

Suffer the Children? Divorce and Child Welfare in Postwar Britain

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Abstract

This article explains why a consensus emerged in the 1950s that courts should be satisfied with the arrangements made for children before parental divorce was granted. I locate this within an evolving child welfare landscape in the context of high levels of divorce in England. The issues at stake were the relationship of child welfare to parental marital status, how this should be established in individual cases, and the legitimacy and boundaries of state intervention in divorce cases. Such developments were absent in Scotland, where the Scottish judiciary believed in upholding the autonomy of parents to make their own arrangements.

Keywords

divorce, children, Matrimonial Proceedings (Children) Act 1958, juvenile delinquency, Scotland, law, social work, psychology

The contemporary history of divorce in England focuses on the liberalization of divorce with the 1969 Divorce Reform Act and the unprecedented rise in the divorce rate which followed.¹ This Act was the culmination of more than two decades of debate, discussion, and inquiry into whether the grounds for divorce should be extended to allow for divorce following separation rather than only where a so-called matrimonial offense had been committed. Since 1937 in England and Wales, and 1938 in Scotland, matrimonial offenses included adultery, desertion for three years or more, cruelty, or incurable insanity preceded by five-year detention in a facility for mental health.² The 1969 Divorce Reform Act, which subsumed all grounds for divorce under the heading of “irretrievable breakdown” and included where parties had lived apart for two years with consent and five years without consent, brought together the views of government, the legal profession and the established Church, and was followed in 1976 by similar legislation in Scotland.³ The position of children of divorcing parents has been largely subsumed within these broader developments. Writing about the 1969 Act, Stephen Cretney argues that the perceived benefits to society of legitimizing children of new unions following divorce was seen by lawmakers to outweigh the problems for children of

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divorcing parents.⁴ More scathingly, Carol Smart argues that children in divorcing families were still constituted “as mere property . . . their right to participate [in decisions about their future] or at least be consulted was still a matter of debate in the 1990s.”⁵

As I will show, however, the question of children’s well-being in parental divorce was considered at some length after the end of the Second World War, resulting in the 1958 Matrimonial Proceedings (Children) Act which covered both England and Scotland. This Act created in effect two distinct categories of divorcing couples across Britain—those with children under sixteen and those without. For those *without* children under sixteen, divorce could be gained by proving to the court that relevant grounds for divorce existed (i.e., prior to the 1969 Divorce Reform Act, that a matrimonial offense had been committed). For couples *with* children under sixteen, divorce courts were compelled for the first time to enquire into and be satisfied with the arrangements that were being made for the children of a marriage prior to granting an action for divorce, separation, or nullity. This was, in the words of Robert Beloe, a proponent of this reform, a “new principle” which overrode “consideration of the matrimonial offence by giving paramount consideration to the welfare of the children.”⁶ As I will show, this Act legislated for the emerging postwar consensus that divorce was a point of risk for children which required state intervention through the courts to safeguard their welfare. This was a significant shift in the direction of family law.

Beloe, at that point Chief Education Officer in Surrey and later lay secretary to the Archbishop of Canterbury, was speaking as a member of the Royal Commission on Marriage and Divorce which sat between 1951 and 1955.⁷ This was known as the Morton Commission after its Chair, Fergus Dunlop Morton, Baron Morton of Henryton.⁸ The Commission had a wide-ranging remit to examine divorce law and was encouraged to have in mind “the need to promote and maintain healthy and happy married life and to safeguard the interests and wellbeing of children.”⁹ The Morton Commission followed the 1946–1947 Committee on Procedure in Matrimonial Causes (chaired by Lord Denning, hereafter referred to as the Denning Committee), which examined administrative provision for divorce and the machinery for reconciliation. The Commission was also directly preceded by a Private Member’s Bill (known as Mrs. White’s Bill) in 1950 which sought to introduce seven-year separation as grounds for divorce and address the financial inequalities that women particularly faced after divorce.¹⁰

While there is a broad view that the 1950s were a period with low divorce rates and idealized nuclear family domesticity,¹¹ these developments suggest that contemporaries were extremely concerned about the stability of marriage and the availability of divorce. As Cretney has shown, this was in part a practical concern: courts in England simply could not cope with the numbers of divorce cases following the liberalization of divorce laws in 1937, the impact of the Second World War, and the end of the Armed Forces Legal Aid provision.¹² Further, as Janet Finch and Penny Summerfield suggest, romantic ideals and “companionate marriage” came under suspicion when the postwar surge in divorce did not dissipate, as did greater female participation in the workforce, housing shortages, and the relatively youthful age of marrying couples.¹³ In line with this, as Lawrence Stone notes, the Morton Commission called for “more marriage counseling and the inculcation into the young of a greater sense of responsibility to the community.” Stone also notes the need for “a greater sense of duty to protect the children from the psychological effects of a broken marriage.”¹⁴

As Stone’s comments suggest, high levels of divorce were seen as a social welfare issue, particularly for the children of divorcing parents. In 1947, the Denning Committee had recommended in its final report that a system of court welfare officers be established to facilitate reconciliation between parents and to report to the court in matrimonial cases where children were involved.¹⁵ Cretney argues that this marked “a decisive shift in the approach taken by the law to the legal consequences of divorce in relation to children,” but he does not explore why this shift occurred.¹⁶ Similarly, Cretney argues that the Matrimonial Proceedings (Children) Act 1958 was influential over the longer term because the Morton Commission (and the procedures which then resulted) distinguished

“between the *judicial role* to be discharged by a court on the one hand and the *social work* of investigation to be carried out by welfare officers on the other [*my emphasis*]” when child arrangements were in dispute or the court wished further information about a child’s welfare.¹⁷ However, social work should be narrowly understood here: in England, such investigations were to be carried out by welfare officers appointed to the courts, in practice probation officers, rather than children’s social workers or any other welfare providers. This continued the development of a distinct court welfare service, staffed by probation officers, which had begun in the interwar period with the involvement of magistrates in attempting to reconcile married couples in dispute.¹⁸ The emphasis of the “social work of investigation” was thus on the investigation (to provide more detailed information to inform legal decisions about custody and access) and not any broader form of social work or intervention (e.g., psychological or social support). The Matrimonial Proceedings (Children) Act 1958 placed a statutory duty on *courts* in England and Wales, which had a combined legislative system, and Scotland, which was distinct, to consider and be satisfied with the arrangements for the care and upbringing of any child(ren) of the marriage under the age of sixteen prior to granting decree of divorce, nullity, or separation.¹⁹ The Act also gave the courts the power to commit the care of the child to the local authority in exceptional circumstances where it was neither practical nor desirable for the child to be entrusted to the care of the parents.²⁰ In other words, the Act made a very clear distinction between the remit of the courts and other professional groups and defined when local authority social work departments should become involved. Thus, I argue, the Act was not only about the welfare of children but about marking professional boundaries and the shape of this should not be seen as a foregone conclusion.

As I will show, concern about children of divorce was raised by a range of welfare organizations and was perceived sympathetically by officials and the public following the Second World War. This dovetailed with anxieties in the late 1940s and into the 1950s about juvenile delinquency and the perception that “broken homes” and absent fathers (whether through death in service, desertion, or divorce) were a causal factor. These concerns echoed through the evidence to the Denning Committee and the Morton Commission, amplified by the growing professionalization of welfare services and of social work. The issues at stake were the relationship of child welfare to parental marital status, how this should be established in individual cases, and the legitimacy and boundaries of state intervention in these matters. Members of both the Denning Committee and the Morton Commission considered the model of children’s officers in adoption and other care proceedings that emerged with the Children Act of 1948. Discussions were also informed by prevalent understandings of material and maternal deprivation, and the development of child guidance as a central element of mental health provision in the postwar welfare state. There was also a trans-Atlantic influence, as contemporaries looked to developments in the United States, given the existence of the so-called domestic relations or family courts in certain states (although this is less evident than one might expect given the obvious parallels in provision which resulted).²¹ As such, children of divorcing parents fitted within the emerging consensus, identified by Nikolas Rose and others, that children, particularly those in the so-called problem families, were a legitimate and urgent focus of government intervention.²² The questions were who should intervene, at what point and for how long.

These issues are thrown into sharp relief by the inclusion of Scotland in the Morton Commission’s enquiries, recommendations, and subsequently in what was Part II of the 1958 Act. As I will show, debates around child welfare in divorce and the developments of a nascent court welfare service evident in England in the mid-twentieth century were largely absent in Scotland. Scotland had, and still has, a distinct legal system, and there was a widespread belief that the Scottish divorce system was easier and better and that the problems apparent in England did not apply north of the border. Indeed, summarizing the evidence to the Royal Commission in 1953, Lord Morton noted the “absence” of any demand for reform in Scotland on the grounds or procedures for divorce.²³ The evidence of the Scottish judiciary to the Morton Commission and within Scottish ministerial papers

suggests a desire to entrench, rather than change, existing legal arrangements in Scotland. Nonetheless, Scottish welfare agencies who gave evidence at the Commission saw, albeit sometimes at the prompting of members of the Commission, an opportunity for a greater role in safeguarding children of divorcing parents. Neither they nor Scottish government ministers wished to be behind in reform. As such, the pathway for developments toward a court welfare service apparent in England did not exist in Scotland, but a similar range of professional interests did.

I argue that this distinct Scottish landscape had implications for the way in which the recommendations of the Morton Commission could be and were enacted in Scotland. While the Scottish Home Department sought a greater involvement for social workers, the judiciary sought to retain control of how divorce cases involving children were investigated and disposed of. What emerged in Scotland was a compromise between these two elements, which largely left existing legal structures and practice untouched and failed to clearly define who should do any necessary investigative reports.²⁴ This had longer term implications for how the statutory duty imposed on the courts was discharged (and the Scottish judiciary did feel that it was “imposed”), but the discussion around it also makes the professional interests at stake in child welfare more clearly visible.

