

“... EQUALITY FROM THE MASCULINE  
POINT OF VIEW ...”:  
THE 2ND EARL RUSSELL AND DIVORCE  
LAW REFORM IN ENGLAND

GAIL SAVAGE  
History / St. Mary's College of Maryland  
St. Mary's City, MD 20686, USA

John Francis Stanley, the second Earl Russell and Bertrand Russell's older brother, in a lifetime marked by more activity than achievement, appears to have dissipated a heritage replete with wealth, intellect and access to political power. Known as “the wicked Earl”,<sup>1</sup> Russell's career included a university education abruptly terminated under a mysterious cloud, three failed marriages, numerous marginal business ventures, and a checkered record in progressive political circles. At his sudden death in 1931, Russell bequeathed his younger brother the earldom and debts that included a life annuity to support his second wife, who lived to the age of 90. The third Earl, who had ex-wives of his own, naturally resented this responsibility (*Auto.* 1: 153).

Russell's marital adventures came to define one of the most important features of his public, as well as his private life, when his personal travail found expression in his activism on behalf of efforts to reform the divorce law. Russell's intercession in the public discussion of this question came after ten years of litigation occasioned by his first marriage culminated in a bigamy conviction at the hands of his peers in the House of Lords. His subsequent assumption of a leadership role in the movement for divorce law reform raises two points for discussion. The first demands an assessment of Russell's contribution to a political movement that gathered momentum very slowly, finally leading to substan-

<sup>1</sup> George Santayana, *Persons and Places: Fragments of Autobiography* (Cambridge, Mass.: MIT P, 1987), p. 308.

tive legislation in 1937, six years after Russell's death. The second concerns difficult issues about how one is to understand both the links between individual experience and individual behaviour and the extent to which that dynamic interaction might express and shape larger-scale historical and social processes. The explanatory narrative of Russell's involvement in divorce law reform offered below will seek to address these larger, more theoretical, matters.

Born in 1865, the future second Earl Russell, familiarly called Frank, became an orphan at the age of eleven. Although his younger brother remained at home under the supervision of governesses and private tutors, Frank went first to a local preparatory school, then to Winchester, and finally to Balliol College, Oxford. The first of the numerous scandals that punctuated Russell's life erupted at Oxford. The Master of Balliol, Benjamin Jowett, questioned Russell about the nature of his friendship with a school friend, the poet Lionel Johnson, who had come to visit him. When Russell reacted indignantly, Jowett pressed the matter of an "improper letter" attributed to Russell and had Russell sent down for a year. Russell thought Jowett's action cavalier and arbitrary and angrily removed his name from the books of the College. He never returned to Oxford. Many aspects of this episode remain obscure. Jowett did not elaborate on the substance of the charges or produce any evidence—even the letter itself. Although Jowett and Russell reconciled later in life, the implications of this episode cast a permanent cloud over Russell's reputation (Santayana, pp. 308–9).

After a period of time chiefly occupied by travel and yachting, Russell married Mabel Edith Scott. Mabel Edith and her mother had lived a precarious life on the fringes of respectable society. Russell first became infatuated with the beautiful widow and, at her instigation, proposed to and married her daughter. Lady Scott and Mabel Edith, for their part, welcomed the financial security and social standing Russell offered them (Santayana, pp. 316–17). The emotional complexities of the motives that brought these three people together did not bode well for long-term stability, and, on 6 May 1890—exactly five months after the wedding—Mabel Edith left Russell and went back to her mother.<sup>2</sup> On 28 November the young Countess Russell filed a petition for judicial separation on

<sup>2</sup> Earl Russell, *My Life and Adventures* (London: Cassell, 1923), p. 160.

the grounds of cruelty, and thus began Frank Russell's long and arduous education in English divorce law.

Among the acts of cruelty detailed in her petition, Mabel Edith accused her husband of committing sodomy with a male friend who came to visit their home. This charge had enormous significance, both for Russell personally and for the public before which Mabel Edith and Frank would engage in legal battle. Mabel Edith's accusation recalled the scandal of Frank's Oxford days and its hints of youthful homosexual relationships. In addition, the heightened tension over issues of gender and sexuality during the 1890s that found their most notorious expression in the trial of Oscar Wilde lent the Russell litigation great urgency.<sup>3</sup> After all, Russell's private life exhibited many of the features associated with the "decadence" attributed to the culture of the 1890s. But the moral panic set off by the Wilde case necessitated that Russell vigorously defend himself against such charges.<sup>4</sup> The social and political power that aristocratic connections could still command, used so effectively by the Marquess of Queensberry against Wilde, served, when the shoe was on the other foot, to protect Russell.

