

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository: <https://orca.cardiff.ac.uk/id/eprint/146164/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Thompson, Sharon 2023. Edith Summerskill: letters from deserted wives. *Women's History Review* 32 (6) , pp. 843-862. 10.1080/09612025.2022.2138201

Publishers page: <https://doi.org/10.1080/09612025.2022.2138201>

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies. See <http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.



## **Edith Summerskill: Letters from Deserted Wives**

Dr Sharon Thompson<sup>a\*</sup>

*<sup>a</sup>School of Law and Politics, Cardiff University, Cardiff, Wales.*

[\\*ThompsonS20@cardiff.ac.uk](mailto:*ThompsonS20@cardiff.ac.uk)

Acknowledgements: I would like to thank Professor Russell Sandberg and delegates of the Women's History Network Annual Conference 2019 for their helpful feedback on earlier versions of this paper.

## **Edith Summerskill: Letters from Deserted Wives**

*While Edith Summerskill was an important feminist reformer of the twentieth century, she remains an arcane figure in the history of the Labour Party and is a mere footnote in family law history. Yet she has played a significant, albeit unacknowledged role in law reform, particularly through her campaigns for greater legal protection of married women. Summerskill's relegation to the margins of family law, and in particular the understated significance of her role in divorce reform in the 1960s, can in part be attributed to interpretations of her perspective as reinforcing women's dependency on men, at the very time feminists were seeking to be liberated from this dependency. This article challenges this view, drawing upon previously unaccessed sources such as letters written to Edith Summerskill by deserted wives. These sources bring new meaning to Summerskill's concerns about divorce reform, enabling Summerskill's view to be re-evaluated. It is concluded that dismissing Summerskill's role in divorce reform results in a failure to properly understand a landmark moment in family law history, while oversimplifying feminist debates about the recognition of married women's rights in the 1960s.*

Keywords: Edith Summerskill; Divorce reform; Labour Women; Legal History.

### **Introduction**

Often, it is the process of reform which encapsulates the historical development of law and policy best. As Stephen Cretney has argued, there are numerous examples of legislation that have been influenced 'sometimes in an unforeseen way' by figures either working behind the scenes or who wish to resist it.<sup>1</sup> These events are 'sometimes dismissed as technical details', Cretney said, even though the stories of influential figures and their views can help family lawyers and legal historians to understand better how policy and law is reformed. Edith Summerskill is one such figure, given insufficient credit for her role in the development of family law.

This article focuses on Edith Summerskill's resistance to divorce reform in the late 1960s. The Divorce Reform Act 1969, which continues to underpin divorce law today, is a milestone in legal history. For the first time in English law it enabled spouses to have the option to divorce when neither party was at fault for the breakdown of the marriage.<sup>2</sup> Unhappy marriages that were empty shells could be dissolved under this new law; an ostensibly emancipatory

development for women who would previously not have been able to legally separate unless they could prove their partner had committed a matrimonial offence.<sup>3</sup> It might therefore seem strange that Edith Summerskill was so opposed to this reform given she was a feminist who sought to elevate women's legal status. She played a role in having the introduction of this law delayed for two years, with divorce reform proponent Leo Abse commenting in his memoirs that: 'No one was more successful in delaying its passage, and in arousing hostility to its objectives, than...Summerskill'.<sup>4</sup>

Summerskill's feminism is seen as 'contradictory'<sup>5</sup> because she fought for equality within marriage while failing to challenge the institution of marriage itself; the very thing other feminist campaigners of the day sought to dismantle as a root of women's oppression.<sup>6</sup> This article argues that this has contributed to the dismissal of Summerskill's view of divorce. This history revisited in this article by adopting a ground-up, feminist legal historical analysis using new and previously unexplored sources. It shows the complexity of Summerskill's view is often missed – that she opposed the Divorce Reform Act 1969 because she was concerned about the economically vulnerable position of wives left by their husbands. In short, it is argued that Summerskill did more than simply condemn divorce reform; she gave voice to deserted wives by fighting for their financial protection. Indeed, the two-year delay in the Act coming into effect – in which Summerskill played a part – was of critical importance because it meant that the financial consequences of divorce could be reformed too. Therefore, by homing in on Summerskill's role in divorce reform, it is clear there was a plurality of feminist responses to the Divorce Reform Act, and Summerskill's feminism was not 'odd'<sup>7</sup> simply because it did not align with that of other women's rights advocates at the time.

Part one explains the methodology and perspective employed in this article, as well as introducing Edith Summerskill and her involvement in divorce reform. The article draws upon previously unexplored archival material, with particular focus on letters written to Summerskill about divorce by deserted wives. Following an outline of the institutional account of the Divorce Reform Act in part two, part three uses these letters to present a detailed examination of what motivated Summerskill's opposition to this reform. By bringing women back into this historical account through an assessment of both Summerskill's view and her letters from deserted wives, different questions and alternative perspectives are uncovered, which institutional accounts previously considered unimportant. After investigating Summerskill's argument through these alternative sources, part four assesses the overall significance of

Summerskill's intervention in divorce reform, concluding by arguing that closer inspection of her ideas alongside the letters she received from deserted wives can provide useful insights into this landmark of legal history.

