Reformation, the Roman Catholic Church could no longer regulate English marriages. Parliament, however, did not transfer jurisdic-

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8. In *Putting Asunder: A History of Divorce in Western Society* 500 (Cambridge: Cambridge University Press, 1988) (“Phillips, *Putting Asunder*”), Roderick Phillips has noted that England was one of the last countries to remove the double standard from the divorce laws. The British colonies, France, and Germany all preceded England in the reform; the United States and Scandinavia had never incorporated a double moral standard into their divorce statutes.
tion in matrimonial cases to a secular court. The Anglican Church, rather than the state, assumed responsibility for administering that area of the law. The courts of the Church of England enforced the medieval canonical view that marriage was indissoluble and would not grant divorce a vinculo matrimoni, one that severed the marriage bond and gave each party the right to marry another person. Thus, ecclesiastical courts would not dissolve a marriage, while secular courts had no jurisdiction.

Wealthy litigants, however, gradually devised a procedure to escape the harsh realities of the system. Those who desired a divorce could petition Parliament for a Private Act to end a marriage. This practice became increasingly common in the 18th and early 19th centuries. Before 1714, Parliament granted only 10 such divorces; during the remainder of the 18th century 123 Private Acts were passed. The number of these divorces increased during the first half of the 19th century; between 1800 and 1856, Parliament passed 184 Private Acts.

Most of the more than 300 Private Acts granted a divorce to a husband on the ground of his wife's adultery. No woman obtained such a divorce before 1801, and in 150 years only four acts were passed at the behest of the wife. None of the wives based her petition on the commission of adultery alone. The four divorces granted to women by Parliament included two cases of incestuous adultery and two cases involving bigamy, in one of which the adultery had been aggravated by cruelty. Thus, in granting divorces, Parliament established a significant precedent.

The debates on the 1857 Divorce Act and testimony before the Royal Commission in 1910 reveal several explanations for the durability of the double standard. Central to the concept was a concern for property. As the Lord Chancellor, Cranworth, told the House of Lords, "No doubt the crime in both cases was essentially the same; but the consequences were not the same."

9. These courts would, however, grant divorce a mensa et thoro (from bed and board) on the grounds of adultery, cruelty, or sodomy. Such a "divorce" was really the equivalent of a modern judicial separation in that, legally, the parties remained married. C. E. P. Davies, "Matrimonial Relief in English Law," in R. H. Graveson & F. R. Crane, eds., A Century of Family Law 314 (London: Sweet & Maxwell, 1957) ("Graveson & Crane, Century of Family Law"). Some scholars, including Davies, believe that the ecclesiastical courts may have granted divorces a vinculo matrimoni during the late 16th century. The sources are open to interpretation. Since some individuals improperly remarried when only separated from their spouses, divorces a mensa et thoro may have been confused with divorce a vinculo. Harvey Couch, "The Evolution of Parliamentary Divorce in England," 52 Tul. L. Rev. 513, 515, 516 (1978). According to Lawrence Stone, it was only at the end of the century, during the years between 1597 and 1603, that the English Church and state made it clear that the courts would not grant divorces a vinculo. Stone, Road to Divorce 305.


11. Finer & McGregor, 1 History 35, 36, and Stone, Road to Divorce 360-62.
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same." Simply stated, a wife's infidelity was considered to be more serious than her husband's because her adultery could confuse the rightful inheritance of property by introducing illegitimate children into a family. Samuel Johnson, who was quoted both in the 1857 debates and before the Royal Commission, had expressed the classic explanation of the double standard succinctly: "Between a man and his wife a husband's infidelity is nothing. . . . The man imposes no bastards on his wife. A man, to be sure, is criminal in the sight of God, but he does not do his wife any very material injury if he does not insult her." More subtle than fears regarding inheritance was the idea that a husband had a property interest in his wife; her adultery decreased the value of that interest. Parliament expressed this aspect of the double standard in section 33 of the 1857 act, whereby a husband could sue a co-respondent in a divorce action for damages. A wife seeking a divorce had no such right of action against another woman.

Parliament based the provision on existing practice. At common law, criminal conversation was a proceeding by which a husband could sue for damages a person accused of committing adultery with his wife. In 1857 some Members of Parliament felt that suits for criminal conversation should be abolished because such litigation was unseemly. Lord Lyndhurst, a former lord chancellor who argued strongly that the grounds for divorce should be the same for men and women, called the actions "a scandal to the country." He told the House of Lords that "on the Continent they are looked upon with feelings of disgust and horror; and it is wondered at that a civilised country like this should maintain a law of this description." In the Commons, however, one member described suits for criminal conversation as "the real protection of the poor man's wife." Another supported this argument by citing the example of a married female factory worker who was seduced by her employer. Since the woman's husband did not want a divorce, his only legal recourse was a suit for damages.

Section 33 of the 1857 act represented the resolution of the controversy. Parliament defined a wife's adultery as a civil injury subject to compensation. A suit for damages in a divorce case was no longer termed an


13. Parl. Deb., Lords, 142 (20 May 1856): 415. When T. P. Griffiths, a solicitor, quoted Dr. Johnson before the Royal Commission in 1910, the Chairman, Lord Gorell, asked if the quotation from Boswell's Life of Johnson should be considered outdated. Griffiths replied, "It is a little old, but I submit it is equally good sense today," 1 Minutes of Evidence 151:3463.