This article considers why child welfare came to the fore in England and Wales after 1945 in the context of divorce, before looking at the distinct issues in Scotland which mediated the debate in that setting. Throughout I pay attention to the different professional groupings and alternative possibilities laid out in the evidence to the Denning Committee and the Morton Commission, in related documentation and correspondence and in media coverage. I analyze the relative weight given to different considerations by the Morton Commission, before considering the ways in which the drafting of the 1958 Matrimonial Proceedings (Children) Act sought to reconcile the differences between England and Scotland.

Child welfare in divorce: the evidence to the Denning Committee

A key point of this article is that the impetus for reform in child welfare in divorce grew out of a set of circumstances in England and not in Scotland. In England, the Second World War led to a rise in applications for divorce, as the pressures of separation and the harsh conditions of war took their toll, and widespread concern about the effects of this. This was widely covered in the press: *The Times* reported in June 1945 that, “3,500 divorce suits [are] awaiting trial in London, in addition to long lists in the provinces.”²⁵ By October, the figure had risen to “some 4,000” in London alone²⁶ and in March 1946, the Lord Chancellor, Lord Jowitt, informed the House of Lords that 48,500 applications for assistance in matrimonial proceedings had been received in the three years to 1945, and only a fraction had been processed due to staff shortages.²⁷ In June 1946, Lord Jowitt appointed a committee under Mr. Justice Denning to inquire into “the administration of the divorce law.”²⁸ However, the Committee were also asked to consider whether there should be machinery available for helping couples reconcile and if so, what that machinery should be.²⁹ This is important because it marks a departure from simply addressing the administrative issues. As Behlmer has shown, the emphasis on reconciliation had its roots in earlier twentieth-century developments in London magistrate’s courts, which dealt with matrimonial issues short of divorce. Of particular relevance was London magistrate Claud Mullins who pushed for greater social intervention in the courts through “conciliation,” a practice that was legislated for in 1937.³⁰ By the time the Denning Committee heard evidence, the practice of employing probation officers as the so-called conciliators in magistrates courts was said by the Home Office to be “general” across the country (meaning England and Wales). The Home Office further noted that such officers were also used to investigate issues relating to custody (the legal right to make decisions about the child, including where that child lived and was educated) and maintenance (financial provision for the child or the resident parent).³¹ A further precedent for reconciliation work was found in the Armed Forces, for example, through the work of

the Soldiers', Sailors and Airmen's Families' Association (SSAFA)³² and in the work of the Marriage Guidance Council, founded in 1938.³³ The question for the Denning Committee was whether and how to extend such practice to the Divorce Court. The deliberations and decisions of the Denning Committee in relation to reconciliation have been covered by Cretney, discussed above, and Teri Chettiar, and it is not my intention to discuss this in detail.³⁴ It is important to note, however, that child welfare initially arose within discussions of reconciliation. For example, Colonel J. B. Lately, a member of the English Bar practicing principally in the Divorce Division of the High Court, had overseen the Legal Aid section in the Middle East Command from July 1942. He described his experiences of matrimonial issues among servicemen to the Committee and the efforts to effect reconciliation between the spouses.³⁵ Lately explained, and the Committee subsequently repeated, that "when he had children [of the marriage] to argue about, that was one of the levers he used [...] that was certainly one of his strongest points."³⁶ The final report of the Denning Committee suggested that reconciliation was more likely when couples had children, noting that "the most powerful reason which urges parties [...] to forgive and forget is the welfare of the children."³⁷ The Committee proposed extending the system of probation officers involved in reconciliation work in the magistrates courts to a fuller court welfare system in the divorce courts, which would deal with reconciliation work. Their final report noted:

The children are the innocent sufferers from any estrangement of their parents, and it is in their interest that every possible attempt at reconciliation should be made. We realise that an unhappy home may be worse for the children than a home with one parent only; but true reconciliation means a happy home with both parents which it is desirable for every child to have.³⁸

This emphasis on a happy home with two parents was arguably shaped by wartime anxieties about evacuation, paternal mortality, and parental separation. As Mathew Thomson has shown, there were heightened expectations after the end of the Second World War about the "emotional environment" of the home and increased concerns about the absence of this on children.³⁹ Nonetheless, the Denning Committee did not believe that parents should stay together at all costs for the sake of the children. For example, Mrs. Lloyd Lane, one of the few female members of the English Bar at the time and a member of the Committee, questioned the "universal assumption that divorce is bad for children," particularly if there were high levels of parental conflict.⁴⁰ Representatives from the National Association of Mental Health (NAMH) advised the Committee that divorce did not, in their opinion, "produce more difficult children than the continued living of children in their own homes where the parents bicker."⁴¹ These witnesses advocated enhanced child guidance where child distress and disruptive behavior was evident, arguing that information and therapy for the children could mitigate difficulties.⁴² John Stewart has documented the emergence of child guidance as a specialism in British mental health practice, and it is worth noting that one member of the Denning Committee, Dr Grace Calver, was a psychiatrist at the Tavistock and at the Maidenhead Child Guidance Clinic.⁴³ She was a passionate advocate of child guidance who had been involved in an award-winning series of lectures to promote the importance of emotional well-being among children.⁴⁴ In her writing, she noted that "a child [...] looks at the world in an entirely different light [to an adult], and its interpretation of a happening may be wrong,"⁴⁵ for example, they feared parental separation was their fault. Calver drew on this point in the Committee to suggest that if children were given the facts that sometimes relationships break down, they would face up to divorce perfectly well.⁴⁶

Calver's interventions suggest that space existed for a solution to child welfare concerns around divorce which focused on psychological support and guidance for children in separating families. The focus on psychological support can be understood within the postwar consensus that intervention at an early stage to address children's emotional needs would resolve myriad social problems.⁴⁷ The final report of the Denning Committee acknowledged that "an unhappy home may be worse for

the children than a home with one parent only,” and there was a need “to enable the children to meet the psychological problems created [by the] breaking up of a home.”⁴⁸ However, the solution to child welfare concerns that emerged was linked with court proceedings, and it is not clear what, if any, psychological or practical support for children in separating families resulted. It is worth noting that Carrie Morrison, in giving evidence to the Denning Committee, raised the possibility of dedicated family courts, with “doctors, psychiatrists, and welfare workers” attached, taking existing “Courts of Domestic Relations” in the United States as her model.⁴⁹ Miss Morrison, who had been the first female solicitor in England and Wales in 1922 and was known for her work with disadvantaged sections of the population, had advocated this idea as early as 1931 alongside advocating for divorce law reform more broadly. She herself had divorced in 1937.⁵⁰

The more dominant thread in the postwar period, however, was that of “broken homes” within more punitive discourses. “Broken homes,” including those “broken” by divorce, were seen as a constituent part of the social problems, including juvenile delinquency, which a constellation of psychologists, academics, religious figures, and government officials sought to resolve, not merely mitigate.⁵¹ The Denning Committee heard evidence that “broken homes” and divorce wreaked psychological damage on children, which was linked to juvenile delinquency and “failure” for children. For example, Claud Mullins started his correspondence to the Denning Committee in August 1946 by explaining “the need” for reconciliation in divorce cases as follows:

Authorities on juvenile delinquency and failure are in general agreement that breaking and broken homes are a potent cause of juvenile delinquency and failure.⁵²

He referred to work by Sheldon and Eleanor Glueck, American sociologists active in criminal sociology in the late 1920s and early 1930s, as well as extracting significant sections from his own book *Why Crime?*, published in 1945 and reprinted in 1947.⁵³ Mullins positioned parental strife as the source of childhood delinquency and parental harmony as the foundation for childhood emotional security.⁵⁴

The connection between divorce and juvenile delinquency was also made to the Denning Committee by Professor of Child Health, Alan Moncrieff, who referred to work on juvenile delinquency by Cyril Burt, a London-based educational psychologist and geneticist, dating from 1925, to argue that there was a “very definite” correlation between juvenile crime and those who came from homes where one or both parents was divorced.⁵⁵ Despite using the language of contemporary child psychology, the writings of Mullins and Burt were informed by older eugenic ideals. Burt argued that “delinquency [came from] an inherited or congenital defect in [moral] faculty,” while Mullins wrote damningly of “children born from bad stock [...] with parents, who resent their coming, with parents who quarrel, separate or divorce, or [children who] become flotsam or jetsam by reason of being born illegitimate, [...] who] can easily become hopeless criminals.”⁵⁶ Divorcing parents, he believed, were themselves emotionally and psychologically immature and would benefit from conciliation and education for marriage.⁵⁷ Mullins rejected the idea of family courts, as established in the United States, arguing that the idea of conciliation in marriage cases should be adopted in practice for several years first. Underpinning this was a conviction that better conciliation would lead to fewer divorces.⁵⁸

Alongside delinquency sat the idea of “deprivation,” a term which emerged in the context of children in institutional care, particularly in the context of the Care of Children Committee which sat from March 1945. The Care of Children Committee was remitted under Myra Curtis to inquire into “existing methods of providing for children who from loss of parents or from any cause whatever are deprived of a normal home life with their own parents or relatives” and a parallel committee sat in Scotland under James Clyde.⁵⁹ In November 1946, a leading article in the *Times* explicitly used the Curtis’ Committee phrasing “deprivation of a normal home with their parents” to highlight the

welfare of children in divorce proceedings. Such children were, the editorial argued, similarly deprived to those covered by the Curtis Committee and the article linked this deprivation with juvenile delinquency. A moral dimension was added: separated mothers were said to take up with new partners, committing adultery, and giving birth to illegitimate children, exposing children to “the gravest moral danger.” The editorial suggested that the “children’s officer” proposed by the Curtis report might usefully be employed in divorce proceedings as well.⁶⁰ The article was so similar in content and tone to the written evidence supplied to the Denning Committee by Professor Moncrieff that Lord Denning reasonably supposed that the author was one and the same.⁶¹ Divorce was clearly positioned as a departure from respectable family norms and as such, required state intervention for the children. The report of the Curtis Committee, published while the Denning Committee was sitting, was used to buttress these claims despite the fact that Myra Curtis herself saw no parallel in the two situations.⁶² Curtis explained to the Denning Committee that while her Committee had considered the children of divorced parents, such children would be living with one parent or the other and her Committee saw no reason to suppose that their care would be bad. Curtis differentiated between the legal need for information to decide custody and access questions in court and the continuing supervision and involvement of children’s officers in social work cases involving children. Ongoing supervision of children of divorcing parents would, in her view, be going too far.⁶³