The first Russell *vs.* Russell case went to trial in December 1891, and a special jury exonerated Russell of all charges. Although "not guilty", the outcome left Russell married to his estranged accuser, who refused to apologize and continued to air her grievances against him in public. In April 1894 Mabel Edith filed suit for the restitution of conjugal rights, almost certainly with the aim of forcing Russell to provide her with an income. Russell, for his part, decided to counter-sue and asked for a judicial separation on the grounds of his wife's cruelty. He argued that Mabel Edith's persistence in making charges against him which had been judged untrue, especially the accusation that he had committed an "unnatural act", in order to extort money from him, amounted to "cruelty of the most devilish kind, which ought to be if it is not within

<sup>3</sup> Elaine Showalter, "Decadence, Homosexuality, and Feminism", in *Sexual Anarchy: Gender and Culture at the Fin de Siecle* (New York: Viking P., 1990), pp. 169–87.

<sup>4</sup> Both Showalter (pp. 171–2) and Samuel Hynes identify the Wilde trials with the narrowing and inhibiting of the public discussion of issues of gender and sexuality after 1895 (*The Edwardian Turn of Mind* [Princeton: Princeton U. P., 1968], pp. 184–5). Some of the litigation between the Earl and his Countess came to court during the spring and summer of 1895, coinciding with and post-dating the prosecution of Wilde in April of that year.

the legal definition" (*My Life*, p. 187). Not only did this express Russell's sentiments, it was also a shrewd legal move: if his wife defended her earlier conduct, she would necessarily undermine her case for restitution.

The second trial took place in April 1895. A special jury, after deliberating twenty minutes, found Countess Russell guilty of cruelty, and the judge granted Russell a judicial separation. Russell saw this outcome as a vindication of his character against Mabel Edith's false charge "of the most odious description."<sup>5</sup> Mabel Edith then took the case to the Court of Appeal, where a panel of three judges held that the facts in the case did not constitute legal cruelty, which under long-standing precedent included only behaviour that caused or threatened to cause actual physical harm. The judges, however, also concluded that Mabel Edith's conduct negated her claims for a reconstitution of conjugal rights. Taken together these decisions meant that Russell again found himself exonerated but still married. He then appealed to the House of Lords, which heard the case in the summer of 1897. The Lords upheld the view of the Appeal Court.<sup>6</sup>

This sequence of events exhausted Russell's legal avenues under English law. When Russell became enamoured of Mollie Somerville, a suffragist and political activist whom he encountered in the progressive political circles in which he moved, the couple turned to American law for a solution to Russell's marital impasse. In April 1900 Russell obtained a divorce from Mabel Edith in Reno, Nevada, and married Mollie the very next day.<sup>7</sup> English law did not, of course, recognize the validity of the American divorce action. The marriage thus finally gave Mabel Edith sufficient grounds to sue Russell for divorce. In order for a wife to sue her husband for divorce in England, she had to couple charges of adultery with at least one other of the marital transgressions enumerated by the 1857 Divorce Act. Bigamy, which in itself also evidenced Russell's adultery, met the necessary legal criteria. Mabel Edith promptly sued,

<sup>5</sup> Frank Russell to Santayana, 10 April 1895 (RA1 732). In the same letter Russell comments on the trial of Oscar Wilde: "This Oscar affair is awful: Alfred Douglas is a great friend of Lionel's & he is dreadfully distressed."

<sup>6</sup> *All England Law Reports* (1895-97), pp. 1-32.

<sup>7</sup> The publicity and notoriety generated by this episode apparently helped to lay the foundations for Nevada's reputation as a divorce mill (Glenda Riley, *Divorce: an American Tradition* [New York: Oxford U. P., 1991], pp. 135-6).

her legal action also facilitated and motivated by the £5000 Russell advanced her (*My Life*, p. 279). The Divorce Court finally pronounced a decree nisi in the case on 24 March 1901, and at last free of his tie to Mabel Edith, Russell regularized his union with Mollie.

But he was not yet clear of the thorny thicket of English marriage law. In June 1901 Russell was arrested on a charge of bigamy. He demanded a trial by his peers, the last such trial ever held; his peers in the House of Lords found him guilty and sentenced him to three months in prison.<sup>8</sup> The account of Russell's tangled legal affairs up to this date fails to do justice to their intricacies. For instance, it omits both the breach of promise suit brought against him at the time of his marriage and his successful suit for libel against Lady Scott, but it does serve to sketch in the personal background for Russell's interest in divorce law reform.

Three months in prison gave Russell ample opportunity to contemplate large philosophical questions about the meaning of life, as well as to dwell upon the inequities of English divorce law. He spent his time in reasonable comfort, reading, thinking and writing. The book of essays he produced during this hiatus of enforced inactivity, entitled *Lay Sermons*, included a discussion of marriage. In it he laid the intellectual groundwork for his subsequent efforts to reform the law that had led to so much personal suffering.