14. R. H. Graveson, "The Background of the Century," in Graveson & Crane, Century of Family Law 5. See Stone, Road to Divorce 231-300, for an analysis of what were known as "crim. con. actions."


action for criminal conversation, and the so-named adulterer was to pay the amount of damages to the Court rather than to the petitioner. The judge would determine what proportion of the sum would be applied to the maintenance of the wife and the support of any children. Apart from these changes, though, Members of Parliament decided that the courts would hear and try petitions for damages according to the same procedures "as Actions for Criminal Conversation are now tried." Under the provisions of the 1857 act, then, adultery continued to resemble another ancient civil wrong: trespass. The image of woman as the property of man was clear.

Proprietary concerns were not the only explanation for the inclusion of the double standard in the divorce laws. Another expression of the concept was stated quite simply by a witness appearing before the Royal Commission: "Women are naturally chaste and men unchaste." During the 19th century, the development of the idea that women lacked sexual desires reinforced the traditional bases of the double standard. A woman's perceived sexual insensitivity made her adultery a more serious offense because her "sin" was unnatural.

Both the Parliamentary Debates and the Royal Commission's Minutes of Evidence contain expressions of the idea that women did not have sexual desires. In 1857 the Bishop of Oxford in the Lords and William Gladstone in the Commons agreed that women rarely committed adultery because of "sensual passion." They believed that emotional involvement was a more likely cause of female infidelity. Those who adhered to the belief that women were naturally chaste felt that the "sin," as well as the consequences, of a wife's adultery was more serious than her husband's. C. N. Johnston, King's Counsel of the Bar in Scotland, testified in 1910: "A woman is protected much more than a man both by natural modesty and by social conventions. The defiance of these indicates a greater degradation and perversion of affection on the part of a married woman than does similar conduct on the part of a man." In this regard, another witness, A. C. Plowden, Metropolitan Police Court Magistrate, defined the distinction between the infidelity of one sex and the other as "the difference between a lapse and a fall." During the 1857 debates, a Member of Parliament based his argument that a man's adultery was a "lesser offence" than a woman's on the French axiom that "it was in one case a surprise of the senses, and in the other an error of the heart."

17. 3 Minutes of Evidence 94:35,665.
18. Nancy Cott has used the term "passionless" to represent "the view that women lacked sexual aggressiveness, that their sexual appetites contributed a very minor part (if any at all) to their motivations, that lustfulness was simply uncharacteristic." Cott argues that this view was "a central tenet of Victorian sexual ideology." Nancy Cott, "Passionlessness: An Interpretation of Victorian Sexual Ideology, 1790–1850," 4 Signs 220 (1978).
20. 3 Minutes of Evidence 346:40,046.
The idea that a husband's adultery was a "lapse" appears in the Royal Commission's discussions of so-called accidental or casual adultery, a term used to distinguish a single act of male infidelity from ongoing adultery. Many witnesses felt that a single act of adultery should not be grounds for a wife to divorce her husband. Sir John Bigham, who was the President of the Probate, Divorce and Admiralty Division of the High Court, told the Royal Commission: "Very frequently . . . an act of adultery on the part of a man is not inconsistent with his continued esteem and love for his wife. . . . Whereas an act of adultery on the part of a woman, in my opinion, is quite inconsistent with continued love and esteem for the husband."22 In Bigham's mind, a wife did not share her husband's ability to separate physical sex from love and marital fidelity. Thus, his adultery was not necessarily a breach of the marriage vow while hers could be nothing else.

Those who could deem a man's adultery "accidental" or "casual" expected women to be tolerant of their husbands' "lapses." Another expression of the double standard heard in Parliament and before the Royal Commission was the belief that women were more forgiving than men. In 1857 the Lord Advocate emphasized this particular difference between the adultery of a husband and that of a wife when he told the House of Commons that "condonation on the part of one sex might be amicable, while on the part of the other it would be degrading."23 A woman's tolerance was admirable, while a man's was contemptible.

Numerous descriptions of women's patient endurance of suffering reinforced the image of the forgiving wife. The Reverend Pearson M'Adam Muir idealized the feminine virtue of self sacrifice when he testified in 1910: "That there are many unhappy marriages is undeniable, but, as a rule, the unhappiness is carefully concealed and the way in which wives screen their husbands' faults and make no complaint of neglect and cruelty . . . is most touching and beautiful."24 Members of the Mothers' Union, a conservative Anglican organization, substantiated Muir's assessment. In a clear expression of the ideal of self-sacrifice, one member said of her spouse, "He may be a brute, but he is my husband."25

During the 1857 debates, Lord Lyndhurst had agreed that women were remarkably tolerant, but he had used the point to argue that a wife should be allowed to divorce her husband for adultery alone. In his words, "[N]othing but a long, deliberate, hopeless suffering—nothing but intolerable agony, would overcome her patient endurance."26 If a wife would nor-