## **Part 1 – Historiography**

This paper takes a feminist legal historical approach to reassess the institutional account of English divorce reform and Edith Summerskill's role in it. As subsequent sections will further explain, in the story of the Divorce Reform Act 1969 Summerskill is not remembered as an advocate for impoverished deserted wives. Instead, she is best known as designating the 1969 Act a 'Casanova's Charter' for husbands wishing to divorce their middle-aged wives and marry younger women.<sup>8</sup> However, looking beyond this soundbite of 'Casanova's Charter', enables the importance of Summerskill's role in advocating for deserted wives to be uncovered and understood, as her intervention became a catalyst for the core tenets of financial provision to be reassessed.

The approach in this article can be characterised as 'feminist' for two reasons: the perspective taken, and the sources used. As feminist legal historians like Rosemary Auchmuty explain, perspective is important when taking a feminist approach because it requires a shift in focus away from law's formal development, law's makers and law's institutions.<sup>9</sup> She goes on to say that textbooks can at times 'obliterate the historical context which had contributed to legal decisions and developments'.<sup>10</sup> And so adopting an alternative, feminist perspective requires broadening the scope through which law has traditionally been seen to be reformed, while considering who was demanding change and why. Adopting an alternative perspective along these lines means emphasis is placed on different sources too, for as Felice Batlan argues, looking 'beyond traditional legal sources' allows one to find 'new legal actors' and to locate 'how some [women] sought to transform law as part of a broader and potentially radical agenda for social change'.<sup>11</sup>

This article presents the results of a thematic analysis of 283 letters written to Edith Summerskill by women about the Divorce Reform Act 1969. These letters are archived in closed files (comprised of approximately 1900 pages) in the Women's Library at the London School of Economics because of their sensitive and confidential content, and so the individuals referred to are anonymised in references below.<sup>12</sup> The following sections also draw upon archival interviews between Summerskill's son, Michael, and her contemporaries, such as

Barbara Castle and Lord Denning.<sup>13</sup> By comparing Summerskill's personality based upon these sources with her words recorded in Hansard, a more nuanced and detailed understanding of her views is garnered.

Access to these previously untapped resources is a valuable way of gaining deeper understanding of why Summerskill opposed the Divorce Reform Act 1969. Perhaps most interestingly, the sources examined in this article reveal a range of different and often conflicting accounts of Summerskill and her views on divorce, suggesting the complexity of her perspective.

### Introducing Edith Summerskill

Though Edith Summerskill is recognised as an important feminist reformer of the twentieth century by historians like Penny Summerfield,<sup>14</sup> she remains an arcane figure, and is a mere footnote in family law history. Yet she has played a significant, albeit unacknowledged role in law reform, particularly through her campaigns for greater legal protection of married women. Born in 1901, Summerskill was a doctor, politician and feminist activist at a time when women were (only just) allowed to participate in public life.<sup>15</sup> She was a Labour MP from 1938 until she became one of the earliest female life peers in 1961, when she was promoted to the House of Lords. By this time, as Summerfield notes, there had only been three other female ministers of state, and the only woman to have been an MP longer than Summerskill was Nancy Astor (who had never held a ministerial position).<sup>16</sup>

Summerskill's work in improving the lives of women was inextricably linked to her socialism too. In a speech titled 'Why I Am a Socialist' broadcast on radio in 1948 she told a story about the moment her political views were cemented, when working as a doctor she treated a young mother starving and living in squalor, with her wedding ring tied to her finger with thread to stop it slipping from her shrunken hands.<sup>17</sup> This early speech typified the focus of her work throughout her career, where she was influenced strongly by the experiences of women as she saw them.

Summerskill had a record of fighting for women's rights throughout her life. She spearheaded both the Married Women's Property Act 1964, which gave wives a one-half share of housekeeping savings<sup>18</sup> and the Matrimonial Homes Act 1967, which gave deserted wives the right to occupy the matrimonial home when they had previously been forced to leave it.<sup>19</sup> Her

campaign to oppose divorce reform and fight for better financial provision for deserted wives in the 1960s and early 1970s was perhaps her most prominent stand in parliament, but was also one of her last, as she died in 1980. Underpinning her activism was a belief that the institution of marriage could be strengthened by improving the economic and legal status of married women, as seen through her prominent roles in pressure groups such as the Married Women's Association, which sought to reform the financial consequences of marriage so that women's work inside the home could be valued equally to men's work outside it. She often had to contend with assumptions that women's equality had been achieved and feminism was redundant. Former Labour Minister of Health Kenneth Robinson, saw Summerskill as 'pushing at a door that's already open' and the inequality she spoke of as 'grossly exaggerated'.<sup>20</sup> This reaction might seem unsurprising given that throughout Summerskill's time as an MP, parliament was, as Paula Bartley put it, 'a male privileged institution dominated by men'.<sup>21</sup>