Although the idea of using children’s officers to investigate child welfare in divorce was “deprecated” by Miss Curtis, the Denning Committee continued to explore the possibility of a dedicated welfare officer attached to the courts who would investigate issues arising in relation to children of divorcing couples. In this, they were assisted by the evidence of The Viscount St. Davids, who argued both in the House of Lords and in evidence to the Denning Committee, using the language of warfare, that divorcing parents were too busy fighting each other, bringing their children “into the battlefield,” with only the “unfortunate judge to defend them.”⁶⁴ The language of care and protection was used: the state should “look after” the interests of these children, even when these were not in dispute between the parents. By creating a “broken home” and thus damaging their children, parents were seen to forfeit the responsibility and privacy for decisions about their child’s welfare. The final report of the Denning Committee stated:

It should be recognised that parents who have been, or about to be, divorced have no absolute right to determine the future of their children. They have disabled themselves from fulfilling their joint responsibility and have created a new situation in which the interests of the children need consideration apart from those of the parents.

The Denning Committee recommended that investigative powers should be given to the court welfare officer in every case of divorce, and the court welfare officer should have the power to make application to the court as regard “the custody, education, and maintenance of the children, whether the parents make application or not.”⁶⁵ As such, the Committee also legitimized state intervention in parental arrangements for their children in a similar manner to social work intervention in the lives of children suffering neglect, abuse, and otherwise requiring state intervention and care. More positively, divorce, as viewed by the Denning Committee, opened space for the child’s interests to be considered independently from and indeed above those of the parents. As The Viscount St. David’s would later argue “the child’s right to be represented in these cases is far more important than those of its parents.”⁶⁶ Finally, the Committee recommended that the judge should “deal with” the future of the children *subsequent* to dealing with the divorce, in private, and with the opportunity of speaking with both the parents and the child(ren) and with the benefit of the investigating officer’s report.⁶⁷ Thus, while divorce was constructed as a point of risk for children requiring intervention and/or protection, there was *no* suggestion that divorce should be withheld in the interests of the children. This would come later.

Pressure for reform

Although Curtis had argued that children of divorcing parents were not analogous to those in need of social work intervention, the idea that divorce, constructed as “breaking a home,” necessitated state intervention gained ground in the years following the publication of the Denning Committee report. This was in part due to the gradual professionalization of children’s social services following the Children Act of 1948, within the context of debates about the condition of family life, the influence, and extent of poverty and perceptions of class-based social problems.⁶⁸ In one of the first Parliamentary debates on the final report of the Denning Committee, the Lord Chancellor was sceptical of the Denning Committee’s proposals on practical grounds (“It is quite impossible to select from a pile of 50,000 pieces of paper cases in which you should intervene and cases in which you should not”⁶⁹), but religious and social welfare organizations as well as campaigning groups on divorce law reform pressed for more attention to the issues. Speaking at a conference of the Marriage Law Reform Committee in February 1948, psychiatrist Dr. Portia Holman (also director of a Child Guidance Clinic in Ealing, London) identified two types of divorce: “the bitter kind and the gentlemanly”—in the latter, “whatever the legal arrangements, the parties usually settled the question of the children’s custody at a later date between themselves.” This attitude was, she noted, “probably confined to the more intelligent and enlightened people.” Holman noted the large gulf between legal and psychological attitudes to the child and questioned who was best placed to decide on matters in the absence of parental agreement: lawyers or psychiatrists.⁷⁰ On the other hand, Mr. Reginald Pestell, a Justice of the Peace, linked the discussion to homeless children covered by the Curtis report. He decried the lack of supervision of children of divorce cases; where a marriage broke down, he argued, “any mortal thing” could happen to the child: “parents could make arrangements by mutual agreement, they could disregard the needs of the child, or the child could be sent overseas or to relatives.”⁷¹ The Marriage Law Reform Committee was an offshoot of the Progressive League, who campaigned for a range of social reforms.⁷² In their statement of policy, most likely from 1946, the Marriage Law Reform Committee mentioned children in two contexts: that “children of thwarted marriages [were] in a particularly bad position,” and interestingly, given the context of postwar concerns about population⁷³ that the divorce law reduced the number of children, as refusal to have children was not a grounds for divorce and children of extramarital unions could not be legitimated.⁷⁴

While space arguably still existed for nonlegal resolution of childcare issues following separation and divorce, the greater emphasis in political and public debate was on the need for state intervention. The dominant discourse driving calls for state intervention was that divorcing parents were failing their children. In the House of Commons in 1948, Labour MP, Thomas Skeffington-Lodge, spoke emotively of the thousands of children who were “the shuttlecocks of evaded responsibilities.”⁷⁵ Similar arguments were made by the British Federation of Social Workers (BFSW) in 1949 when they sought unsuccessfully to persuade members of the Parliamentary Standing Committee E to incorporate a range of amendments into the Law Reform (Miscellaneous Proceedings) Bill. These amendments would have enacted the recommendations of the Denning Committee regarding the welfare of children. The BFSW noted that it was “gravely concerned about the increasing number of children in this country who are the children of divorced parents and for whose future no provision is made.”⁷⁶ The idea that divorcing parents did not make provision for their children was also evident in correspondence from child psychologist and author, Mrs. Len Chalenor, to the BFSW, as she argued somewhat emotively that children of separating parents were “either a bone of contention or just thrown overboard as ‘scrap’ from the wreck of the marriage.”⁷⁷ The discursive construction of separating or divorcing parents as irresponsible and uncaring positioned the children of such parents as analogous to those covered by the Curtis Committee (and Clyde Committee in Scotland) whose parents were unable to care for them and required social work intervention. Religious figures also spoke out against divorce, citing the impact on children and on

society more generally. The Archbishop of Canterbury argued that divorce created “an area of poison and a centre of infection in the national life and, where there are children, has a result completely disastrous upon them.”⁷⁸ In 1950, the Reverend J. L. Wilson, Dean of Manchester, speaking at the annual meeting of the Manchester and Salford branch of the National Society for the Prevention of Cruelty for Children, blamed divorce, two world wars, lack of housing and failure to understand children’s minds for juvenile delinquency.⁷⁹ The continued grouping together of factors such as divorce, neglect, crime, and vice imbued debates about parental separation with a moral overtone. Divorcing parents were seen to be depriving their child(ren) of “the happy childhood which is its right,”⁸⁰ a point which speaks to the emerging postwar view that the emotional and psychological needs of a child could best be met within an (intact) family home.⁸¹

The government response to such concerns was to make minimal changes to court procedures, not least because of a reluctance to “interfere” too far in marital breakdown and its consequences.⁸² In July 1950, the Attorney General announced that judges of the Divorce Division would be able to refer to a probation officer attached to the court for an inquiry and report on the welfare of the children concerned in any application for custody or access heard in London.⁸³ Campaigners saw this as inadequate: the chairman of the Marriage Law Reform Society (MLRS), as the Marriage Law Reform Committee had become, Robert Pollard, wrote to *The Times* noting that this did “not mean that [recommendations of] the Denning Report had been carried out.”⁸⁴ Overall procedures and practice remained untouched and the appointment of court welfare officers deferred. In private, Pollard noted that Lord Justice Denning was “rather pleased” with the correspondence and Pollard urged the BFSW to follow this up with their own letter to *The Times*.⁸⁵ Despite this agitation, a Miss Turner of the Children’s Moral Welfare Committee of Hampstead and St Pancras underlined in correspondence with the BFSW in November 1950 that “no appointment to the divorce court [had] been made” (emphasis in original). The Deputy Principal of the Probation Service was, she noted, doing the work, a man who had been “at the Central Criminal Court for years, and before that, in Hampstead.” While he was, she suggested, very knowledgeable about men and boys, she was doubtful he knew much about women as he was “unmarried.” Mrs. Turner concluded that “it is far from carrying out the recommendations in the [Denning] report.”⁸⁶ While a dedicated court welfare officer appears to have been appointed in December 1950, debate remained about the extent of his work geographically and whether he should be required to investigate every case where there were children.⁸⁷ This issue gained urgency with the passage of the Legal Aid Act in 1949, which was in part a response to the rising number of divorces and inadequate legal provision, in the context of postwar social and welfare reform. This Act made divorce accessible to a greater cross-section of the population.⁸⁸

Concern about the children of divorcing parents was apparent among social welfare organizations, and pressure for reform was being coordinated by the MLRS by the early 1950s. This organization had campaigned for a Royal Commission on Marriage and Divorce from their inception in 1946 and drew on the issues concerning children to augment their campaign.⁸⁹ The MLRS was also behind the Private Members’ Bill (known as Mrs. White’s Bill) in 1950. Mrs. White’s Bill served as a vehicle to persuade the government to appoint a Royal Commission on Marriage and Divorce (the Morton Commission) for fear it would be passed.⁹⁰ The MLRS was also active in writing to newspapers and to organizations to persuade them to give evidence to the Morton Commission.⁹¹ Nonetheless, such campaigning took place at a time when discursive constructions of a home-centered society dovetailed with high levels of nuptiality.⁹² The additional emphasis in the remit of the Morton Commission on “the need to promote and maintain healthy and happy married life and to safeguard the interests and wellbeing of children” should be seen against this growing background of concern about the welfare of children of divorcing parents who were seen to lack that stable home.⁹³