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22. 1 Minutes of Evidence 41:617.
24. 3 Minutes of Evidence 340:39,887. What Muir did not seem to recognize was that a woman's financial dependence upon her husband may have made her sacrifices a necessity rather than a virtue.
25. 2 Minutes of Evidence 196:17,087.
mally forgive her husband's infidelity, then granting her the right to divorce
him on that ground would not end a significant number of marriages. Several Members of the Commons echoed this argument. The Lord Advocate, who had distinguished so pointedly between male and female tolerance of marital faults, then stated that he supported equal grounds for divorce for men and women because "nothing but absolute extremity would induce the wife to apply for the remedy." The majority of the Members of Parliament, however, were unwilling to rely on a woman's forgiving nature. Rather than allowing a wife the right to decide for herself whether to tolerate her husband's infidelity, the legislators compelled her to maintain her marriage. By legalizing the double standard in 1857, Parliament not only encouraged feminine self-sacrifice, they ensured it.

The common themes of the arguments supporting the preservation of the double standard in the divorce laws, then, were a concern for property, a belief in innate female chastity, and an emphasis on the feminine virtue of self-sacrifice. During the second half of the 19th century, each of these points became increasingly controversial. By the Married Women's Property Act of 1882, wives gained the right to own property apart from their husbands. Since ownership of property and personal status have traditionally been closely linked in English law, a married woman achieved significant recognition of her individual legal identity through the provisions of the 1882 act. She appeared as her husband's equal rather than his ward. From this perspective, the double standard in the divorce laws seemed anachronistic. A married woman's ability to own property weakened the image of a wife as either a chattel of her husband or as a mere bearer of his heirs.

A series of matrimonial causes acts that further contributed to the legal emancipation of married women culminated in the Summary Jurisdiction (Married Women) Act of 1895. The statute provided for both the protection and maintenance of married women. A wife whose husband was guilty of an assault upon her for which he had been sentenced to a fine of more than £5 or a term of imprisonment exceeding two months was entitled to a separation order with maintenance. The act also included persistent cruelty or cruelty or neglect that caused a wife to live apart from her husband as grounds for separate maintenance. The magistrates' courts were thus empowered to offer significant matrimonial relief to married women. Although a wife could still not obtain a divorce on the grounds of her husband's cruelty or adultery alone, she had obtained recourse against cruelty and desertion. The laws of England no longer required women to maintain absolutely the ideal of self-sacrifice.

28. 45 & 46 Vict., c. 75.
29. 58 & 59 Vict., c. 39.
The laws regarding the custody of children also demonstrated significant changes in the legal rights of married women. In the early 19th century an English father's authority over his children was virtually absolute at common law. By the Custody of Infants Act of 1839, Parliament at last granted mothers the right to petition the Court of Chancery for access to their children who were in the custody of their fathers. According to the first section of the statute, the courts were to grant custody of children under the age of 7 to the mother. Importantly, though, no mother who had been found guilty of adultery could benefit from the provisions of the statute. Since a father's character and behavior did not affect his rights at common law to the custody of his children, the double standard was evident in custody suits as well as in divorce cases.

The Custody of Infants Act of 1873 granted mothers the right to petition to obtain custody of children up to the age of 16, rather than the age of 7 established by the 1839 act. By section 3 of the 1873 act, Parliament repealed the 1839 act and thus also removed the statutory bar that had denied any benefits of the legislation to a mother guilty of adultery. The Guardianship of Infants Act of 1886 further extended the rights of mothers by instructing judges in custody cases to consider "the welfare of the infant, . . . the conduct of the parents, and . . . the wishes as well of the mother as of the father." By the end of the 19th century, then, a father's right to custody of his children was no longer absolute. Also, in custody cases, the double standard regarding adultery was no longer statutory.


31. As early as the 17th century, the Court of Chancery had established a jurisdiction over children as distinct from the absolute rights of the father at common law. This equity jurisdiction probably originated in the Crown's authority as parens patriae to protect those subjects who could not take care of themselves. In the Court of Chancery the rules of equity allowed judges to circumvent the common law rights of the father; the welfare of the child was the guiding principle in custody decisions. Although the Court of Chancery could deprive a father of custody if he had demonstrated himself to be an unfit parent on the basis of his character or conduct or if he could not support his children, judges were reluctant to act according to the "best interests" of the child if there were a conflict between that principle and the rights of the father. P. H. Pettit, "Parental Control and Guardianship," in Graveson & Crane, Century of Family Law 63-66 (cited in note 9), and Homer Clark, The Law of Domestic Relations in the United States 786-87 (2d ed. St. Paul, Minn.: West Publishing Co., 1988).

32. 36 Vict., c. 12.

33. 49 & 50 Vict., c. 27.