The views Russell expressed at this juncture of his life have a double aspect. On the one hand, anyone familiar with his personal story can see the shadows it cast over the objective and reasoned stance Russell adopted in his essays. On the other, Russell's essays express sentiments that echo contemporary currents of opinion. Although fuelled by personal animus, Russell's work on behalf of divorce law reform was thus becoming something more than an idiosyncratic expression of his particular circumstances and experience. By conceptualizing his own experience in a particular way, Russell's public stance on divorce as a political issue provided a more generalized framework for understanding the experience of marriage and marital conflict. By publishing his essays Russell made his story accessible to a larger audience and, in doing so, imbued that story with a larger significance.

<sup>8</sup> Russell, *My Life*, pp. 259, 279, 281, 283; *Law Reports*, House of Lords (1901), pp. 446-9.

How then did Russell, sitting in his prison cell as a consequence of his marital escapades, view marriage and divorce? Russell's polemic begins with the proposition that the "continuation of the race" necessitates "the union of the sexes", which, under ideal circumstances, will occur "where the man desires with a full sense of responsibility and respect to embrace the woman, and where she with a lift of her whole being yields herself without fear and without shame." Such a state, seemingly a direct and unmediated expression of nature, will produce a "true union which makes for morality and produces healthy offspring." According to Russell, marriage is "only the outward advertisement of a union—a mere social act—and unless the underlying qualities are present it is a mere sham and falsehood" (p. 70).

Russell identifies several obstacles to achieving the matrimonial state he considers ideal. For women, "questions of money or of social status" obscure "natural emotion", whereas for men "early dissipation and immoralities" blunt "finer feelings". Such considerations lead individuals (such as Mabel Edith and Russell himself, perhaps?) to establish marital alliances that fail to accord with Russell's moral vision (pp. 69–70). Russell also blamed religion, especially "the Mosaic and the Puritan traditions", for creating a state of "cruel ignorance responsible for lewd imaginings and whispered innuendo", that precluded the possibility of "true marriage" for many (pp. 74–5). Russell calls for "a breath of Walt Whitman's large clean thinking" as an antidote to this poisonous atmosphere. He argues that only the "knowledge of the dignity of sex" that results from "honesty in speech and thought" combined with "the admiration for a clean and healthy body" can provide the context enabling couples to conduct themselves morally (pp. 74–5). In addition to these social and cultural impediments to forming authentic marriages, men and women also make simple but potentially devastating mistakes in their choice of partners. Because of the various ways men and women can go wrong, divorce exists, or should exist, "to remedy these mistakes and to advance in a lawful manner under the protection of society to a higher union" (p. 73). Divorce thus becomes a vehicle for attaining a greater good, both for the individuals involved and for society at large.

Russell presaged his public rehearsal of these arguments when he

<sup>9</sup> Frank Russell, *Lay Sermons* (London: Heinemann, 1912), p. 69.

defended his American divorce and re-marriage in a letter written to his younger brother on 12 June 1900. Frank explained to Bertrand that he had "simply announced to the world that I have taken a woman to be my wife in every moral sense and domestic relation, and with all the legal formalities possible under the circumstances." He went on to justify his actions: "We invoke what human laws are available to sanction the cause which commends itself to our consciences and morals: and at last I obtain domestic felicity and a home and happiness."<sup>10</sup> In private and in public Russell displayed great consistency in the way in which he constructed an ideological framework that served to explain his situation and to justify his behaviour, both to others and to himself.

Russell's view of marriage and divorce expresses key presumptions widely shared in progressive circles. Russell propounds a species of liberal individualism which demands that social institutions allow the expression of the felt inner reality of those affected rather than require people to govern their inner lives in conformity with social conventions. Russell assumes that this inner reality, and the sexuality at its core, has its roots in nature, a nature which is bifurcated by gender. Notice that in Russell's ideal marriage men "desire" and women "yield". Notice too that Russell defined the impediments to ideal marriage by gender, portraying men and women as subject to differing temptations.<sup>11</sup>

Russell did not have to content himself with only a theoretical discussion of the matter; he remained a peer of the realm with direct access to a powerful legislative body in which he had been active on behalf of various causes throughout the 1890s. The year after serving his prison term, we find him rising to speak in the House of Lords to introduce a bill that, if passed, would have thoroughly overhauled English divorce law. When Russell began with the understated observation that he had "had occasion to consider the question of the divorce laws ... for the past eight years", many of his listeners would have recalled the publicity generated by his various trials.<sup>12</sup>

<sup>10</sup> Frank Russell to Bertrand Russell, 12 June 1900 (RA1 730).

<sup>11</sup> For another analysis of the way in which this view of the individual underlies the legal regulation of sexuality see Mary Poovey, "The Abortion Question and the Death of Man", in *Feminists Theorize the Political*, ed. Judith Butler and Joan W. Scott (New York: Routledge, 1992), pp. 239–56.