Child welfare in divorce: the evidence to the Morton Commission

The Morton Commission sat from October 1951 and reported in 1956. Cretney notes that the Commission and the final report were negatively judged as lacking statistical rigor and vision and being dominated by lawyers and their concerns.⁹⁴ The contemporary sociologist, Oliver McGregor, later Lord McGregor, for example, complained that none of the members of the Commission “possessed expert knowledge of the considerable body of modern sociological research” on marriage and the social consequences of divorce and compared the Commission unfavorably with the Royal Commission on Population (1944–1949) which had included social scientists among its members and appointed three specialist committees.⁹⁵ “Lacking such assistance,” McGregor wrote with reference to the poem by Edward Lear, “the Morton Commission joined the Jumblies and went to sea in a sieve.”⁹⁶

Nonetheless, the voluminous qualitative evidence taken by the Commission and its subsequent deliberations are important to understand the shape of the Matrimonial Proceedings (Children) Act 1958. This is particularly true in Scotland which had not figured at all in preceding discussions around child welfare and divorce, and where tensions emerged during the period of the Morton Commission between lawyers and their concerns, and social welfare organizations and government ministers. The Committee heard nine days of evidence in Scotland in late October and early November 1952 from nineteen organizations and societies and one individual, in addition to the evidence from Lord Cooper, Lord President of the Court of Session. The Scottish evidence was around one-fifth of the total, both in terms of organizations represented and volume of evidence. Given the scope of the Commission, less than a tenth of the evidence related to child welfare in some way.⁹⁷

To some extent, the evidence to the Commission, the lines of questioning and the subsequent deliberations of the Commission simply developed ideas already aired during the proceedings of the Denning Committee. For example, the Commission were extensively concerned in their questioning whether “a quarrelsome home” was better or worse for children than “a broken home,” taken to mean where the parents were divorced, with mixed views apparent in the evidence.⁹⁸ The question of a link between divorced parents and juvenile delinquency also loomed large in the minds of commentators.⁹⁹ As with the Denning Committee, the trope of the “broken home” and subsequent “maladjustment” threaded through the evidence to the Morton Commission. Few witnesses believed that divorce should be restricted for couples with children, however, arguing rather that the interests of the children should be more thoroughly considered when parents separated. Law professor, L. C. B. Gower, believed it was “an absolute scandal” that the custody of children was determined on affidavit, without the judge seeing the parties or the children.¹⁰⁰ He called for the judge to interview the parents and see the child, a suggestion echoed in other evidence.¹⁰¹ Where custody was contested, witnesses complained that decisions “followed the cause,” that is, the award of custody was made to the party innocent of the matrimonial offense. The National Society for the Prevention of Cruelty to Children, for example, argued that, in many undefended cases, the petitioner, that is, the person usually innocent of the matrimonial offense, was “really not the right and proper person to have the child,” although the witness did not explain who the “right and proper” person may have been.¹⁰² Several organizations, including the National Association for Mental Health, argued that every case involving a child should be investigated.¹⁰³ Parallels were drawn with other cases involving children, for example, the Association of Children’s Officers (ACO) suggested that in a “home-breaking application under the divorce laws, the child may need as much protection as he does under the adoption laws.”¹⁰⁴ The ACO had been set up in November 1949, following the establishment of local authority children’s departments as a result of the Curtis Committee and the ensuing Children Act 1948.¹⁰⁵ They drew on established practice in the courts in child protection cases using reports by trained social workers to argue that they were well placed to take on the role of investigating child welfare in divorce cases.¹⁰⁶

The evidence suggests wide-ranging support among witnesses for greater intervention by the court regarding the custody, care, and upbringing of children affected by divorce. Moving child

welfare in divorce beyond the traditionally private family realm offered opportunities for existing and emerging professional groups to extend their reach. As noted, the ACO were keen to present themselves as best placed to take on the role of investigation for the courts. Moncrieff suggested divorcing parents should come before the juvenile court.¹⁰⁷ The NAMH suggested education officers, among others from existing services, could be involved.¹⁰⁸ Unsurprisingly, the National Association of Probation Officers believed that child welfare questions in divorce should remain with them.¹⁰⁹ The rationale for such arguments centered on who was best placed to understand and foreground the interests of the child. The risk was that divorcing parents, caught up in their own battles, would fail to meet these needs or that judges would make the decision based on guilt or innocence of the matrimonial offense and with little or no information.

The needs of the child were not only seen as material but emotional, in line with developing understandings of child psychology. The Viscount St. David's, who credited himself with shaping the Denning Committee's recommendations on child protection in divorce, argued that investigation was not about material issues but "the wishes of the child . . . the child's natural affection . . . where the child's friends are, the activities the child likes engaging in, a thousand little things."¹¹⁰ The ACO similarly explained that the emotional perspective of the child should be fore-grounded:

If the child loves his mother, and she is the worst woman alive, nothing will alter the fact that he loves his mother. It is to her that he should go [. . .] the question cannot be settled on outward appearances [. . .] you have to get down to it with the child and find out what he is thinking.¹¹¹

Other organizations, such as the NAMH, went further to suggest that the emotional well-being of children of divorce not only be investigated but supervised for a period after arrangements had been made. The Association's views were explicitly informed by developing work on child psychology, particularly that of the psychologist John Bowlby, who was on the staff of the Association.¹¹² Finally, a good deal of discussion focused on the financial welfare of children after divorce, and on the best way of ensuring maintenance of the children was met by the nonresident parent (usually, but not always, the father, particularly if he started a second family).¹¹³

In many ways, the Morton Commission simply expanded debates already evident in the evidence to the Denning Committee and developments in the interim. However, it is possible to see ideas about the best interests of the child expanded, as well as new strands of discussion, particularly around the balance of custody and access between parents, the importance of a child retaining contact with both parents and what to do in cases of cruelty. The consensus across the Commission and witnesses was that both parents should retain a relationship with the child after divorce, aside from circumstances where there might be a negative effect on the child's welfare or access was being used as a means of perpetuating the dispute between the parents.¹¹⁴ However, equally clear was a commitment to each case being decided on its merits and the interests of the child. Finally, several organizations raised the issue of cruelty to children becoming grounds for divorce within the context of expanding the definition of cruelty.¹¹⁵ These latter discussions were relatively small in the overall volume of evidence but attest to a nascent understanding of domestic abuse going beyond physical threat to life. The NAMH, for example, included sexual abuse, parental alcoholism, defamation, and other forms of verbal and emotional abuse in their examples of cruelty to both spouse and children.¹¹⁶ If such things did not pose a risk to the life or health of the spouse, however, it was difficult to gain a divorce on cruelty grounds.

Divorce and child welfare in Scotland

While it is possible to see an emerging consensus in England around child welfare in divorce from the end of the Second World War through to the publication of the Morton Commission report,

such developments were almost entirely absent in Scotland. Scotland had experienced a rise in divorce proceedings during and immediately after the Second World War, but this was seen as temporary. At the end of December 1945, the Edinburgh-based newspaper, *The Scotsman*, reported that a new record for divorce actions had been set: 2,230 compared to 892 in 1939. The article blamed “war conditions” for the increase.¹¹⁷ However, another article noted approvingly that cases were dealt with expeditiously compared to the situation in England.¹¹⁸ By 1947, the divorce rate had begun to fall again and with the exception of 1952, postwar divorce levels were not reached again until the mid-1960s.¹¹⁹ The Court of Session in Edinburgh appointed a sixth judge to deal with the additional work, and in giving evidence in 1952, the Lord President of the Court of Session, Lord Cooper was able to say confidently that divorce cases were heard and decrees awarded within six weeks of petition.¹²⁰ Therefore, the issues of delay which bogged down the English courts were not apparent in Scotland.¹²¹

The Scottish divorce system was also historically seen as better than the English one.¹²² In the 1912 report of the Royal Commission on Divorce and Matrimonial Causes (hereafter the Gorrell Commission), Scotland had been held up as a beacon of equality and progressive divorce law.¹²³ Equality because, as Charles Guthrie, a Scottish member of the Royal Commission, explained in 1910, Scotland’s divorce lawyers prided themselves on the fact that men and women could petition on the same grounds (a point only reached in England in 1937). Progressive because desertion was considered sufficient grounds for divorce in Scotland, not only adultery (although Scotland followed England in 1938 in extending grounds beyond this).¹²⁴ Further, the Scottish legal profession believed that, in theory at least, rich and poor alike could access divorce, through the operation of the Poor’s Roll, a system which provided *pro bono* support of litigants below a certain income threshold.¹²⁵ Such provision was absent in England and Wales at this point, rendering divorce out of reach of the poor. Although divorce cases were heard in the Court of Session in Edinburgh, presenting additional geographical and financial barriers, the Scottish Lord Advocate, Salvesson, assured the Gorrell Commission that “the introduction of the railways and cheap fares” meant that the bulk of the population could easily travel to Edinburgh and noted that additional hearings were held on Saturdays to extend justice to the laboring population.¹²⁶ These assurances were repeated in articles in the press. Indeed, in 1917 the *National News* noted with some triumphalism that the divorce law in Scotland “must surely be better than the entirety of matters existing in England, for it gives almost complete satisfaction, and practically there is no demand for any alteration so far as it goes.”¹²⁷ In 1924, Scottish lawyer, John Burns, wrote that agitation for divorce law reform existed in England but not Scotland, explaining that “the Scottish people, having long enjoyed a liberal law of divorce, and one founded on the spirit of absolute equality between the sexes, would continue to be quite well satisfied with it.”¹²⁸