34. The 1873 act had removed the statutory bar preventing an adulterous mother from seeking custody of her children, but in 1891 solicitors argued: "The text-books lay it down as a rule that access to the children is not to be given to a woman who is divorced by reason of her adultery." Handley v. Handley, [1891] C.A. 124 at 125. Not until the Guardianship of Minors Act of 1973 did Parliament grant mothers the same rights as fathers over their children. Lee Holcombe, Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England 54 (Toronto: University of Toronto Press, 1983) ("Holcombe, Wives and Property").
As married women gained the right to own property, the right to secure protection and maintenance from their husbands, and the right to seek custody of their children, the denial of equal access to the divorce court appeared even more unjust than in 1857. Apart from legal reforms, between 1890 and 1910, a profound revision of thought regarding sexuality challenged another basis of the double standard, the idea that women did not experience sexual desires. The work of Havelock Ellis was the most significant English contribution to the development of modern sexual theory. His *Man and Woman*, first published in 1894, laid the groundwork for the six volumes of his *Studies in the Psychology of Sex*, published between 1897 and 1910. One of Ellis’s most important contributions was his rejection of the belief that women were “naturally chaste.” Correctly dating the recent development of the concept, he wrote that “it seems to have been reserved for the nineteenth century to state that women are apt to be congenitally incapable of experiencing complete sexual satisfaction, and peculiarly liable to sexual anesthesia.” Ellis completely rejected the belief that the lack of sexual desire in women was “natural”: “It seems to me that a state of sexual anesthesia, relative or absolute, cannot be considered as anything but abnormal. . . . If we wish to be accurate, it is very doubtful whether we can assert that a woman is ever absolutely without the aptitude for sexual satisfaction.” Ellis cited medical authorities and individual cases to substantiate his views regarding female sexuality, and his research challenged a significant assumption reinforcing the double standard in the 1857 Divorce Act.

By 1910, when the Royal Commission convened, the status of married women had changed significantly since 1857. Wives and mothers had gained important legal rights, and modern sexual theorists had begun to question the belief that women were incapable of sexual desire. Each of these developments encouraged the removal of the distinction between husbands and wives in the divorce laws. None, however, proved to be as powerful a challenge to the double standard as the increasing concern about the social dangers of male infidelity.

It was a concern clearly evident in the movement to repeal the Contagious Diseases Acts. Parliament passed these statutes between 1864 and

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36. Havelock Ellis, *Studies in the Psychology of Sex*, vol. 3, *Analysis of the Sexual Impulse* 193–94, 206, 219 (2d ed. Philadelphia: F. A. Davis Co., 1913). Sheila Jeffreys has written that, although Ellis “asserted not merely woman’s capacity, but also her right to sexual pleasure,” his work should be characterized as antifeminist. Jeffreys cites three ideas of Ellis to justify her argument. He asserted “that there were innate biological differences between the sexes” and thus reinforced “the idea that there should be separate spheres for men and women.” Ellis also prescribed “that sexual relations between women and men should take the form of male dominance and female submission,” and he created “an ideology of the ‘ideal’ woman, which was represented as a form of feminism, and consisted of the glorification of motherhood.” Sheila Jeffreys, *The Spinster and Her Enemies. Feminism and Sexuality, 1880–1930* at 129–30 (London: Pandora Press, 1985) (“Jeffreys, Spinster”).
1869 with the intention of preventing the spread of venereal disease in the armed services through the regulation of prostitution. In garrison towns and port cities, women who were suspected of being prostitutes were subject to arrest and medical examination and treatment. One implication of the Contagious Diseases Acts was that men, unlike women, were unable to control their sexual desires.37

In the male world of the military, heterosexuals would necessarily turn to prostitutes. The Contagious Diseases Acts indicated that the government not only accepted the idea that men were unable to exercise restraint but also assisted enlisted men in gaining access to healthy women. The legislation reflected the ideology of the 1857 Divorce Act in that both sanctioned extramarital sexual activity for men. The belief that men were physically incapable of chastity made a husband’s adultery more justifiable than a wife’s.

Opponents of the Contagious Diseases Acts condemned the double standard that justified legislation enabling the government to oppress and exploit women for the purpose of satisfying male sexual desires. Perhaps the best known leader of the movement to repeal the acts, Josephine Butler, identified the root of the problem of prostitution as “the unequal standard in morality; the false idea that there is one code of morality for men and another for women.”38 Although Parliament did repeal the Contagious Diseases Acts in 1886, criticism of the double standard continued and became a central feature of discussions that revealed new anxieties regarding sexuality during the next decade. Elaine Showalter has used the novelist George Gissing’s term “sexual anarchy” to describe the fin de siècle.39 During the 1890s, the public came to fear feminists, homosexuals, and promiscuous heterosexual males as threats to social stability. Notorious scandals directed the public’s attention to problems such as child prostitution and venereal disease, which were associated with sexual self-indulgence. Increased moral concerns regarding sexual relationships outside marriage were a significant feature in the background to the consideration of divorce reform in 1910.

A social purity movement that grew in significance during the 1880s reflected anxieties about male promiscuity. Many social purists attacked the double standard because they believed that tolerance of male adultery contributed to such problems as prostitution, illegitimacy, and the spread of venereal disease. For most social purists, the proper response to these problems was not to regulate prostitution but to encourage male chastity.