<sup>12</sup> *Parliamentary Debates*, (4), 56 (1902): 389.

In a long and careful speech, Russell argued for several new grounds for divorce, including cruelty, penal servitude for three years, lunacy, three-years' separation, and mutual consent after one year's separation. Another provision of Russell's bill would have required considerable changes in court procedure by replacing the ecclesiastical common law, retained by the Divorce Court under the 1857 divorce legislation, with the rules and regulations governing the King's Bench Division. Russell's bill also would have given the county courts jurisdiction over divorce litigation brought by couples whose joint annual income did not exceed £500.

Russell outlined his bill in moderate language, rooting his discussion in a close analysis of the lengthy debates surrounding the passage of the 1857 Divorce Act in order to demonstrate that his views had respectable precedents. Reading his speech, it is obvious that Russell had prepared carefully for what he and many others regarded as an important occasion. In this public forum provided by his peers, Russell spoke in a restrained tone and never touched upon his personal experience directly, although he undoubtedly stirred memories in many minds when he described the plight of those who "have been, to all intents and purposes, divorced for years and years, but, notwithstanding, severance of the legal bond is refused to them, and they are condemned to live a mutilated life, without a home, a spouse, or a family, or the chance of obtaining any."<sup>13</sup>

His peers' response was not favourable: no discussion of the bill followed his speech. The Lord Chancellor, the Earl of Halsbury, indignantly characterized his proposed legislation as amounting to "the abolition of the institution of marriage"; and he called upon the Lords to express their disapproval by rejecting the bill, as opposed to voting to postpone its consideration, which was the customary practice. Without debate, the House of Lords voted to sustain the Lord Chancellor, and Russell again found himself an isolated renegade among his peers.

Despite this unequivocal rejection, Russell persisted in his efforts. In 1903 he introduced another bill, which was framed more narrowly. This proposed legislation expanded the grounds of divorce to include cruelty and separation for three years. In his speech introducing the bill, Russell

propounded what he took to be the two principal aims of divorce law reform: he believed that any reform should recognize the equality of men and women before the law, and that it should serve the state by granting legal recognition to marriages already dissolved in fact so that the individuals involved could contract new, and presumably happier, alliances. Lord Halsbury treated this more moderate bill with the same contempt as the one before, remarking: "I hope that we may not have the same proposal repeated over and over again, for the noble Lord and everybody else must know that it is only in the nature of a protest by himself against the marriage law as it exists." Again, the Lords supported the Lord Chancellor's rejection of Russell's proposed legislation without debate. In 1905 and in 1908 Russell repeated his attempt to introduce legislation to amend the law of divorce, contenting himself with suggesting that desertion for two years become by itself a grounds for divorce. No more headway was made on these occasions than on the earlier attempts, although the House of Lords treated him somewhat more gently by postponing consideration of his bills rather than rejecting them outright.

Russell's single-handed campaign for divorce law reform in the House of Lords might make him appear to be an isolated voice in the wilderness. While that might have been true about his attempts to persuade the House of Lords during the first decade of the twentieth century, it is not the whole story. During these years, Russell organized a society for divorce law reform in order to gather information and to hold public meetings (*My Life*, p. 235). The goals of his group, the Society for Promoting Reform in the Marriage and Divorce Laws of England, included adding desertion, lunacy, and long prison terms to the list of recognized grounds for divorce, securing equal treatment of women under the law, and granting divorce jurisdiction to County Courts so that persons of small means could avail themselves of the law.<sup>14</sup> In 1906, Russell's organization merged with the Divorce Law Reform Union, which subsequently took on the task of mobilizing public opinion.<sup>15</sup>

This admittedly small-scale enterprise of political activism in support

<sup>14</sup> Royal Commission on Divorce and Matrimonial Causes, Minutes of Evidence, Cd. 6481, 3: 453.

<sup>15</sup> E. S. P. Haynes, "The Late Lord Russell and Divorce Law Reform", *The Saturday Review*, 151 (14 March 1931): 369.

<sup>13</sup> *Ibid.*, col. 395.

of divorce law reform had a larger context. The increasingly militant movement for women's suffrage, the discussion of the relations between men and women revolving around the concept of "the new woman", changes in attitudes towards sexuality stimulated by the writings of Havelock Ellis, all supplied material for Russell and others interested in divorce law reform.<sup>16</sup> Growing dissatisfaction with the operation of the divorce law among legal professionals also lent impetus to the nascent divorce law reform movement. When Lord Gorell, the sitting President of the Divorce Court, called for a revision of the statute law governing divorce in delivering his judgment in *Dodd vs. Dodd* (1906),<sup>17</sup> he lent an important measure of respectability to the cause of divorce law reform.