Yet Summerskill's female parliamentary peers often disagreed with her too, believing that her focus on women's issues could perpetuate a stereotype of women politicians that made it more difficult for women to occupy 'men's territory' in parliament.<sup>22</sup> Labour MP Barbara Castle said she was not her sort of feminist, and that she was 'conscious of her as a very sort of dominating feminist'.<sup>23</sup> Indeed, Castle thought Summerskill's decision not to take her husband's name and for her children to be called Summerskill was 'going too far'.<sup>24</sup> In Summerskill's son's interviews with other politicians and contemporaries of hers, she is described as unwavering yet pragmatic, with a touch of arrogance and shyness,<sup>25</sup> all of which appeared to set her apart from other members of the House. As Castle saw it, she was 'a bit of a loner'.<sup>26</sup>

Understanding these aspects of her personality, and in particular her reputation as an outsider is important when investigating what her views on divorce were and why they are commonly misrepresented or even dismissed by others. However, whether it was her feminism, her socialism, her single mindedness or a combination of all these things, the sample of letters studied for this article reveal that middle-aged women, who otherwise felt invisible in the eyes of law and politics viewed Summerskill as their advocate. 'I do want to write and say how much I appreciate all you are doing to help women of my age' wrote one woman, with another writing 'I have such faith in you as our best ally' and another: 'we rely on you'.<sup>27</sup> Dozens of letters revealed similar messages to Summerskill who, as this article argues, aimed to give voice to women typically over the age of 40 when their stories and experiences would likely otherwise be unheard.

## **Part 2 – Divorce Reform Act 1969**

To properly historicise Edith Summerskill's role in the Divorce Reform Act, it is important to first look to the institutional account of how this legislation was introduced to see how Summerskill's view has been oversimplified and misunderstood. As a result, this section sets out the textbook account of the Divorce Reform Act, highlighting the role of institutions like the Law Commission and the Church of England.

Before the 1969 Act, divorce was based entirely on the fault of one of the parties and required proof of a matrimonial offence by the party petitioning for divorce. Therefore, if the husband petitioned for divorce on the ground of his wife's desertion (a matrimonial offence under the law<sup>28</sup>) he would be barred from divorce if he had committed adultery (another matrimonial offence), even if this had only happened on one occasion.<sup>29</sup> This meant that in marriages where both parties were at fault, or indeed where neither party was at fault, divorce was not possible. By the 1960s it was clear that this position had become untenable, as there was widespread consensus that it was not in the public interest to legally keep a marriage in existence when it had in actuality broken down.

Both the Anglican Church<sup>30</sup> and the newly established Law Commission<sup>31</sup> recommended reform, with the latter institution stating that the objectives of a new divorce law should be:

- (i) To buttress, rather than to undermine, the stability of marriage;
- and
- (ii) When, regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation.<sup>32</sup>

In 1967 Labour MP William Wilson introduced the Divorce Reform Bill to enact the Law Commission's proposal for a new divorce law based on irretrievable breakdown, and when it did not progress through Parliament before the parliamentary session was prorogued, it was re-introduced by another Labour MP, Alec Jones. Under the Bill, establishing irretrievable breakdown would require one of five facts: adultery, behaviour that would make it unreasonable to be expected to live with the respondent, desertion, two years separation with consent or five years separation without consent.<sup>33</sup> While this Bill marked a radical shift away



from previous divorce law, it had widespread support. Politicians like Leo Abse kept the issue of divorce reform in the public eye throughout the 1960s using (in Abse's own words) 'histrionics, panache and style'.<sup>34</sup> Even Conservative MPs, for whom the sanctity of marriage was core to their conservative ideology,<sup>35</sup> were not expected by their party to oppose the Divorce Reform Bill.<sup>36</sup> From this perspective, it seemed almost inevitable that the Divorce Bill would get Royal Assent. But there was one stumbling block in particular that almost prevented the Bill from becoming law – the financial consequences of divorce for women.

A major threat to the passage of the Divorce Reform Bill was the concern that it could be economically disastrous for a woman to be divorced by her husband without her consent after a period of five years separation (which is one of the routes to establishing irretrievable breakdown pursuant to the Divorce Reform Act 1969 and section 1(2)(e) of the consolidating Matrimonial Causes Act 1973). Edith Summerskill is frequently positioned as the champion of this view, because she referred to this provision as the 'Casanova's Charter';<sup>37</sup> coined to describe her apprehension that husbands would be empowered by section 1(2)(e) to leave their wives, marry younger women and financially support their new family instead of their old one. Put simply, the institutional account explains the Casanova's Charter view as opposition to divorce without consent, a view dismissed by some at the time who retorted 'Casanovas do not bother with charters',<sup>38</sup> because an individual's decision to desert their spouse for another woman was not thought to be based on law.

It is interesting to note that the Casanova's Charter opposition was the most powerful impediment to the Divorce Reform Act (and indeed the Act nearly foundered because of it), yet those pushing for reform were not apathetic about the financial consequences of divorce for the non-moneyed spouse either.<sup>39</sup> Indeed, proponents of the Bill argued that the hardship of the existing law for wives made reform of divorce all the more urgent, with the Law Commission and Archbishop of Canterbury's group both emphasising the harsh consequences of the law for the more economically vulnerable spouse. This concern filtered into the Matrimonial Causes Act 1973 (which consolidated the Divorce Reform Act 1969) in section 5, preventing divorce without consent in the event of 'grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage' and section 10, facilitating postponement of the decree absolute (the legal end of the marriage) so that financial provision for the non-moneyed spouse could be arranged.