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Purity organizations, such as the Church of England Purity Society and the White Cross League, rejected the notion that men were incapable of sexual continence. Instead, they emphasized a man's ability to remain chaste through reliance on his conscience and the exercise of self-control. The social purity leagues espoused the view that women were sexually passive, but they rejected a double standard of behavior based on female frigidity. Social purists, then, did believe that men's sexual impulses were stronger than women's; they encouraged men to remain pure through self-restraint.40

Social purists emphasized a significant implication of the Divorce Act of 1857: Husbands could commit adultery with impunity. The statute's apparent toleration of male infidelity became the focus of the opposition to the double standard in the divorce laws. Reform would not only make divorce more accessible to women but would also censure a husband's adultery.

The opposition to the double standard was strengthened by the Christian ideal of high moral standards for both sexes. In 1857 several Members of Parliament who had opposed the introduction of judicial divorce denounced the distinction between men and women even more vehemently. Basing his argument on what he termed "Christian law," William Gladstone told the House of Commons, "I believe that the evil of introducing this principle of inequality between men and women is far greater than the evil which would arise from additional cases of divorce." When Lord Lyndhurst had argued against the double standard on the basis of ecclesiastical law, the Bishop of Salisbury had agreed that "an indulgence should not be allowed to the man which was denied to the woman."41

Echoing these arguments in 1910, Canon Hensley Henson of Westminster, later Bishop of Durham, testified before the Royal Commission: "In no respect is the teaching of the New Testament more original than in the emphasis it places on the equality of the sexes."42 Thus, Christians who might oppose extending the grounds for divorce could not justify the distinction between male and female adultery. Dr. Johnson had expressed this view when he had said, "A man, to be sure, is criminal in the sight of God." From a Christian perspective, when adultery was considered as a moral offense rather than a crime against property, the double standard became indefensible.

Apart from moral objections to the toleration of male infidelity, social concerns that had not been much in evidence in the 1857 debates surfaced in testimony before the Royal Commission. Specific threats to the community lay in two possible consequences of a husband's adultery: the birth of

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40. Phillips, Putting Asunder 499 (cited in note 8), and Edward J. Bristow, Vice and Vigilance: Purity Movements in Britain since 1700 at 100, 129 (Dublin: Gill & Macmillan, 1977).
42. 2 Minutes of Evidence, 410:22,583.
illegitimate children and the spread of venereal disease. References to these issues constituted explicit social arguments against toleration of male infidelity. To those witnesses who argued that a wife's adultery could threaten the family's inheritance by introducing another man's child into the home, E. Heron Allen, a solicitor, responded by describing the other side of illegitimacy:

He [the husband] does not introduce it [a child] into his own house, but he introduces it into the house of somebody else—either the house of an unmarried girl or of another married woman, and I think his sin is infinitely greater than the woman who brings a little child into the world who will, at all events, be protected.43

Adherence to the double standard was evident in the responses to Allen's arguments. J. H. Watts, a barrister, replied that "we are not trying the case of that family but of this," while Frederick Harrison argued even more firmly, "I cannot imagine the idea of putting the possible casual act of passion of a man by which he may become a father as having the moral, the social, and the physical consequences of the woman becoming a mother."44

Even those witnesses who rejected the argument that a husband's adultery could produce illegitimate children took seriously the charge that male infidelity could introduce venereal disease into a home. The possibility of infecting an innocent wife and perhaps even children with syphilis or gonorrhea made a man's "casual" adultery a grievous offense and provided the critics of the double standard with a strong argument. Dr. Frances Ivens told the Royal Commission that she considered "sex inequality in Divorce a cause of widely-spread Diseases in Women."45 Social purists argued that syphilis and gonorrhea were serious threats to the community. Any sexual relationship except that between husband and wife was potentially harmful to society. In addressing the problem, social purists condemned male promiscuity and encouraged men to control their sexual desires.

An emphasis on the possible grave consequences of male infidelity increased the effectiveness of the argument that the law encouraged male infidelity by setting a lower moral standard for men. The Reverend J. Scott Lidgett, a Methodist minister, told the commissioners: "I . . . believe that the best way to raise the moral standard of men is to call upon them for a higher degree of self-discipline by making the conditions of divorce absolutely equal between the sexes."46 Although Lidgett reflected the influence

43. Id. at 1:160:3,730.
44. Id. at 1:236:5,740 and 3:361:40,253.
46. 3 Minutes of Evidence 333:39,720.
of the double standard in his statement that men will have to exercise a "higher degree of self-discipline," his concern for high moral standards contradicted the distinction between men and women in the divorce laws.

Feminists who testified before the Royal Commission also deplored setting a lower standard of marital fidelity for husbands. Millicent Fawcett, the well-known leader of the moderate wing of the women's movement, told the commissioners: "As the law of England now stands it sets up two standards, a fairly high one for women, a lower one for men." In arguing for equality of men and women in the divorce laws, she added, "If in matters of morality you do not level up, you will almost certainly level down." Margaret Llewelyn Davies, General Secretary of the Women's Co-operative Guild, also expressed concern about toleration of male infidelity when she denounced the idealization of feminine self-sacrifice: "If divorce is considered a sin, and the patient endurance of degradation and compulsory suffering a virtue, a most serious moral confusion is created. It means that women's self-respect and happiness are sacrificed, and adultery on the part of men condoned."47