Gorell's intervention in the discussion spurred interest in the issue, leading directly to the formation of the Divorce Law Reform Union. The leadership of that group found that Russell's reputation proved prejudicial to their cause. At their request, Russell assumed a somewhat lower profile in the movement, which in its first three years focused its energies on persuading the government to appoint a Royal Commission to investigate the question of changing the English law of divorce.<sup>18</sup>

In 1909, the government named Lord Gorell himself, then retired from the bench, as chairman to the Royal Commission on Divorce and Matrimonial Causes. This body held exhaustive hearings over the next three years, and their report provided those interested in divorce law reform with a concrete legislative platform. Russell expressed his surprise to Prime Minister Asquith that he had not been appointed to serve on the Royal Commission. Although disappointed, he provided the Commission with materials relevant to its investigation and appeared before it—at his own request—to expound his views on divorce.<sup>19</sup>

<sup>16</sup> For general discussions of these cultural developments see Hynes, *The Edwardian Turn of Mind*, pp. 132–211; Jonathan Rose, *The Edwardian Temperament, 1895–1919* (Athens, Ohio: Ohio U. P., 1986), pp. 80–90; and Ruth Brandon, *The New Women and the Old Men: Love, Sex and the Woman Question* (New York: Norton, 1990). For an overview of divorce law reform, see Ann Sumner Holmes, "Hard Cases and Bad Laws: Divorce Reform in England, 1909–37" (unpublished PhD disser., Vanderbilt U., 1986).

<sup>17</sup> J. E. G. De Montmorency, *John Gorell Barnes, First Lord Gorell: a Memoir* (London: John Murray, 1920), pp. 89–91.

<sup>18</sup> Haynes, "The Late Earl Russell", p. 369.

<sup>19</sup> Asquith to Frank Russell, 30 Nov. 1909; Lord Gorell to Frank Russell, 11 May 1911

The divorce law reform movement thus had its roots in the experience of blighted hopes and bitter unhappiness witnessed by the Divorce Court. Gorell had the duty of presiding over the legal process, whereas Russell had the misfortune to find himself ensnared by it. Important differences, however, existed between the positions of these two men. When Gorell, who had been known as a "wife's judge", pointed to the "inconsistencies, anomalies, and inequalities amounting almost to absurdities" that characterized divorce actions, he had in mind the way in which the law failed to protect wives from their husbands.<sup>20</sup> In contrast, Russell placed himself, as man and as husband, in the role of victim. Russell and Gorell thus viewed divorce law reform from positions analogous to, but fundamentally in conflict with, one another. This conflict, however, remained merely potential until the Parliamentary debates over divorce reform during the 1920s articulated them explicitly.

During the public investigation of divorce conducted by the Royal Commission, Russell, with the encouragement of H. G. Wells, published his fullest statement on the subject, a book simply entitled *Divorce*.<sup>21</sup> Russell reiterated his basic principles: that "the only bond of marriage which can be recognized as a fitting one is that of mutual affection, confidence, and respect"; and that in principle, divorce should be "granted for every cause which destroys the home and renders true marriage impossible" (pp. 183, 94). In this work Russell did not add anything new to his previous discussion of the issue, but he demonstrated again his thorough grounding in the parliamentary debates of the 1850s, as well as the sixteenth-century background of English marriage law. As H. G. Wells commented to the author, who was anxious for feedback on his manuscript: "your attitude is so *entirely* legal & Western European". Wells thought this approach, so different from his own, precluded the possibility of collaboration between them, but he pronounced the whole "very fine & interesting", singling out Russell's "clear barrister-isms" for praise. Wells also suggested a publishing strategy to Russell, which

(RAI 734); Royal Commission on Divorce and Matrimonial Causes, Minutes of Evidence, Cd. 6481, 3: 450–5.

<sup>20</sup> Barnes' judgment in *Dodd vs. Dodd* (1906), quoted in De Montmorency, *John Gorell Barnes*, p. 90.

<sup>21</sup> Russell, *Divorce* (London: Heinemann, 1912); Russell to H. G. Wells, 18 and 27 July 1911; H. G. Wells to Russell, July 1911 (RAI 734).

included establishing an "acceptable price" and the book's appearance "just a little in advance of the Royal Commission Report".<sup>22</sup>

At this juncture, the lives and careers of Wells and Russell shared some similarities. Despite differences in approach, the two men agreed on important principles about the relationship between the state and the individual as well as the naturalistic and ultimately sexualized basis of individual identity. Not surprisingly, they also agreed about the need for easier divorce in order that individuals could maintain a moral consistency in their private and public lives. Russell and Wells also shared a propensity to cast their personal circumstances and behaviour in ideological terms.<sup>23</sup> Finally, his new book appeared just before Russell embarked on his last great romance; the woman was the novelist Elizabeth of *Her German Garden*, the Countess Elizabeth von Arnim. The couple renewed a youthful acquaintanceship in 1913 just as Elizabeth began distancing herself from an intense and tumultuous relationship with H. G. Wells!<sup>24</sup>

After the Royal Commission completed its work, it was apparent that Russell no longer stood alone in his espousal of divorce law reform, even in the House of Lords. Numerous attempts were made to enact the legislative programme outlined by the Royal Commission's Majority Report between its publication in 1912 and the passage of the Herbert Act in 1937. Russell participated in only some of these debates, which were instigated and largely carried on by others. He figured most prominently in the debates over the 1920, 1921 and 1923 Matrimonial Causes Bills, which took place after the breakdown of his third marriage at the end of the first world war.