It is of course possible to pick apart these early twentieth-century arguments about access to divorce with reference to gender and class-based material and social inequalities and expectations, not least on the grounds of practicality and expense. As noted, the power to adjudicate on divorce was invested solely in the Court of Session in Edinburgh, a position which remained until 1983.¹²⁹ The requirement to instruct an Advocate at the Scottish bar to appear at the Court of Session meant that in practice, parties had to instruct a local solicitor, who may then also instruct a solicitor in Edinburgh, and who would then instruct an advocate in Edinburgh.¹³⁰ Affidavit evidence was not permitted in divorce cases, with counsel, parties, and witnesses appearing before the courts in a “proof” hearing at the Court of Session; even in undefended actions, the pursuer was represented by counsel and was obliged to bring his or her witnesses to court.¹³¹ Further, there was no question of divorce being remitted to the lower courts: the Scottish legal profession looked askance at developments in the English courts after the Second World War, particularly the extension of divorce jurisdiction to the provinces, where county court judges sat as Special Commissioners

in Divorce with the status of the High Court for the proceedings.¹³² In 1946, a commentator in the *Scots Law Times* wrote:

From time to time it has been suggested that simple undefended [divorce] cases might be dealt with by Sheriffs [. . .] this appears to be too revolutionary for us in Scotland. The English system of transference to [divorce] commissioners also does not accord with our ideas of the fitness of things, seeing as we regard [marital] status as something not to be lightly interfered with but calling for solemnity in procedure.¹³³

There were also no comparable developments in Scotland in relation to probation officers taking on the task of reconciliation although this appears to have been done informally by charitable organizations. Speaking for the Scottish Society for the Protection of Cruelty to Children in 1910, Ninian Hill explained that the society worked on an ethos of reconciliation for couples, even in cases of high conflict and violence.¹³⁴ Felicity Cawley has found that this emphasis on maintaining the nuclear family, regardless of the prevalence of domestic abuse or other problems, continued in the mid-twentieth century.¹³⁵

Further, while John Stewart sees parallel and mutually confirming developments in England and Scotland in the development of the provisions of the Children Act 1948, there was no such consistency in relation to child welfare in divorce proceedings in England and Scotland after 1945.¹³⁶ The suggestion that courts should intervene in the private arrangements of parents where no custody case was brought and that a special court welfare officer be appointed for this purpose was an anathema to the Scottish judiciary. The Lord President of the Court of Session, Lord Cooper, argued in his evidence to the Morton Commission that arrangements made for children were a matter for the parents themselves: “if the spouses are agreed as to who is to hold the custody, I do not altogether like the court, through a welfare officer, interfering with what they want to do.”¹³⁷ The vast majority of divorces in Scotland were undefended, and Cooper noted that custody and access were “in the great majority of cases, [. . .] amicably settled out of court altogether,” with the number of contested issues not exceeding “about fifteen” per annum in the Court of Session. Disputed custody cases were not heard in a full proof with witnesses, but evidence was sought by remitting an advocate at the Bar (usually female) to provide a report on the circumstances of the case. Lord Cooper decried the proposal that the court should be satisfied on questions of children’s welfare before granting a divorce as “unworkable,” stating that this would delay proceedings “for how long no-one knows—whilst the question of custody is investigated.”¹³⁸ Cooper’s evidence demonstrated a clear belief in parental autonomy and privacy but also a robust defense of existing Scottish arrangements.

The last point, defending Scottish legal arrangements, dominated the evidence of other Scottish legal witnesses, who provided almost half of the Scottish testimony to the Commission.¹³⁹ In particular, concern focused on the question whether to remit divorce actions to the lower courts, in the Scottish case, the Sheriff courts. Only one organization, the Procurators of Greenock, spoke in favor of this proposal, with a supporting letter from the Procurators of Paisley, while the consensus was that matters should remain unchanged.¹⁴⁰ The Faculty of Advocates argued that “divorce, being an action involving the *status* of the parties and having serious effects on family life ought to be under the supervision and control of the Supreme Court [the Court of Session].”¹⁴¹ The status quo also found broad support from the Church of Scotland: although there was a greater acceptance by the Church of Scotland that divorce was a reasonable remedy for marital breakdown by the early 1950s than there had been forty years earlier, this too was qualified by the wish to reserve divorce proceedings for the Court of Session on the grounds of uniformity in the administration of the law.¹⁴² Thus, there was a tension between the long-held view that divorce was “easier” in Scotland and the belief that divorce was a matter of such gravity it should be dealt with only by the Court of Session and that parties and their witnesses should attend at court. Bluntly put, transferring divorce cases to

the Sheriff courts, where parties could be represented by local solicitors, also presented a clear threat to the monopoly of the Scottish Bar in Edinburgh.

The preoccupation of the Scottish legal profession with jurisdiction and the absence of public and policy discussion around child arrangements in divorce meant that this latter issue was largely raised by the Commission itself in Edinburgh, as they had already discussed it at length whilst taking evidence in England. Speaking for the Church of Scotland, Sheriff J. R. Phillip QC, suggested that there would be room for a court welfare reporter in the Sheriff Courts at least (where custody and maintenance cases could be raised independently of marital status), and quite possibly also in the Court of Session, an argument which did not trespass on questions of jurisdiction. He noted, far more critically than Cooper, that in many undefended divorce cases, the question of child custody was not raised at all.¹⁴³ For child welfare organizations, the fact that the Court of Session often did not consider custody issues was a bone of contention: the Royal Scottish Society for the Prevention of Cruelty to Children (RSSPCC) complained that “the practice has developed of making no order concerning the children in the absence of any plea thereanent.” This could, they argued, lead to children being left with “unsuitable” parents, with “unsuitable” constructed in economic, health, moral, or spiritual terms for example, if a mother had a child by another partner.¹⁴⁴ In discussing possible remedies to this issue, the RSSPCC spokesman drew on the model of the juvenile (criminal) courts:

When a Sheriff Court is acting as a juvenile court and a child is brought before it, information is laid before the court as to the child’s home circumstances, educational standard and so on . . . the machinery does exist in the lower courts for that.¹⁴⁵

This was partly an argument for extending jurisdiction but more importantly an argument for extending the professional reach of child welfare organizations. The child of divorcing parents may not have done anything wrong, and their parents may not have requested any legal decision around custody or access, but the RSSPCC, along with other welfare organizations, recommended a level of state intrusion previously reserved for children who had broken the law in some way or whose parents were, for whatever reason, deemed unable to care for their children. Further, should the parents be found wanting, the RSSPCC recommended that the children be removed into care:

Q: Suppose the mother wants the children and is fond of them. The father says, “I do not want the children and I cannot look after them.” Suppose you got an independent report from somebody which said, “But the mother is not a suitable person to have the custody of the children.” To whom do you think the court should give custody of the children? [Italics added to make questions clear]

RSSPCC spokesman: In these circumstances, I would suggest that the court should direct the juvenile court to consider these are children in need of care or protection and that the children’s officer of the local authority be asked to receive them into care.¹⁴⁶

The witness for the Scottish Children’s Officers’ Association made a similar comment:

If neither party [in the divorce, i.e. parent] is suitable in the eyes of the person making the report, [. . .] then we would recommend committal of the child to the care of the local authority.

Q: Then the children’s officer would have that child?

SCOA: We would have the care of the child.¹⁴⁷

Thus, divorce was constituted in this evidence to the Committee, in the subsequent report and the ensuing legislation as a risk point for parents losing a child into care.¹⁴⁸ There was therefore a substantial gulf in Scotland between the view of the head of the judiciary and the majority of the legal profession in Scotland that parents were best placed to make appropriate decisions regarding their

children after separation and no reform was needed, and child welfare organizations who viewed divorce as a point of risk for children necessitating social work intervention.

From recommendation to legislation

Analysis of subsequent discussion among Committee members and in the government discussion following the publication of their report suggests that the welfare of children in divorce was intimately bound up with broader questions of the potential liberalization of divorce. After the evidence had been heard, Morton summarized his views in advance of meeting members of the Commission in January 1953, explaining his view that “easier divorce would have a disastrous effect on the children [of divorcing couples].”¹⁴⁹ Morton explicitly endorsed the words of a Mr. Foot who had argued that quarreling parents were better than divorced parents as “they might learn to get on with each other better . . . after the divorce is over, then the thing is finished.”¹⁵⁰ Nonetheless, the views of the Commission members were more mixed. Considering the question of child welfare, some agreed that relaxing divorce laws would hurt children, while others, such as Lord Keith, a judge in the Court of Session in Edinburgh, argued that “the state [had] no interest in having a marriage in name which was not one in fact.”¹⁵¹ The discussion laid bare the tensions between the different interests at stake (the state, the married couple as individuals, and their children) and marked a clear shift from children being seen as “ancillary” matters to be dealt with in the breakdown of a marriage toward seeing their interests as central. Mr. Walker, a Scottish advocate, noted the potential conflict between the parties’ private right to a divorce and the children’s right to have the home maintained (a construction which saw the home as a family with two parents), while Beloe later argued that “the State should regard the maintenance of a home for the children as paramount and if necessary as overriding the private wishes of the parents.”¹⁵² This view underpinned his proposal that the court should have the discretion to refuse a divorce where it was felt to be in the interests of the child.¹⁵³ Those opposing Beloe’s proposal pointed out that the marital relationship would have already deteriorated by the point of divorce, and it was arguably too late to try to effect reconciliation; many parents would have already separated by the time they reached court and arrangements for the children been made; and there was a risk of creating “bitterness in the home” if divorce was refused on account of the children.¹⁵⁴ Beloe defended his proposal on the basis that it would deter people from thinking of divorce and thus would change the general attitude toward marriage and parenthood, suggesting that “the type of person whose marriage was likely to end up in divorce should not be encouraged to have children.”¹⁵⁵

Beloe’s proposal was revised along the lines that the court would require the successful party to bring forward a written statement, agreed by the unsuccessful party if possible, of the proposed arrangements for the children of the marriage and that no decree be pronounced until the court had approved the scheme.¹⁵⁶ The obvious objection to this was made by a member of the Commission, Mr. Lawrence, who noted that cases might arise whereby a respondent might seek to delay a decree by bringing a contest on the question of custody: in other words, that the proposal opened the door for divorce to be contested on questions involving the children rather than the matrimonial issues between the spouses.¹⁵⁷ Indeed, members of the Commission voiced disquiet about confusing two distinct elements—the question of the grounds for divorce and of the best interests of the child as regards custody and access.¹⁵⁸ Nonetheless, in its final report, the Commission recommended that “a court must be satisfied about the arrangements proposed for the children” as this “should be considerable help in making people face their responsibilities as parents [and] in some cases at least, the result might be that people decide to start life together again for their children’s sake.” Thus, the welfare of the children was brought to bear as part of a broader desire to reduce the divorce rate and uphold the social and legal institution of marriage.