The arguments of Fawcett and Davies were consistent with the position that most of their contemporary feminists adopted. Emphasizing self-respect, they advocated a high standard of morality for both sexes rather than sexual freedom for women. In 1857 Parliament had sanctioned extramarital sexual activity for men. Feminists condemned that approval; they did not demand similar freedom for women.49

In the public debates on the divorce laws, feminists based their opposition to the double standard largely on the conservative sexual ideology of a single high standard of morality rather than on the inequity of the double standard. They were demanding equal access to the divorce court, but the emphasis was on removing the qualifications regarding a husband's adultery and not on extending rights or opportunities for women. For most feminists, neither male nor female adultery was acceptable. What they wanted, in the

47. Id. at 2:371:21,732.
48. Id. at 3:162:37,006.
49. See Olive Banks, Faces of Feminism: A Study of Feminism as a Social Movement 63 (New York: St. Martin's Press, 1981) ("Banks, Faces of Feminism"). Susan Kingsley Kent, Mary Lyndon Shanley, and Sandra Stanley Holton have agreed that feminists rarely raised the issue of sexual freedom for women. According to Shanley, Feminism 187–88 (cited in note 30), "For most Victorian feminists the main component of women's sexual liberation consisted in curbing men's 'licentiousness'; most were silent about or hostile to contraception. They did not propose severing women's sexual activity from the possibility of pregnancy and childbirth." In Sex and Suffrage in Britain, 1860–1914 at 145 (Princeton, N.J.: Princeton University Press, 1987), Kent has written, "For all their willingness to discuss sexual problems and sexual issues, the vast majority of even the 'New Women' of the 1880s and 1890s did not raise the idea of sexual pleasure for women." Holton has stated in Feminism and Democracy: Women's Suffrage and Reform Politics in Britain, 1900–1918 at 22 (Cambridge: Cambridge University Press, 1986): "The curbing of male sexuality by the enforcement of a single repressive standard of sexual morality was the suffragists' goal."
words of Millicent Fawcett, was for men to “level up” by maintaining the same high moral standards that were expected of women.50

The combination of moral arguments and social utility was effective in undermining the distinction between husband and wife in the divorce laws. By 1912, when the Royal Commission reported, traditionalists as well as reformers wished to eliminate the distinction between men and women from the divorce statute. As indicated by the number of witnesses who favored allowing women to divorce their husbands on the single ground of adultery, this particular amendment to the law was no longer seriously controversial.

In recommending that the same grounds for divorce should be available to men and women, the Commissioners stated in their Report: “Nothing has been more striking in our inquiry than the agreement amongst the great majority of the witnesses, who dealt with the question, in favour of equality.”51 The Royal Commission’s Report was not unanimous; a Minority Report objected mainly to the extension of the grounds for divorce but concurred with the majority of Commissioners that men and women should have equal access to the divorce court. Both the Minutes of Evidence and the Report of the Royal Commission indicate that the double standard was no longer tenable.

Lord Gorell, the Chairman of the Royal Commission, died in 1913 and thus could not sponsor implementation of the commissioners’ recommendations. On 28 July 1914, his son, the second Lord Gorell, introduced in the House of Lords a bill that would have established equality between men and women regarding the grounds for divorce. The support the bill received indicated that there was no longer significant opposition to the change.

Cosmo Gordon Lang, the Archbishop of York, had served on the Royal Commission. As one of the most vocal opponents of the extension of the grounds for divorce, he had signed the Minority Report. He supported Gorell’s bill, however, noting that the legislation was based on recommendations common to both the Majority and Minority Reports. Referring to the inequity of the double standard, Lang told the Lords, “I feel that the Bill removes an assertion of an immoral principle from our Statute law.”52

Lang was one of the most outspoken public opponents of divorce reform in 1914. His support of Lord Gorell’s bill indicated that the legislation very likely would have passed the Lords if the House had voted. Lang and

50. Olive Banks believes that feminists derived their emphasis on a single standard of morality from evangelical Christianity. She also has argued that a conservative conception of womanhood, based on a belief in the moral superiority of women, dominated feminist thought in the early 20th century. Faces of Feminism 63, 84. This perspective is evident in the debates on the double standard in the divorce laws.


several other peers, however, urged the sponsor to delay voting on the measure. They felt that it was too late in the session for adequate consideration of all the provisions. Gorell agreed to withdraw the bill, and World War I delayed the reintroduction of the legislation. Although Lang's advice to delay the vote contributed to the death of Gorell's bill, his strongly stated arguments in favor of the legislation, when compared with his vehement opposition to other measures of divorce reform, demonstrated that the double standard was no longer acceptable even to conservative opponents of divorce.

When Parliament finally resumed consideration of the double standard in the divorce laws, the world was quite a different place. One of the most obvious differences in postwar society was the further legal emancipation of women. Immediately following World War I, women gained the right to vote, to serve on juries, and to sit in Parliament. The removal of the double standard from the divorce laws was consistent with these changes.