The 1920 bill, introduced in the House of Lords by Lord Buckmaster, a Liberal who had served as Solicitor-General and Lord Chancellor, encompassed the full programme of reform recommended by the Majority Report of the Royal Commission on Divorce and Matrimonial Causes. Russell emerged as an important player during the committee

<sup>22</sup> H. G. Wells to Russell, July 1911 (RAI 734).

<sup>23</sup> On Wells see Jane Lewis, "Intimate Relations between Men and Women: the Case of H. G. Wells and Amber Pember Reeves", *History Workshop Journal*, 37 (Spring 1994): 76–98.

<sup>24</sup> Karen Osborne, *'Elizabeth': the Author of Elizabeth and Her German Garden* (London: Bodley Head, 1986), pp. 156–89.

stage of the deliberations when he offered a large number of amendments drawn up by a committee of barristers and solicitors experienced in Divorce Court practice. Russell sat through four days of debate at the committee stage, offering a total of fourteen amendments to the bill, eight of which were adopted. The most substantive change he suggested—that evidence of collusion between the litigating parties be a discretionary rather than an absolute defence against divorce—did not win approval.<sup>25</sup>

When the 1920 bill, after exhaustive debate in the House of Lords, failed to pass through the House of Commons, Lord Gorell, the younger son of the chairman of the Royal Commission, introduced a much more narrowly framed bill in 1921. This bill cautiously attempted to implement only those reforms that enjoyed the broadest possible support. Gorell did not, for instance, offer to increase the number of grounds for divorce beyond adultery, although he did provide for the equal treatment of husbands and wives under the law. Russell, who described Gorell's bill as providing "illusory remedies for real hardships",<sup>26</sup> did not find much to commend in this timid approach; he feared that to carry out such a small scale reform would preclude the possibility of more thoroughgoing change in the near future.<sup>27</sup> His suggestion that the Lords reject the measure outright rather than risk such an outcome motivated Lord Buckmaster to propose the alternative strategy of amending Gorell's bill in order to make it more substantive. Russell supported this expedient, but the resulting bill, like its predecessor, failed to become law.

Although the proposed measures in 1920 and 1921 did not succeed, 1923 saw the passage of the Matrimonial Causes Act. The new statute provided for equal grounds of divorce for both husbands and wives. This reversed the encoding of the sexual double standard into statute law by the 1857 Divorce Act, which had allowed husbands to divorce adulterous wives but had required wives to prove their husbands guilty of adultery compounded by some other grave marital offence, such as desertion or cruelty, before they could obtain a divorce. The 1923 bill, originally

<sup>25</sup> *Parliamentary Debates*, House of Lords, (5), 39 (20, 27 April May 1920): cols. 818–30, 1049–85; 40 (4, 11 May 1920): cols. 70–85.

<sup>26</sup> *Parliamentary Debates*, House of Lords, (5), 44 (1921): col. 462.

<sup>27</sup> *Ibid.*, col. 466.

drawn up by the National Unions of Societies for Equal Citizenship as part of their legislative programme,<sup>28</sup> received a surprising amount of opposition from the Divorce Law Reform Union on ostensibly the same grounds advanced by Russell in opposing the 1921 bill—that the piecemeal approach to divorce law reform would preclude substantive reform in the near future.<sup>29</sup> The Parliamentary debates reveal, however, that the volatile issue of what constituted equality between the sexes ignited tensions that polarized those interested in divorce law reform.

Although equality for women had always formed a central tenant of Russell's professed political beliefs, his speech on this bill reveals a telling ambivalence about the equality of husbands and wives before the law. The Lord Chancellor, Lord Birkenhead, himself also a divorce law reformer, spelled out this ambivalence explicitly, saying:

In substance the Bill is based as it must be based, on the alleged desire to obtain equality between the sexes. In the days before the vote had been conceded to the other sex, as far as I was able to understand these matters I always attempted to vote on behalf of that equality, because I thought that a special obligation was laid upon a legislature which consisted solely of the male sex, to see that women had that equality. But equally, now that women do possess the vote, and are in a majority in this country, I am deeply concerned that there should also be equality from the masculine point of view, and I fail to find the slightest sign of equality in these proposals. If the Bill be passed in its present form the situations of the husband and wife remain quite different in a number of material respects, extremely to the disadvantage of the sex to which the members of this House belong.