In all the discussions, it was accepted that contested cases would be investigated by a court welfare officer, with the Commission recommending that probation officers attached to the courts continue this function and develop the role.¹⁵⁹ It is notable that Lord Keith, a Scottish judge and himself in favor of divorce by consent after seven years separation, by which time the arrangements for the children would be settled, abstained in all the votes on these issues.¹⁶⁰ It is also clear from correspondence between the Commission and the Lord President, Cooper, that the Scottish judiciary remained opposed to any proposal to amend existing practice.¹⁶¹ Writing in November 1953 to the Commission, Cooper reiterated that existing practice in divorce involving children was “satisfactory,” that the pleadings and answers (documents provided by each side in the case) provided “authentic” evidence of the measure of agreement between the parties and that potential delay would be introduced if large number of uncontested cases required scrutiny. Finally, Cooper noted that there was no suitable service in Scotland to conduct the necessary investigations, least of all in rural parts of Scotland, to the standards required by the courts. In particular, Cooper objected to the use of probation officers, noting that “we [himself and his judicial colleagues] do not care for the idea of introducing into custody issues officials concerned with criminal courts and juvenile delinquents.”¹⁶² This is in marked contrast to England where the perceived connection between juvenile delinquency and “broken” homes informed the decision-making process.

The Scottish probation service disagreed with this view, arguing that Scottish officers should be on an equal footing with their English counterparts. However, the Scottish Home Department sought to avoid conflict with Cooper by responding about “the machinery not the merits” of the proposal when asked by the Commission. In their view, either the probation service or the children’s service would be appropriate for the work, but if the probation service were not to take on reconciliation work and only be concerned with offenders, the “balance of advantage” was in favor of the children’s officers.¹⁶³ The children of divorced or separated parents were seen to be “analogous” to care or protection cases where children’s officers had an existing statutory obligation in that regard following the Children Act of 1948.¹⁶⁴ In the end, the Morton Commission report simply recommended that welfare officers should be drawn from existing statutory services and that the Secretary of State for Scotland, after consultation with the Lord President of the Court of Session, decide how best to give effect to the recommendation.¹⁶⁵ This is a crucial distinction from in England where the use of probation officers in matrimonial matters had developed within the courts at the behest of magistrates and later judges in the divorce court. Scotland did not have the structures in place, and while a strong steer was given that it was a government and local authority, as well as a legal, matter to take forward, there was no history of cooperation between these professional groups in divorce and custody matters.¹⁶⁶

When the Commission reported in March 1956, members had agreed, with one exception, that the existing law based on matrimonial offense be retained, and members were evenly split on the question of whether an additional ground of irretrievable breakdown be added.¹⁶⁷ They were unanimous on the recommendations that the courts must be satisfied with the arrangements made for children prior to granting a divorce, with information being provided in a statement by one or both parents and a court welfare officer being employed in cases of dispute or concern; that the courts have jurisdiction to make orders in relation to children even when these were not requested; and that the court should have the power to require a local authority to receive a child into its care.¹⁶⁸ Press discussion of the issues surrounding children were framed in the language of the report: *The Times* explained the Commission’s view that these recommendations “should be of very considerable help in making people face their responsibilities as parents.”¹⁶⁹ An article in *Probation Journal*, a publication for those most likely to be asked to conduct child welfare reports, cited Kenneth Brill in June 1956, then a children’s officer and later general secretary of the ACO.¹⁷⁰ Brill had “apparently pointed out the strange contradiction of the suggestion that parents seeking divorce should be regarded as still having a very heavy sense of responsibility about their children”¹⁷¹; a statement

I take to mean that responsible parents would not, in his view, reach the divorce courts. Around the same time, in a discussion following a presentation by Latey on the Commission's report shortly after its publication, reported in the *Medico-legal Journal*, a Mr. Ramage reiterated the views that "a great many divorcing parents could not get together and do the most sensible and best thing for their children," while a Miss Morgan Gibbons suggested "anybody thinking of starting divorce proceedings should have their eyes on the future generations of England."¹⁷² This statement clearly located decisions about marriage within the context of the well-being of the postwar nation and not only the interests of the child. McGregor was something of a lone voice arguing in 1957 that the Commission's findings on children were not grounded in empirical evidence and the effects of divorce on children noted by witnesses, "while grievous," were "frequently exaggerated."¹⁷³ The predominant discursive constructions were of divorcing parents caught up in their own battles and neglecting their children's interests which had been apparent in the previous decade.

Questions in Parliament similarly drew on discourses of children suffering through the actions of irresponsible parents. When the Attorney General effectively shelved the question of divorce legislation in June 1956, the Labour MP, James McColl, highlighted the unanimous agreement of the Commission regarding the recommendations on children, who he described as "innocent victims of matrimonial strife . . . suffering all the time."¹⁷⁴ Such arguments carried weight; by autumn 1956, the government sought to deflect campaigners for the so-called divorce by consent with "better facilities for marriage guidance" and "better safeguards for the children of broken marriages."¹⁷⁵ Neither of these undermined the existing legislation on access to divorce, and indeed, were portrayed to strengthen the state's involvement in marriage. Speaking in the House of Lords on October 24, 1956, the Lord Chancellor noted that in his time as Home Secretary he "came to the conclusion that the most important causes of crime were broken homes and the lower moral standards that [he] found." Everything should be done, he continued, "to ensure the welfare of the children who are the innocent victims of a broken marriage."¹⁷⁶ These two points encapsulate familiar themes of the previous decade, namely, the prevailing views that broken homes led to crime and immorality and the state should intervene to safeguard the children of divorce.

In the aftermath of this debate, the Lord Chancellor's Office drew up notes on various topics which could be taken forward as Private Members' Bills or rules of court, with the recommendations for the measures on children top of the list.¹⁷⁷ The former were discussed by the Home Office with members of the MLRS, who went on to draft the Matrimonial Proceedings (Children) Bill, put forward as a Private Member's Bill by Mr. Arthur Moyles, a Labour MP, a year later.¹⁷⁸ Mr. Moyles had previously been a magistrate in a South London juvenile court and visited the Royal Courts of Justice in advance of the second reading of the Matrimonial Proceedings (Children) Bill. His host, George Neve, described him as having a "bee in his bonnet" that all children of divorced parents should be visited periodically to ensure that they were not neglected, which points to the persistent view that such children were at risk of this.¹⁷⁹

It was initially unclear whether Scotland would be included in the Matrimonial Proceedings (Children) Bill, partly because of differences in the legal system but partly because of the clear opposition of the Lord President, head of the Court of Session, to the provisions. This position was now held by Lord Clyde who was no less vocal in his opposition than his predecessor.¹⁸⁰ If Scotland was to be left out of the Bill, however, officials in the Scottish Home Department believed it would only be postponing "the inevitable clash" between the views of the Lord President and "the majority of interested MPs."¹⁸¹ Officials within the Lord Advocate's Chambers (the chief legal officer to the government and the Crown on Scottish legal matters) and the Scottish Home Department had explored the possibility of updating the court rules in Scotland in November 1956, following discussion at Westminster. Their intention was to ask divorcing parents to provide a written statement about the care and upbringing of children as part of divorce proceedings.¹⁸² Couples who agreed the arrangements through a joint minute were to be exempt from this requirement: as was noted within

the Lord Advocate's Chambers' files "where parties agree custody by a joint minute [of agreement] they cannot, without legislation, be compelled to lodge a statement of proposed arrangements."¹⁸³ Thus, the proposed distinction in the Scottish case was not only between divorcing couples with children under sixteen and those without but between those who formally recorded agreement and those who did not. This sought to minimize the involvement of the courts in child arrangements where there was no dispute.

However, confusion about who within the Scottish Home Department or the Lord Advocate's Chambers would approach the Lord President with the draft new rules (an Act of Sederunt) meant that nothing happened until the advent of Mr. Moyles' Bill in Westminster forced the issue almost a year later.¹⁸⁴ By this point, correspondence suggests that ideas of risk to children of divorce had by now moved northward: civil servants in the Scottish Home Department countered Clyde's view that arrangements were best left to parents with the view that "it may not always be safe to assume that [arrangements made by the parents] are in the best interests of the children or that they are sufficiently binding."¹⁸⁵ This formulation clearly echoes arguments made in England previously that divorcing parents could not be trusted to make appropriate provision for their children.