The Report of the Royal Commission and the response to Lord Gorell's bill in 1914 had indicated that, even before World War I, there was no longer strong opposition to legislation making the grounds for divorce the same for men and women. Social changes associated with the war had further undermined the double standard. Yet the concept persisted not only in statutes but also in judicial decisions, particularly in the exercise of judicial discretion. According to the 1857 act, a judge could deny a divorce to a petitioner who was guilty of adultery. This bar to divorce, known as recrimination, was not absolute. Under Section 31 of the 1857 act, a petitioner who was guilty of adultery could obtain a divorce if the judge chose to exercise his discretion by granting a decree to dissolve the marriage.

A comparison of the responses to two requests for judicial leniency illustrates adherence to the double standard. In the 1920 case of Wilson v. Wilson, the husband petitioner had returned to England in 1917 from active service in France to discover that his wife had committed adultery and given birth to an illegitimate child during his absence. Discovering his own children in a neglected condition, Wilson removed them from his wife's custody and sued her for divorce. Subsequent to his discovery of his wife's infidelity, Wilson himself had committed adultery with Amelia Brown, a friend of the family who had been caring for the Wilson children. In the course of the divorce proceedings, Brown had given birth to Wilson's child. Since that time the couple had lived together, continuing to care for the Wilson children. They wished to marry.

The judge in the case, Sir Henry Duke, was not known for his leniency. In the Wilson case, he stated that "discretion is not to be exercised lightly, or indeed readily, but with some degree of stringency." Nonetheless, he decided to grant the divorce. The fact that Brown and Wilson planned to marry was a powerful motivation to the exercise of judicial discretion.
There was no hope of a reconciliation between Wilson and his wife. A divorce was the only means by which the children could be provided with a "respectable" home.\(^{53}\)

The converse of Sir Henry Duke's decision is found in the 1917 case of *Holland v. Holland*, when Mr. Justice Hill refused to grant a divorce to a wife who had been deserted by her husband. After her husband had begun to live with another woman, the wife had committed adultery and given birth to a child. Although a divorce would have enabled her to marry the father of her child, Hill refused her petition, and the Court of Appeal upheld his decision. An important consideration was the fact that the petitioner lived with her mother and stepfather. Although her husband had deserted her and refused to provide for her, Hill stated that "the petitioner was not thereby in any sense driven to adultery. She had a home at her stepfather's. It was not any necessity, but her own choice or weakness, which at the age of thirty-three led her to commit adultery." The appellate judges agreed that "she was not driven into adultery by any want."\(^{54}\)

The double standard is strikingly evident in a comparison of these cases. Male infidelity was understandable, while female adultery had to be justified by economic necessity. In exercising discretion in the Wilson case, Sir Henry Duke had cited as influential factors "the position of the children, to whose interest it is that they should have a home with the sanctions of decency and ... the position of Amelia Brown, for it is clearly in her interest that she should be lawfully married."\(^{55}\) It was also in the interest of Mrs. Holland that she should be legally married and that her child should have a respectable home, yet these considerations did not overcome the judges' abhorrence of her offense. They refused to sanction female adultery under any circumstances.

The persistence of the double standard is further illustrated by the fact that a husband could still sue a co-respondent for damages, while a wife could not bring a similar suit against a woman with whom her husband had committed adultery. English laws continued to hold that a husband had a property interest in his wife. Justice McCardie provided evidence of the point in a 1920 decision in which he described the nature of the damages in a suit against a co-respondent:

The damages ... have always been compensatory only, and not exemplary or punitive. The grounds on which damages are given are: (1) the actual value of the wife lost; (2) compensation to the husband for the

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53. *Wilson v. Wilson*, 18 *Law J. Rep.* 17–18 (1920). The fact that Wilson had been on active duty when his wife committed adultery may have influenced the judge's decision. Sir Henry Duke, however, in enumerating his reasons for exercising discretion, did not mention that consideration.


injury to his feelings, the blow to his honour, and hurt to his family life.

McCardie measured the value of a wife by two standards. Her pecuniary worth was determined by her personal wealth, her assistance in the family business, and her ability as a housekeeper, while the consortium aspect of her value depended on her "purity, moral character and affection, and her general qualities as a wife and mother." In an adultery case, a co-respondent's conduct was significant in determining the woman's worth because "the ease with which he effected his purpose may show that the wife was of small value."56 McCardie's assessment of the value of a wife demonstrated the durability of the belief that woman was the property of man. When adultery was considered as an economic offense, the double standard was still strongly evident.

Morally, though, the concept was almost impossible to defend. As evident in the Report of the Royal Commission in 1912, there was virtually no opposition to the removal of the distinction between men and women with regard to the grounds for divorce. Major Cyrial Entwistle, a sponsor of the Matrimonial Causes Act of 1923, was careful to isolate the issue. Parliament had rejected bills to extend the grounds for divorce in 1920 and 1921, and Entwistle wanted to separate equality of the sexes from other aspects of divorce reform. He opened the debate on the Second Reading of the Bill by declaring, "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."57 Entwistle clearly felt that equality of the sexes in this regard was not as controversial as other measures. After all, a majority of witnesses appearing before the Royal Commission had favored the amendment, and it was an issue on which the Majority and Minority Reports had agreed. Entwistle voiced the belief of many when he referred to the inequality of the sexes in divorce cases as "an anachronism and an indefensible anomaly."58