The legal disadvantages under which men laboured that were enumerated by Birkenhead included the husband's obligations to provide his wife with an income during legal proceedings and to pay her legal expenses, and his continued responsibility for her maintenance even after a divorce or separation.<sup>30</sup> Russell exhibited a wholehearted agreement with Birkenhead's assessment of the situation when he dismissed the bill as "a sort of platform answer to a platform complaint about sex equality", adding (probably with feeling), "any injustice that is done is gen-

<sup>28</sup> Fawcett Library, NUSEC, Executive Committee minutes, II, 25 Jan., 22 Feb. 1923.

<sup>29</sup> Editorial, *DLRU Journal*, 4 (Feb. 1923): 1.

<sup>30</sup> *Parliamentary Debates*, House of Lords, (5), 54 (1923): cols. 589–91.

erally done to the man."<sup>31</sup> Russell's remarks here do not just reflect the bitterness of hopes blighted in middle age; they also echo sentiments held by Russell throughout his adult life. Over thirty years earlier Russell had listed the reasons he was satisfied by his 1891 victory in court over Mabel Edith in a 19 December 1891 letter to his good friend George Santayana. In that letter Russell stated that the outcome of the case showed "men in general that women should not have all their own way in law courts".<sup>32</sup>

The sense of grievance Russell expressed here had by this time been compounded by the failure of his third marriage. Russell's last wife, Elizabeth, availed herself of a rather different public forum to air their bitter estrangement. In her novel *Vera* (1921), Elizabeth depicted a male character whose thoughtless and self-absorbed behaviour amounted to a tyranny so cruel and so complete that it led one wife to suicide and threatened to destroy another's personality. In the course of the novel a middle-aged man falls in love with a young girl only a few weeks after his wife of fifteen years has mysteriously fallen from a window to her death. In the hands of its skilled author, the man develops from a figure, semi-comical in his pomposity, to a man capable of confronting his new bride, after having locked her out of the house in a driving rain storm, with a pitiless and unrelenting drive to assert his authority over her: "He knocked the ashes out of his pipe, his face twitching with anger, and wished to God he could knock the opposition out of Lucy as easily."<sup>33</sup>

Russell's brother Bertrand and his good friend George Santayana thought this portrait of his character cruel, although Santayana admitted its accuracy of detail.<sup>34</sup> Russell, for his part, carried a copy of the novel about with him and tried to refute individual passages to those willing to listen. His threat to sue for libel raised the hopes of Elizabeth's publishers, who saw in such legal action an opportunity to make the novel a best seller. Cooler heads prevailed, however, and Russell was never able to avenge himself upon his novelist wife.<sup>35</sup> He apparently never reconciled himself to this last episode of marital failure. After Russell's death

<sup>31</sup> *Ibid.*, col. 604.

<sup>32</sup> Russell to Santayana, 19 December 1891 (RA1 732).

<sup>33</sup> Elizabeth von Arnim, *Vera* (London: Virago, 1989), p. 213.

<sup>34</sup> Russell, *Auto.* 2: 154; Santayana, *Persons and Places*, p. 484.

<sup>35</sup> Osborne, *Elizabeth*, p. 235.



Santayana wrote Elizabeth, quoting from a letter he had received from Russell shortly before his sudden death in 1931. Russell had described the breakdown of his marriage with Elizabeth as one of the “two great shocks” of his life—the other being Jowett’s decision to send him down from Oxford. According to Santayana, Russell wrote: “when Elizabeth left me I went completely dead and have never come alive again.... I ascribe my bad heart entirely to the year’s anguish I suffered after she left me and her betrayal with a kiss of Judas.”<sup>36</sup>

When Russell rose before his peers in the House of Lords, did he speak with the voice of the pioneer in divorce law reform, who had always advocated equality for women as an integral part of his political agenda? Or did we hear the voice of the aggrieved husband who, by 1923, had three estranged wives in his personal history? An answer, I think, lies in the nature of the divorce law reform movement itself, which allowed both voices to sound together without psychic dissonance. The contradictions inherent in a patriarchal legal system, as well as the social and political privileges which Russell enjoyed by virtue of his birth, worked together to give Russell the scope to articulate his personal experiences in more generalized political terms.

The first two presidents of the Divorce Law Reform Union, the successor organization to Russell’s reform society, shared many of Russell’s ideas. The first president, Sir Arthur Conan Doyle, worried about the dire social and moral consequences likely to result from the large numbers of men and women who obtained separations but could not remarry. Doyle also entertained a vision of marital relations sanctified by “unselfish love”, the absence of which degraded the marital relationship to “fornication”.<sup>37</sup> The second president, who was none other than F. E. Smith, the Earl of Birkenhead, enjoyed a well-deserved notoriety for his ardent opposition to women’s suffrage and other legislation intended to secure sexual equality. But he also believed that the state ought to recognize the failure of the marital relationship and that by not doing so the law imposed a hardship and an unreasonable burden on the

<sup>36</sup> Santayana to “Elizabeth” Russell, 10 Nov. 1931 (RA1 Rec. Acq. 102; original in Huntingdon Library).