In addition, the introduction of the Divorce Reform Act 1969 was delayed until the Law Commission had fully investigated the financial consequences of divorce. The recommendations in the Law Commission's report<sup>40</sup> sought to ameliorate the concerns of those opposed to divorce because of the potential consequences for married women. These were enshrined in the Matrimonial Proceedings and Property Act 1970, now consolidated in the Matrimonial Causes Act 1973 and still in force today. The effect of the Act was transformative in that where the court previously made maintenance and lump sum orders on a discretionary basis which operated to penalise the spouse 'at fault', the new legislation gave the court wide ranging discretionary powers to make financial orders regardless of fault, which included redistribution of property. This redistributive power was a turning point in family law, because it marked a shift in emphasis away from making the wife dependent on maintenance towards helping her become economically independent by providing her with property and therefore 'purchasing power'.<sup>41</sup>

The account of the passage of the 1969 and 1970 Acts in this section is a dominant narrative and represents the accepted institutional, 'textbook' version of events. It adopts a top down perspective, whereby reform is primarily seen as driven by the Law Commission and the established Church.<sup>42</sup> The role of women like Edith Summerskill is marginal and while her concern for deserted wives is acknowledged in this account, it is not interrogated and understood. Similarly, this account does not explore what the views and experiences of deserted wives *actually were* – it simply registers that opponents of reform were anxious about how they would be affected by it.

### **Part 3 – Edith Summerskill's View in Focus**

Though Summerskill's opposition is important within the dominant institutional narrative outlined above, this account does not properly examine what shaped her views, leading to assumptions that she was inherently anti-divorce and even puritanical.<sup>43</sup> Yet examining her campaign against divorce reform is an important part of legal history, and so this section aims to examine properly why Summerskill coined the term 'Casanova's Charter'.

A logical starting point when analysing Summerskill's view of the Divorce Reform Act is the passage from Hansard where she first labelled the Divorce Reform Act a 'Casanova's Charter' in Parliament.<sup>44</sup> She repeated this term in press reports and speeches, but arguably she best explains and rationalises her view of reform as a Casanova's Charter in this particular

passage.<sup>45</sup> Here, it is shortened into five extracts and is analysed alongside her letters from deserted wives and other archival material.

**Extract 1:** *I beg the Government not to be precipitate but to give the most careful consideration to the proposition that matrimonial offences should be replaced by the breakdown of marriage as the ground for divorce, and that an innocent spouse should be compelled to accept divorce after a few years of separation...*<sup>46</sup>

Summerskill's first criticism is that the reform would allow the 'innocent spouse' to be 'compelled to accept divorce' after five years of separation.<sup>47</sup> Divorce without consent was a powerful and memorable refrain that featured in several of Summerskill's appeals to media and talks to women's rights groups.<sup>48</sup> Her expression of 'grave concern' by the innocent man or woman being divorced against their will 'for the first time in our social history' was reported by the press.<sup>49</sup> Support for her view even featured in Catholic newsletters;<sup>50</sup> ironic not only given Summerskill's atheism, but also her antagonistic history with the Catholic church, which had successfully thwarted one of her early election campaigns because of her support for birth control.<sup>51</sup>

To Summerskill, removing the requirement of a matrimonial offence meant punishing a party who was 'innocent' in causing the breakdown of the marriage. In her son Michael's writings, he surmised: 'Perhaps Edith's wish to adhere to the concept of a matrimonial offence reflected her view of women as wronged'. This was reflected in the letters received by Summerskill where the women writing to Summerskill frequently emphasised their economic hardship in spite of their proclaimed innocence.<sup>52</sup>

On the other hand, it is difficult to understand how maintaining the matrimonial offence and making divorce inaccessible to spouses when their marriage had broken down irretrievably would help the middle-aged women for whom Summerskill advocated. The Law Commission's report found a pressing need to dissolve empty shell marriages that benefitted neither party.<sup>53</sup> Indeed, many of the women writing to Summerskill about the Divorce Bill had *already* been deserted by their husbands and were, for all intents and purposes, separated without their consent:

Three years ago my husband...deserted me after 26 years of marriage in which we were rarely free from debt owing to his drinking and extravagance...He no longer loved me and he wanted to be free. I do not exaggerate when I say that he left me ill, penniless and homeless. I lived for a time in a room above a junk shop where the roof leaked and I was bitten alive with fleas...After two temporary jobs I was fortunate in finding clerical work in a garage...I made an attempt with legal aid to obtain at least some support from my husband but without result...He never supported me...I have it on good authority that he has recently bought a new car and has a married woman friend...Recently, owing to the closing of the department, my job in the garage was terminated. At present I am doing two weeks temporary work as a shorthand typist. I am 58 and it is not easy to find work at my age.<sup>54</sup>

Unfortunately, accounts like this were not uncommon in letters to Summerskill. This woman, still married, was already in dire straits, leading one to ask how the Divorce Reform Act could have made matters worse for her. Another woman writing to Summerskill wrote:

I am afraid that you do not realise that the law as it stands now is a 'Casanova's Charter'... My husband refuses to maintain myself and our four children and we must live on social security assistance.<sup>55</sup>