There was still not complete agreement on the measure, however. The chief opponent of the bill in the Commons, Dennis Herbert, argued with irrefutable logic that "you can never make a man a woman and you can never make a woman a man." Herbert was often interrupted in his speech opposing the reform. When he asked, "Is there any man in this House who is the father of a son and of a daughter who would regard the sin of adultery on the part of his son as being as serious as the sin of adultery on the part of his daughter?" another Member replied, "Why not?" Herbert continued to argue the point by stating that "under the present conditions of society,

58. Id. at 2356.
from the highest to the lowest, the sin of adultery does not ruin the reputation of a man in the way that it ruins the reputation of a woman." When other Members inquired, "Why?" Herbert replied, "I am not concerned with the question why; it is a fact."59

While it may have been a fact to Herbert, it was clearly not to a majority of the Members of Parliament. At least it was not a fact that they were willing to defend in public. The passage of the 1923 act by votes of 257 to 26 in the Commons and 95 to 8 in the Lords demonstrated not so much the weakness of the double standard as the strength of the moral arguments against its preservation. Fears regarding the social consequences of male infidelity had combined with moral concerns to undermine the belief that a woman's infidelity was a more serious offense than a man's. By 1923 the debate was such that Dennis Herbert, in opposing the Bill, had to defend himself against the charge that he was arguing for a lower standard of morality for men.60

The 1923 act, then, should be seen as a rejection of the idea that male adultery was acceptable. Although it was passed concurrently with other reforms benefiting women, it should not be viewed solely in that context.61 A central theme apparent in the debates regarding all aspects of divorce reform was the idea that the dissolution of a marriage was a matter of concern not only to the individual parties but also to the community. Proponents of reform emphasized individual happiness, while conservatives argued that divorce threatened social stability. The removal of the double standard was a change that both groups supported. On the one hand, the change made it possible for the courts to relieve the misery of many married women who would otherwise have had no recourse. On the other hand, Christians and social purists supported the establishment of the equality of the sexes with regard to moral standards. A belief that male adultery contributed to such social problems as prostitution, illegitimacy, and the spread of venereal disease was as significant as the desire to relieve the hardships imposed by the double standard. From this perspective, the 1923 act was conservative in nature and narrow in scope.62

59. Id. at 2366–67.

60. Id. at 2388.

61. Postwar feminists disagreed about the various issues involved in divorce reform. Through the National Union of Societies for Equal Citizenship (NUSEC), they played an influential role in the introduction of the 1923 act. Yet members of the organisation could not agree to support the extension of the grounds for divorce because some feared that the change would diminish the security that women had traditionally found in marriage. It was not until 1931 that the NUSEC endorsed the extension of the grounds for divorce. Dorothy M. Stetson, A Woman’s Issue: The Politics of Family Law Reform in England 108, 110, 113 (Westport, Conn.: Greenwood Press, 1982).

62. Roderick Phillips has responded to historians who have identified the liberalization of divorce laws with the emancipation of women by arguing that both "the reasons that legislators put forward to justify divorce law reform and . . . the substance of the reforms themselves [indicate that the reforms] were designed to achieve essentially conservative results."
The survival of the double standard in other areas of the divorce laws demonstrates the limited nature of the 1923 legislation. After 1923 a husband could still sue a co-respondent for damages, while a wife had no such right of action. In the Supreme Court of Judicature (Consolidation) Act of 1925, Parliament retained this provision of the 1857 statute. The 1923 act had established the same moral standards for husbands and wives. Economically, though, important distinctions remained in the divorce laws.

The double moral standard almost certainly continued to exist as a cultural assumption. Many Members who voted in favor of the 1923 act undoubtedly agreed privately with Dennis Herbert that a daughter's adultery was a more serious “sin” than a son's. The view is evident in a comparison of the Wilson and Holland cases. The judges in those cases clearly indicated that they believed that a wife's adultery was a more grievous offense than a husband's. Since the 1923 act did not affect the exercise of judicial discretion, it is certainly likely that a de facto double standard persisted long after Parliament ended de jure discrimination.

The debates in 1910, 1914, and 1923, however, indicate that, morally, the double standard was no longer acceptable as a basis for the divorce statutes of England. The concept was deeply rooted in English law, yet it had been undermined by powerful conservative forces. The Christian ideal of marital fidelity for both sexes was the basis of the arguments that men should “level up” to a high standard of morality. Social fears regarding the dangers of male adultery reinforced the demand for equal grounds for divorce. It was these conservative arguments that made the 1923 act possible.

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*Putting Asunder* 494 (cited in note 8). The debates surrounding the removal of the double standard in the English divorce laws provide a specific example of Phillips's general point.

63. 15 & 16 Geo. 5, c. 49. According to the 1925 Act sec. 189(1): “A husband may on a petition for divorce or for judicial separation or for damages only, claim damages from any person on the ground of adultery with the wife of the petitioner.” See Lord Birkenhead's speech in the Lords during the debate on the 1923 act for a discussion of other distinctions between men and women in the divorce laws. *Parl. Deb.*, 54 (26 June 1923): 590–91.