While the Scottish Home Department was less hostile than the Lord President to Mr. Moyle's Bill, even they expressed disquiet about its workings, not least because of the desire to avoid setting up a statutory system of court welfare officers.¹⁸⁶ As noted earlier, there was no parallel in Scotland to the developments in court welfare in England and no consensus about who would fill the role. Both the Scottish Home Department and the Lord Advocate's Chambers proposed that the problem be solved by appointing designated local officers from existing services, who could be called on by either the Court of Session or the Sheriff Courts when reports on children in divorce or matrimonial cases were required. This could include probation officers if they were designated, but was not limited to them, and avoided the need to create a court welfare service and to decide whether children's officers or probation officers were best suited for the job.¹⁸⁷

When consulted on these suggestions, Clyde's comments echoed those of his predecessor. Clyde noted that the time taken for divorce proofs (court hearings) would increase enormously, adding drily that he hoped this would be borne in mind when he came to apply for an additional judge.¹⁸⁸ More fundamentally, however, he objected to the interference by the state into what should be a matter for the parents, and the proposal that courts should have the power to remit children to the care of a local authority during divorce proceedings, if the local authority was not already a party to proceedings. In what can be read as a criticism of the proposed level of state intervention and control, he rhetorically asked whether it was necessary to "nationalize" children.¹⁸⁹ The comments of Clyde are notable because he had chaired the Scottish Committee on Homeless Children, which had reported in 1946, slightly predating the Curtis Committee in England. He thus had vast experience of children who were, in the Committee's words, "deprived of a normal home life," as well as post-war discourses on childhood psychological and emotional development.¹⁹⁰ His comments in 1957 suggest that he did not think the children of divorcing parents were at particular risk, unless there were other factors which would necessitate social services involvement. Clyde, like Cooper, was of course keen to protect the autonomy of the Scottish judiciary—one concession he asked for, and was granted, was that the Court of Session retain the power to appoint a suitable advocate (or other person) as reporter in cases where custody was an issue. The Lord Advocate and the Secretary of State for Scotland believed that leaving Scotland out of the Matrimonial Proceedings (Children) Bill would be "indefensible" in Parliament and the resulting provisions in the 1958 Act were a compromise which maintained the autonomy of the Scottish judiciary in choosing when and how to remit a case to a court reporter and to whom, but compelling them nonetheless to inquire into and be satisfied with the arrangements made for children before granting a divorce.¹⁹¹

Conclusion

When contemporaries came again to consider the question of whether the grounds for divorce should be liberalized in the 1960s in England, the issues regarding children had already been thoroughly aired over two decades and the parameters for legal intervention put in place. If children were regarded as “mere property,” this was of the state, not the parents, in a protective, paternalistic sense in terms of final adjudication on their future. In *Putting Asunder*, a 1966 report produced by a group appointed by the Archbishop of Canterbury to review the divorce law in England, with reference also to the “happiness of children,” the authors said they “should like to see the power and the duty of the court to ensure the protection of children somewhat enlarged” (my emphasis)¹⁹²; while the newly appointed Law Commission, reporting on extending the grounds for divorce in 1966, reiterated the point that “the state [had] the duty to protect the interests [of children] in divorce.” The report referred directly to the Morton Commission as initiating greater attention to children’s interests and proposed an investigation into the scope and the working of the law to address concerns about children of divorce (“the innocent victims of their parents’ divorce”).¹⁹³ Thus, liberalization of the grounds for divorce was balanced by view that the state, through the courts, had an established duty to oversee and, if necessary, to regulate the arrangements made for children.

This article has explained why, given the range of professional interests involved in child welfare in the postwar period, there were legal safeguards for children of divorcing parents rather than any other form of intervention or indeed support; why these were universal; and at what point social workers became involved. While the context of interwar developments in the magistrates’ courts in England is important, I have demonstrated that the shift in the law represented by the Matrimonial Proceedings (Children) Act must be understood within the context of the professionalization of child welfare services evident in the mid-twentieth century and the broader consensus that the emotional and psychological needs of children were best met within the context of a secure, two-parent home. The context of mortality, parental separation, and loss during the Second World War is relevant here: the unprecedented divorce rate, made visible by huge backlogs in the courts in England, was a clear threat to reconstruction of the postwar family. Bringing the welfare of children to the fore was seen both by the Denning Committee and the Morton Commission as a means of urging parents to set aside their differences and stay together.

Official intervention for children of divorcing parents throughout the period was justified by a predominant discursive construction of divorce as a parental battlefield, damaging and destructive, leaving children undefended and suffering, and in need of (state) protection. By “breaking” the home, warring parents were seen to have abdicated responsibility and were, in the language of older eugenic discourses, “unfit.” These discursive constructions of divorcing parents were class-based, as demonstrated by the comments made by witnesses, members of the Commission and contemporaries alluding to the distinction between “intelligent and enlightened” people, for example, and the vast majority not so able to take their responsibilities on board. The idea that children “suffered” in divorce and needed protection crossed political party lines and was an issue around which different groups could find common ground.

The paucity of existing court practice regarding the future well-being of children of divorce, with decisions about custody often based on affidavit in England or which parent was perceived to be “innocent” of the matrimonial offense, was laid bare in discussion about existing models of state intervention. Child welfare groups saw an opportunity to step into the space thus identified and to bring to the children of divorce into their remit, and as I have shown, these various possibilities were clearly discussed in the Denning Committee and in the Morton Commission. While there was discussion about how children’s own voices should be heard and paid attention to, this was not clearly followed through in the legislative response; similarly, suggestions for psychological and emotional support for children disappeared.¹⁹⁴

It is clear that the issues that gave rise to the Matrimonial Proceedings (Children) Act of 1958 originated in the English context, that they were a response to a set of problems perceived by social work, legal and childcare professionals in England, and were taken up in Scotland in a desire not to be “behind” in reform. Despite the Chair of the Royal Commission on Marriage and Divorce being Scottish, and the presence of Scots lawyers on the Commission, there was no clear and consistent engagement with the distinct nature of Scots law and practice nor consideration of the implications of imposing a practice developed in English courts into Scotland where there was no comparable court welfare developments or professional resources at their disposal. Lord Cooper, and subsequently Lord Clyde, who voiced objections, were dismissed by government ministers, including those in Scotland, as something of an inconvenience to be got around in the march to be seen to be doing something, anything, about the risks which were seen to be facing children of divorce. Cooper and Clyde’s broader concerns about unwarranted state intervention, the erosion of parental autonomy and privacy, and the “nationalization” of children were similarly dismissed.

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Notes

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18. George Behlmer, “Summary Justice and Working-class Marriage in England, 1870–1940,” *Law and History Review* 12, no. 2 (1994): 229–75.
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24. Matrimonial Proceedings (Children) Act, 1958, Part II, section 11 (1) notes that “the court may, without prejudice to its power to appoint any other person for the purpose, appoint an officer designated under this section to investigate and report to the court.”
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42. *Ibid.*, 10.
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57. Mullins, *Why Crime?*, 94.
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61. NA, LCO 2/3948 Notes of Proceedings, Denning speaking to Moncrieff, November 26, 1946, 1.
62. LCO 2/3948 Notes of Proceedings, November 12, 1946, 25.

63. NA. LCO 2/3948 Notes of Proceedings, December 10, 1946, 2–7.
64. LCO 2/3948 Notes of Proceedings, December 17, 1946, 31. This refers to the 2nd Viscount St. Davids, Jestyn Phillips (1917–1991).
65. *Final Report of Committee on Procedure in Matrimonial Causes*, 1947, 19–20.
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79. “Divorce and Children’s Welfare,” *Manchester Guardian*, February 25, 1950, 10.
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97. This is based on my analysis of the volume of evidence and of the index. *Royal Commission on Marriage and Divorce: Minutes of Evidence* (London, UK: HMSO, 1952).
98. *Royal Commission on Marriage and Divorce: Minutes of Evidence*. See, for example, the evidence of Dr. Doris Oldum of the British Medical Association, 175, for the view that a "quarrelsome" home was worse for children, and the Mother's Union for the opposite view, 86. The BMA's evidence to the Commission was controversial amongst its members, and the Council of the BMA sought to have it withdrawn. It was retained on the request of the witnesses and at the behest of the Commission, 179.
99. *Report of the Royal Commission on Marriage and Divorce: Minutes of Evidence*. See, for example, Mr. Temple of the General Council of the Bar, 56–57; Association of Children's Officers, 394; Professor Moncrieff, 941–42.
100. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, Professor L. C. B. Gower, 24.
101. *Royal Commission on Marriage and Divorce: Minutes of Evidence*. See, for example, The National Council of Women of Great Britain, 838.
102. *Royal Commission on Marriage and Divorce: Minutes of Evidence*. See, for example, National Society for the Prevention of Cruelty to Children, 76.
103. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, National Association of Mental Health, 183; Mullins, *Why Crime?*, 382.
104. *Royal Commission on Marriage and Divorce: Minutes of Evidence* Association of Children's Officers, 389.
105. Warwick Record Office, *Association of Children's Officers*, accessed November 8, 2019, <https://mrc-catalogue.warwick.ac.uk/records/ACO>.
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107. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, Moncrieff, 946.
108. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, National Association of Mental Health, 191.
109. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, National Association of Probation Officers, 331.
110. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, The Viscount St. Davids, 886. See also LCO 2/3948 Notes on proceedings, December 17, 1946, 30–33, for evidence to Denning Committee.
111. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, ACO, 396.
112. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, NAHM, 192.
113. For example, *Royal Commission on Marriage and Divorce: Minutes of Evidence*, Mrs. Eirene White, 2.
114. For example, *Royal Commission on Marriage and Divorce: Minutes of Evidence*, National Association of Mental Health, 190.
115. These were the NAMH, 182, 191; the Marriage Law Reform Society, 226, 272; The Law Society, 742; The Progressive League, 906 and the Royal Medico-Psychological Association, 920, as well as Mr. W. J. C Heyting, LLB, 293 and the Queen's Proctor, 561. *Royal Commission on Marriage and Divorce: Minutes of Evidence*.
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120. Royal Commission on Marriage and Divorce: *Minutes of Evidence*, Lord Cooper, October 27, 1952, 533.
121. This perception was supported by figures provided for the Royal Commission in 1955 by the Registrar General's Office which showed a divorce rate of approximately 4.9 for Scotland (1954) against 7.3 in England and Wales (1950) and a declining trend in Scotland. National Records of Scotland (hereafter NRS), GRO 5/794, approximate proportion of marriages terminated by divorce, 1911–1954–Scotland; approximate proportion of marriages terminated by divorce, 1911–1950, England and Wales.
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130. "Memorandum Submitted by the Faculty of Procurators of Greenock," *Royal Commission on Marriage and Divorce: Minutes of Evidence*, 540.
131. NRS, GRO5/793 extracted evidence of Lord Salveson, 4, from Minutes of Evidence, Royal Commission on Divorce and Matrimonial Causes, March 11, 1910; U.K. Parliament Royal Commission on the Court of Session and the office of the Sheriff, *Report of the Royal Commission on the Court of Session and the office of Sheriff Principal with Summary of Evidence*, vol. 1, 1927, 41.
132. Cretney, *Family Law*, 284. This innovation was introduced following the Second Report of the Denning Committee.
133. "Divorce Spate," *Scots Law Times*, 1946, issue 2, 46.
134. *Minutes of Evidence taken before the Royal Commission and Matrimonial Causes*, vol. III, Mr. Ninian Hill, November 9, 1910, 145–46.
135. Felicity R. J. Cawley, *The Effects of Parental Marital Status and Family Form on Experiences of Childhood in Twentieth-Century Scotland, c.1920–1970* (PhD diss., University of Glasgow, 2018), 150–52.
136. Stewart, "The Most Precious Possession of a Nation Is Its Children," 43–66.
137. This arguably continues a longer pattern of respecting personal privacy evident in other areas of Scottish law and administration. Gayle Davis and Rosemary Elliot, "Public Information and Private Lives: Dr. James Crauford Dunlop and the Collection of Vital Statistics in Scotland, 1904–1930," in *Medicine, Law and Public Policy in Scotland, c.1850–1990*, ed. Mark Freeman, Eleanor Gordon, and Krista Maglen (Dundee, UK: Dundee University Press, 2011), 105–24. Evidence quoted from Lord Cooper, *Royal Commission on Marriage and Divorce: Minutes of Evidence*, 538–39.
138. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, Lord Cooper, 538–39.
139. Legal witnesses included The Procurators of Greenock, with a supporting letter from the Procurators of Paisley, the Council of the Law Society for Scotland, Hamish Masson, the Faculty of Advocates, the Council of the Society of Writers to her Majesty's Signet, Society of Solicitor's in the Supreme Courts