On the other hand, it was not clear that the Divorce Reform Act alone would improve the circumstances of women like this either. Summerskill was eminently pragmatic and would not accept the view propounded by others that divorce reform was generally emancipatory for deserted middle-aged wives:

It is no good sitting here pretending to ourselves that all the women of the country are emancipated; that all of them have higher education; that all of them are skilled, and that all of them can earn their own living. The fact is that the great majority of married women in this country have worked well for their families...if I had been assured that these women, after years of work, would have some financial provision, I should not have objected so very much...<sup>56</sup>

It would, therefore, be a mistake to depict the Casanova's Charter opposition as an attempt only to preserve the sanctity of marriage. This would unfairly historicise Summerskill's view in a

conservative and puritanical way, when from another perspective Summerskill was espousing, as Gillian Douglas put it, ‘the modern view that a wife is *entitled* to a *share* in the family assets, rather than the traditional stance that she is a dependant seeking the husband’s largesse’.<sup>57</sup> This is supported by her son’s comment when interviewing Lord Denning: ‘it was not a kind of moral statement that marriage must be indissoluble – it was more a practical one that she said [the wife] would never get the right financial support’.<sup>58</sup>

This makes sense when reflecting on Summerskill’s background and personality. She had been the first President of the Married Women’s Association, a pressure group that shared her lifelong cause of economic equality between spouses. Her work was more consistent with concepts of fairness and financial security than with preserving marriage for the sake of it. Overlooking this broader biographical context means missing the most important aspect of Summerskill’s opposition to divorce reform – the unresolved issue of married women’s property.

**Extract 2:** *My noble and learned friend (the Lord Chancellor) has told us to-day that...there is a consensus of opinion. He mentioned the Church of England, the Methodist Church...and the Law Reform Committee. But these are organisations composed almost entirely of men...*<sup>59</sup>

Summerskill’s next point of contention is that though the Lord Chancellor Gerald Gardiner notes a consensus in favour of reform among the Church of England, the Methodist Church and the Law Commission, these bodies consisted almost entirely of men. This was problematic because as Summerskill had repeatedly argued, the proposed reform would be disproportionately harmful to middle-aged and older women, whose experiences were not being heard or understood. As Summerskill put it, divorce without consent was ‘opposed by every women’s organisation in the country, and they, as we know, are not represented in this House in great numbers.’<sup>60</sup>

From Summerskill’s perspective therefore, predominantly male law makers would make a divorce law that suited men, and she was not convinced this would address the plight of the women for whom she advocated. Her point is significant for legal historians because it reinforces the importance of assessing legal history from a gendered perspective, makes us

question how women's position was accounted for in divorce reform and reassesses the 'neutrality' of law<sup>61</sup> that, in Summerskill's view, marginalises the lives and experiences of deserted wives. Yet Summerskill's gendered critique of law reform and law reformers features nowhere in institutional historical accounts of the Divorce Reform Act.<sup>62</sup>

**Extract 3:** *Marriage means much more to a woman than to a man. Marriage means to a woman an arrangement whereby a man and a woman live together in order that they may have children, an arrangement which will protect those children as long as possible...*<sup>63</sup>

Examining Summerskill's words on divorce reform not only brings gender into the history of the Divorce Reform Act, but also provides better insight into what she thought about marriage, women and men. Summerskill argued that marriage means more to women than to men in terms of commitment because easier divorce, she said, would encourage husbands to leave their wives when they would otherwise have reconciled. Even before the Act was passed, Summerskill was receiving letters from women claiming that: 'Without a possibility of a divorce we would have been together still and the other woman soon forgotten but this new set up envisaged in the Bill put the idea into his head...'.<sup>64</sup> Summerskill repeated these views in Parliament, arguing further that the corollary of easier divorce was that more children would be born out of wedlock and this would disproportionately affect women. This was paradoxical according to those in favour of reform like Abse, who argued that there were greater numbers of 'illegitimate' children because of the existing law<sup>65</sup> as inaccessible divorce did not prevent new unions outside marriage but *did* prevent remarriage. The concern on both sides of the debate over the now dated (and virtually redundant) notions of illegitimacy and living in sin indicates that in making these arguments Summerskill and Abse were conservative but were also reflecting the deep-set social norms of the day, albeit from antipodal standpoints.

Still, given Summerskill's liberal and resolute stance in favour of birth control, abortion and women in the armed forces, her son Michael noted: 'It was surprising to find Edith in opposition to a measure designed to avoid the dishonesty occasioned by existing laws and to free people tied to an empty marriage'.<sup>66</sup> In trying to understand his mother's perspective, he considered that her reasoning 'reflect[ed] her respect for the institution of marriage as a protection for women'.<sup>67</sup>

Understandably, some feminists have been critical of this perception of marriage. As Auchmuty explains, many have located marriage as a site of oppression for women,<sup>68</sup> yet Summerskill believed in the institution of marriage. She fought for economic equality within marriage but did so without acknowledging that marriage as an *institution* was part of the problem, as other feminists did. For Summerskill, inequality between spouses could be dealt with practically and constructively, such as through law reform ensuring women's entitlement to a share in the family assets.