<sup>37</sup> Arthur Conan Doyle, “Divorce Law Reform”, *The Morning Post*, 9 Dec. 1913; printed in *Letters to the Press*, ed. John Michael Gibson and Richard Llewelyn Green (Iowa City, Iowa: U. of Iowa P., 1986), p. 192.

blighted lives of the unhappily married.<sup>38</sup> According to Doyle and Birkenhead, marriage sanctified by love provided the appropriate arena for human sexuality and reproduction. The state had a legitimate interest in recognizing the end of marriages lacking love’s sanctification so that individuals could form new families. As we have already seen, Russell had already formulated his own version of this complex of ideas, which formed the heart of the programme of the divorce law reform.

The principle of sexual equality plays no necessary role in the positive logic of these arguments. However, since legislators originally framed the 1857 Divorce Act to protect the powers of husbands over wives, a kind of oppositional logic could justify reform in terms of the equality of men and women before the law. In addition, the same patriarchal presumptions that granted power to husbands also promised protection to wives, and the law sought to enforce this as well. Indeed, this implicit promise had been the basis for Caroline Norton’s attack on the marriage laws that formed such an important part of the public discussion of this issue during the 1850s, culminating in the passage of the 1857 Divorce Act.<sup>39</sup> If the state buttressed the power of husbands over wives by reenforcing wifely dependence, then the state would have to require husbands to provide for their wives or take on that task at public expense. Thus, although the principles embodied by the law protected the power and authority of husbands in general, the law in practice could easily work counter to the financial interests of husbands in particular. To free wives from this dependence would be to free husbands from this obligation, something the Russell brothers, with seven wives between them, would have heartily welcomed. Feminists of the early twentieth century wished to proceed cautiously in the latter respect, however, given the enormous disadvantages that continued to burden women in the labour market.<sup>40</sup>

<sup>38</sup> For Birkenhead’s view of divorce see “Divorce Reform” in *Points of View* (London: Hodder and Stoughton, 1922), pp. 105–50, and “The Cruelties of Divorce” in *Last Essays* (London: Cassell, 1930), pp. 337–47. On Birkenhead’s life and career see Birkenhead, *The Life of F. E. Smith, First Earl of Birkenhead* (London: Eyre & Spottiswoode, 1960), esp. pp. 322–24, 339, 416–20.

<sup>39</sup> Caroline Norton, *English Laws for Women in the Nineteenth Century* (1854), and *A Letter to the Queen on Lord Cranworth’s Marriage and Divorce Bill* (1855).

<sup>40</sup> For an assessment of the feminist position on divorce law reform, see Gail Savage, “The Sexual Politics of Divorce Law Reform in England, 1900–37”, unpublished paper

Frank Russell's political activism on behalf of divorce law reform exhibits the way in which an individual's self-interest, shaped and defined by personal experience, can find expression in a political and philosophical stance. In Russell's case this took the form of an individualist vision of the proper relation between the state and family life. This vision in turn resonated with an audience large enough to provide a more generalized frame within which others could understand the experience of marital discord. The particular species of naturalistic individualism espoused by Russell and many of his contemporaries made it possible for him to adopt a posture of radical reform on behalf of individual rights and simultaneously to exercise, without conscious hypocrisy, the increasingly vehement hostility towards women that marked his dealings with them throughout his life. Russell's aggressive assertion of his heterosexuality—both in public and in private, both in theory and in practice—might have served to divert attention away from his youthful homosexual encounters and the warm friendships he enjoyed with men as an adult. But the aristocratic milieu which provided Russell with a public forum that allowed him to politicize his personal grievances also turned a blind eye to these sexual ambiguities.

We have seen how Frank Russell's vulnerability to the charms of a pretty widow and her pretty daughter had devastating consequences for his personal life. But the trajectory of Frank Russell's personal misfortunes and the impetus of his personality intersected a larger-scale social and cultural dynamic that involved a refiguring of the ways in which we understand gender relations and marriage. The reflexive interplay between Russell's private life and its public expression illuminates a process by which particular circumstance and individual propensity can work to meditate, politicize and historicize personal experience.<sup>41</sup>

presented to the Social Science History Association.

<sup>41</sup> For discussions of the concept of "experience" that brings that concept within the province of historical analysis, see Joan W. Scott, "Experience", in Butler and Scott, eds., *Feminists Theorize the Political*, pp. 22–40, and Kathleen Canning, "Feminist History after the Linguistic Turn: Historicizing Discourse and Experience", *Signs*, 19 (1994): 368–404.

---