- of Scotland and the Muir Society. One might also include the Scottish Branch of the National Association of Probation Officers, and it is also worth noting that several of the witnesses for nonlegal groups were themselves solicitors or Sheriffs.
140. Memorandum submitted by the Faculty of Procurators of Greenock; letter submitted on behalf the Faculty of Procurators in Paisley, *Royal Commission on Marriage and Divorce: Minutes of Evidence*, 540.
 141. Memorandum submitted by the Faculty of Advocates, *Royal Commission on Marriage and Divorce: Minutes of Evidence*, October 15, 1952, 646.
 142. S. Tindall William, "Marriage and Divorce in the Church of Scotland," *Theology* 59, no. 431 (1956): 199; Memorandum submitted on behalf of the Church of Scotland, May 1952, *Royal Commission on Marriage and Divorce: Minutes of Evidence*, 566.
 143. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, Church of Scotland, 573.
 144. "Paper no. 75: Memorandum submitted by the Royal Scottish Society for the Prevention of Cruelty to Children," *Royal Commission on Marriage and Divorce: Minutes of Evidence*, 676.
 145. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, RSSPCC, 682–83.
 146. *Ibid.*, 684.
 147. *Royal Commission on Marriage and Divorce: Minutes of Evidence*, SCOA, 601.
 148. *Report of the Royal Commission on Marriage and Divorce 1951–1955* (1956), 111; Matrimonial Proceedings (Children) Act 1958, Part I, section 5 for England and Wales, Part II section 10 for Scotland.
 149. NA, LCO 2/6126, Undated memorandum by Morton, discussed at a meeting January 19, 1953.
 150. This quote is puzzling as it is attributed to a Mr. Foot, extract of evidence given November 25, 1952, but I could not locate a Mr. Foot in the Minutes of Evidence, NA, LCO 2/6126, undated memorandum by Morton, discussed at a meeting January 19, 1953, 8, also appendix VI.
 151. NA, LCO 2/6126, Tenth meeting, January 19, 1953, 10.
 152. NA, LCO 2/6126, January 19, Walker, 17, Beloe, 13.
 153. NA, LCO 2/6126, Eleventh meeting, April 21, 1953, 12.
 154. NA, LCO 2/6126, April 21, 1953, 13.
 155. NA, LCO 2/6126, April 21, 1953, Beloe, 22. On this point, one may note that Mr. Justice Pearce had already christened divorcing couples "misfits" for ease of reference: one finds the "misfits" referred to throughout the record.
 156. NA, LCO 2/6126, April 21, 1953, 13–14.
 157. NA LCO 2/6127, July 16, 1953, 50.
 158. *Ibid.*, 51.
 159. LCO 2/6127, July 15, 1953, 53; *Report of the Royal Commission on Marriage and Divorce*, 110.
 160. LCO 2/6126, January 23, 1953, 46.
 161. National Records of Scotland, ED20/195, Minute sheet, November 28, 1953.
 162. National Records of Scotland, ED20/195: Correspondence from Cooper to Dennehy, November 12, 1953.
 163. National Records of Scotland, ED 20/195: Correspondence from Cunningham to Rowe, December 31, 1953.
 164. NRS, ED20/195: Correspondence from WHB to Rowe, November 16, 1953.
 165. *Report of the Royal Commission on Marriage and Divorce*, 166.
 166. NRS, ED20/195. Draft copy of report sent to Rowe, Scottish Home Department, June 1, 1954.
 167. *Report of the Royal Commission on Marriage and Divorce 1951–1955*, 13.
 168. *Ibid.*, 106–111.
 169. "New Divorce Proposals," *The Times*, March 21, 1956, 10.
 170. Terry Bamford, "Kenneth Henry Brill (1911–1991)," *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004), accessed June 11, 2020, <https://doi.org/10.1093/ref:odnb/49591>.
 171. "Marriage and Divorce: Report of the Royal Commission," *Probation Journal* 8, no. 2 (1956): 28.
 172. John Latey, "The Royal Commission on Marriage and Divorce," *Medico-Legal Journal* 24 (1956): 63–76. Miss Morgan Gibbons, 75; Mr. Ramage, 76.

173. McGregor, *Divorce in England*, 167.
174. House of Commons Hansard, vol. 553, June 4, 1956, col. 681.
175. NA, LCO 2/6139 Memorandum for the Lord Chancellor which refers to discussions between this office, the Home Office and the Scottish Home Department, signed by Mancroft, October 9, 1956.
176. NA, LCO 2/6139 House of Lords Hansard extract, *Marriage and Divorce*, 1058–59.
177. NA, LCO 2/6139, Recommendations for Private Members' Bills, undated, filed as discussed at a meeting with the MLRS at the Home Office, December 10, 1956.
178. NA, LCO 2/6139: Correspondence from Shuffrey to Dobson, December 11, 1956; Correspondence from Mancroft to Beneson, December 12, 1956.
179. NA LCO 2/6154: Correspondence from Neve to Goode, January 17, 1958. In the end, the Act provided for supervision of children when required.
180. NRS, AD 63/350: Correspondence from Lewis to Mackay, November 19, 1957.
181. NRS, AD 63/350: Correspondence from Hutchison to Hume, November 19, 1957.
182. NRS, HH1/1306: Correspondence from Hume to Solicitor, December 7, 1956. Solicitor is not named.
183. NRS, HH1/1306: Correspondence from A. L. I to Lord Advocate, December 28, 1956. A previous Act of Sederunt from March 9, 1951, had provided for joint minutes of agreement on custody and aliment.
184. NRS, HH1/1306: Correspondence from A. L. I, Lord Advocate's Department to Mr. Walker, Scottish Home Department, August 13, 1957; Correspondence from Walker to Innes, August 14, 1957.
185. NRS, AD 63/350: Correspondence from Walker to Hutchison, November 28, 1957.
186. NRS, AD63/350: Correspondence from Dobson to Pittam, November 21, 1957.
187. NRS, AD63/350, "Memorandum: Scottish Recommendations Relating to Children in Actions of Divorce, Nullity, Separation and Adherence," undated but late November/early December 1957 from accompanying correspondence, 2; HH1/1295, Teleprint, November 12, 1957.
188. NRS, AD63/350: Correspondence from Lord Clyde to Lord Advocate December 16, 1957; Lord Clyde to Lord Advocate, January 14, 1958.
189. *Ibid.*, December 16, 1957.
190. Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes from 1845 to the Present Day* (Edinburgh, UK: John Donald Publishers, 1998), 179.
191. Matrimonial Proceedings (Children) Act, 1958 (6 and 7 Eliz 2, c.40), Part II, section 8; section 11 (2).
192. *Putting Asunder: The Report of a Group Appointed by the Archbishop of Canterbury in January 1964* (London, UK: SPCK, 1966), ix, 71.
193. House of Commons Parliamentary Papers, Cmnd. 3123. Law Commission, Reform of the Grounds of Divorce: the Fields of Choice (1966), 41. For a fuller discussion of both Putting Asunder and Fields of Choice, see Cretney, *Law, Law Reform and the Family*, 33–72; Jane Lewis and Patrick Wallis, "Fault, Breakdown and the Church of England's Involvement in the 1969 Divorce Reform," *Twentieth Century British History* 11, no. 3 (2000): 308–332.
194. There was an appendix on psychological issues in divorce in *Putting Asunder* which only briefly considered the impact of divorce on children; while a seminar organized by the Law Commission revisited the question of distinguishing between cases where there were children and where there were not. *Putting Asunder*, 148–49; Cretney, *Law, law Reform and the Family*, note 185 to chap. 2.

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Rosemary Elliot is a senior lecturer in Economic and Social History focusing on the nineteenth and twentieth centuries. She is currently researching and writing on the history of marriage and divorce in Scotland from the introduction of civil registration in 1855 to the end of the twentieth century.