In addition to Summerskill's defence of marriage, some feminists have also castigated her essentialism of women and men. It is easy to see why. In *Letters to my Daughter* she suggests that having children is women's true desire and that there are certain roles that men are better equipped to do.<sup>69</sup> Smart argues that Summerskill's failure to recognise the problem of not only marriage, but women's traditional role within it, meant that Summerskill's view reinforced women as a class of dependants 'who then could hardly survive outside marriage'.<sup>70</sup> Other contemporary feminists of Summerskill's recognised this too, as Barbara Castle noted, she 'had some curious blind spots, did Edith'.<sup>71</sup> Yet it would be unfair to assume that such essentialism meant that her opposition to the Divorce Reform Act was immaterial, or that she believed women's place was in the home and men's place was outside it. First, she was adamant that women's emancipation depended upon men taking up historically gendered roles like cleaning, and indeed her *own* marriage was an example of one where her husband was responsible for more childcare than she was. Her former secretary Suzanne Knowles recalled that in a confrontation with an aggressive man at a Labour Party meeting Summerskill's retort was: 'Why don't you go home and help your wife with the washing up?'<sup>72</sup> And so, she asserted that husbands should support their wives' professional success in the public sphere through taking on some of the domestic labour, arguing that this was essential for women's success outside the home.<sup>73</sup>

Second, it is important to remember that as Summerfield has put it:

In spite of her essentialist view that women were motivated above all by the desire to have children, Summerskill...was unusual among feminists of the 1930s and 40s for fighting simultaneously for both sets of goals: welfare and equality.<sup>74</sup>

In other words, she campaigned for both the removal of barriers to equality and also for women's welfare and protection in recognition of their *inequality*.<sup>75</sup> This again underscores her pragmatism and undermines the characterisation of Summerskill as someone who tended to philosophise about the innate qualities of men and women.<sup>76</sup> Indeed, she wrote in her memoirs that she had little interest in theory or philosophy,<sup>77</sup> but instead was focused on the realities and experiences of others. Perhaps then, by appealing against divorce without the consent of the deserted wife, she was arguing that the Government had not properly acknowledged the different experiences of husbands and wives.<sup>78</sup> That the experience of spouses *was* gendered in the 1960s is clear. Letters to Summerskill corroborate the very different ways in which men and women were affected, with the problem in every letter identified as being financial: 'Middle-aged wives should be given proper financial consideration. It is disgraceful to talk about them having to go to public authorities for money' writes one woman.<sup>79</sup> Another woman wrote informing Summerskill<sup>80</sup> that she had written to *The Times* and Leo Abse to say: 'it's about time the wife's point of view was listened to',<sup>81</sup> and: 'when this Bill is Law and my husband divorces me, my little girl and I will probably end up like "Cathy come home" with nowhere to live'.<sup>82</sup> This shows that in many ways Summerskill was correct, as many of the women writing to Summerskill *did* appear to be impacted by marriage and divorce differently from their husbands.

**Extract 4:** *Surely few men can keep two families...If a law is not enforceable it is a bad law, and if a law is so framed that only wealthy men can take advantage of it is a bad law.*<sup>83</sup>

All of Summerskill's reasons for opposing the Divorce Reform Act are inextricably linked to her concern for the financial position of the first wife, whom she believes has inadequate protection under the law. Here, Summerskill is arguing that a man with obligations towards a second family will not be able to support those from his first marriage, and that the law does not provide proper protection to the wife and children left behind.

As noted in part two, the Divorce Reform Act was delayed by two years so that the financial consequences of divorce could be explored fully. While the Law Commission was clear that divorce should not be means tested and dependent upon a husband being able to maintain two households, it did not view wives' poverty as irrelevant.<sup>84</sup> As a result, a separate law on



financial remedies was developed titled the Matrimonial Property and Proceedings Act 1970, meaning divorce was a separate but connected issue to financial provision.

In spite of this sweeping reform, which ostensibly placed the financially vulnerable ex-wife at the centre of proceedings, Summerskill wrote in one of her personal letters that she was 'losing faith' in the Law Commission.<sup>85</sup> This is because at the forefront of Summerskill and her supporters' concerns was the issue of pension provision for wives, which the Law Commission did not properly address. Many of the women writing to Summerskill were worried about being divorced without their consent and losing any share in their husband's pension, at an age when retraining and employment was unlikely, spending old age in destitution without a pension of their own. As one woman wrote: 'since my allowance will remain static and the cost of living rises rapidly, I shall find myself much less well-off and at the age of 65 not inclined to supplement a living by working'.<sup>86</sup> Several women writing to Summerskill expressed anger at the prospect of losing all widow's pension while the second wife is protected, for example: 'On his death the whole of the widow's pension goes to the second wife...The first wife is left penniless...She has to apply to national assistance'.<sup>87</sup> Many women were too old to build up their own pension and faced old age in much less financial comfort than their former spouse:

I am 67 and feel as though I have another 15 or 20 years ahead of me, but I think it would be unfair to have to live on my bit of capital while my husband pretends to have none. I hope you will continue your fight for reasonable financial provision for the deserted wife.<sup>88</sup>

These were legitimate and serious anxieties, yet even though the 1970 Act significantly improved the financial impact of divorce for women, the issue of pension sharing was not dealt with comprehensively until 1999.<sup>89</sup>

Summerskill therefore remained ambivalent about divorce reform. She predicted that husbands could not financially support two households, even if legislation said that they should. An unenforceable law is a bad law, she said. In many ways, Summerskill was correct, since research has consistently indicated that women take longer to recover financially from divorce than men do.<sup>90</sup>

On the other hand, Summerskill's argument could be countered by asking *why* a husband should have to maintain two households, when the first marriage has been dissolved. It is arguably unfair to the husband, does not enable the parties to move on properly and suggests that the wife is necessarily a needy supplicant. Indeed, as part three will explore further, Summerskill has been criticised by some feminist scholars for insisting on protection for the housewife, as in their view the only way women could achieve full citizenship was to be emancipated from the home. Summerskill's strategy was different: instead of arguing that women should be released from housework and childcare, she contended that this work should be recognised in economic terms. She believed this would help level the financial playing field outside the home too, where women also lacked equal opportunity. The women in employment writing to Summerskill were mainly employed in low-paid or part-time work but also undertook all the domestic labour. Ever the pragmatist, Summerskill acknowledged this reality and the fact that domestic and caregiving roles were gendered, maintaining that these roles should be valued economically. This is clear when analysing the final section of her first Parliamentary speech labelling divorce reform a 'Casanova's Charter'.

**Extract 5:** *There is a tendency in many quarters to disregard the fact that men can earn their income and accumulate capital only by virtue of the division of labour between themselves and their wives...*

*My purpose to-day is simply to try to persuade the Government, before they embark...on legislation calculated to undermine the institution of marriage as we understand it in Britain...if they find that a Private Member is persuaded to draft a **Casanova's Charter**, then they must incorporate...a matrimonial property law which includes community of goods, in order to protect the discarded wife.<sup>91</sup>*

Here, Summerskill was not just demanding a new matrimonial property law; she wanted spouses to share the financial fruits of the marriage when it dissolves. This argument sits at the heart of Summerskill's opposition to divorce reform and also was the central theme of the letters she had been receiving at this time. In these letters, women described a range of personal and individual experiences, but the fundamental problem in each of them was financial. As one letter objecting to divorce reform put it: 'The money question is SERIOUS – for a woman with children to bring up alone...this Bill will create a new poor in our welfare state'.<sup>92</sup> For this reason, the significance of the delay of the Divorce Reform Act 1969 to facilitate sweeping

reform of financial remedies pursuant to the Matrimonial Property and Proceedings Act 1970 should not be underestimated.

There are a number of interesting points revealed in this final extract from Summerskill's speech. First, she uses the 'Casanova's Charter' soundbite in the same breath as calling for financial reform. Yet her specific demands for economic spousal equality are rarely associated with this soundbite. Summerskill's rationale for financial provision mirrors the modern rationale underpinning the redistribution of assets on divorce, which is not just about protection, but is also about entitlement generated by financial *and* non-financial contributions. As she asserted, it is the 'fundamental division of labour between husband and wife which frees the husband for the acquisition of goods'.<sup>93</sup>

The gendered division of labour in the marriage meant that the wife, as Summerskill put it 'must be able to count on her share of the goods accumulated through the marriage'.<sup>94</sup> She went on to explain that the wife earned this share by bearing and rearing the children and in tending the home, leaving the husband free for his economic activities. This language of entitlement is important as it denotes a broader context in which Summerskill had been fighting for property rights for married women since the early 1940s. Her son discovered when interviewing Lord Denning that when Summerskill was pushing for wives' right not to be evicted under the Matrimonial Homes Act 1967, it was a real struggle to achieve reform where 'the wives' interest would be a fetter on property'.<sup>95</sup> She must have known that arguing for financial remedies far beyond maintenance and lump sum orders was controversial. But as former Conservative politician and editor of the *Daily Telegraph*, Bill Deeds, noted: 'I don't think she was a lady who was very easily pushed off her point of view. She stuck to it'.<sup>96</sup> So, instead of framing wives' property rights in terms of need, in the context of divorce reform, Summerskill argued, instead, for recognition of wives' entitlement.

For Summerskill, the most radical and straightforward way to reflect the equal importance of financial and non-financial roles in marriage was 'community of goods' or community of property; a matrimonial property regime whereby spouses' assets and debts automatically go into a pot that is divided in half on divorce.<sup>97</sup> Though property in marriage has been owned by spouses separately in England and Wales since the Married Women's Property Act 1882, the Royal Commission on Marriage and Divorce in 1956 and the Law Commission in 1988 *did* consider the introduction of community of property, deciding against introducing this

matrimonial property regime because it would be too complex.<sup>98</sup> In spite of this, it could be argued that Summerskill's hopes were eventually realised in part, as some have contended that the twenty-first century shift towards ideas of sharing and entitlement in marriage indicates that financial provision on divorce has moved closer to community of property.<sup>99</sup> This evolution in common law was only possible because of the broad discretion accorded to the judiciary by the 1970 reforms consolidated in the Matrimonial Causes Act 1973. As part two explained, this discretion – and the property orders that could be made pursuant to it – transformed financial provision for women because it opened up the possibility for divorcing women to become economically independent through property rights instead of indefinitely dependent on maintenance. Delaying the Divorce Reform Act 1969 enabled this legislation to be introduced. And looking behind the catchphrase 'Casanova's Charter,' makes the importance of Summerskill's intervention in this delay evident.

Still, Summerskill was not satisfied with the new discretionary financial remedies available on divorce under the 1970 Act. She wanted reform of property law *during* marriage too. In Parliament, Edith Summerskill made her feelings clear. A 'confidence trick' had been played 'against the women of this country',<sup>100</sup> she said, because the reform was pitched as the solution to women's economic vulnerability by facilitating property adjustment between spouses on divorce yet did nothing to address women's lack of property rights while the marriage subsisted. In one of her personal letters, Summerskill wrote that she was 'losing faith' in the Law Commission, which had been the architect of this reform.<sup>101</sup>

It could be argued that such criticism was misguided, and that questions of property ownership only become important when marriage breaks down. But there were important reasons for Summerskill's continued discontent. The strict demarcation of ownership under the doctrine of separation property meant that the law did not match spousal expectations. Indeed, research published by Todd and Jones in 1972 found that 91% of husbands and 94% of wives agreed that the matrimonial home and its contents should be jointly owned.<sup>102</sup> And, while the moneyed spouse might be unconcerned about joint ownership, the consequences of separate property ownership during marriage might be very important to spouse with no separate income or property. In more pragmatic terms, the clarification of property ownership during marriage could have significance in crises other than divorce, such as bankruptcy. For Summerskill, therefore, the 1970 reforms might have seemed a pyrrhic victory. On the one hand, Dorothy Stetson has pointed out that the delays to divorce reform – in which Summerskill played a key

part – forced elites to include additional safeguards for married women’s protection, and without it, the implementation of property reform on divorce would have been much more difficult.<sup>103</sup> On the other hand, Summerskill did not think these reforms went far enough.

#### **Part 4 – The significance of Summerskill’s intervention**

The debate started by Summerskill’s Casanova’s Charter comment pushed the Government into introducing legislation on financial provision alongside legislation on divorce because the economic consequences for deserted wives was considered a genuine problem in need of reform. In spite of this, Summerskill is not credited in institutional accounts as having successfully helped shape modern English family law through her intervention in the divorce debate.<sup>104</sup> This is because her view of divorce reform is understood historically as being anti-divorce per se. In the institutional account, her antidote to the financial crises faced by wives on relationship breakdown was enforced continuation of marriage. As Smart saw it, Summerskill and her supporters were of the view that the ‘best a middle-aged wife could hope for was to hang onto her husband, if not in reality, at least in name’.<sup>105</sup>

In representing the concerns of deserted wives in the face of divorce reform, Summerskill was treading a delicate balance between advocating for their protection without reinforcing the gendered and stereotypical position of the vulnerable housewife. Her critics argued that she did not do this successfully, because she was opposing legislation that was ultimately *good* for women.<sup>106</sup> After all, the Divorce Bill sought to remove the concept of the matrimonial offence, which had historically reinforced unequal standards of sexual morality between husband and wife and punished women for violating those standards.<sup>107</sup> Summerskill’s arguments also did not follow the direction of feminist debate at that time, with Abse accusing her of advocating an ‘odd brand of feminism’.<sup>108</sup> This, he said, had:

on the conscious level, little in common with the women’s liberation movement: women, she implies, need constant protection from marauding aggressive philandering men...but simultaneously she makes a loud assertion of the independence value and equality of woman. It is difficult in the face of such contradictory attitudes not to ask whether her strident affirmations spring less from a genuine belief in the equality of women than a pressing need to deny and overcome her own doubts.<sup>109</sup>

Abse's critique is ostensibly damning. He views Summerskill's views as 'contradictory' because she had fought for reform to make marriage a partnership of equals her entire career,<sup>110</sup> yet that equal status was tempered by the assumption of women's economic dependency through her opposition to divorce reform. This bemusement at Summerskill's apparent reinforcement of women's inequality was shared by Lady Gaitskell in Parliament:

I am shocked and surprised at my noble friend Lady Summerskill, who is a great feminist and who has done so much for the women of this country...She wants that woman...to sit in her home and to wait for her pension. Surely any woman with spirit would hate to do that.<sup>111</sup>

Gaitskell powerfully conjured up the image of a woman left in her a 'gilded cage with an unloving husband',<sup>112</sup> trapped by Summerskill's failure to treat women as economic equals to their husbands. However, Gaitskell's comments were not well received by the women writing to Summerskill. Several letters about Gaitskell's comments from deserted wives can be epitomised by this one extract: 'It is all very well for Lady Gaitskell with no financial worries herself, to blithely say that the Social Security will provide under the new Divorce Bill'.<sup>113</sup> The women writing to Summerskill knew she understood the reality of their financial situation, which in some cases was dire. Douglas has noted that at that time 'any assumption of female economic equality was...ill-founded'<sup>114</sup> and in recognising this fact, Summerskill was seen by deserted wives as making their experiences visible in an environment where liberal assumptions of equality between men and women dominated much of the discourse surrounding divorce reform.

Taking all of this into account, an accurate depiction of Summerskill's role must be nuanced and is often elided by the phrase 'Casanova's Charter'. Feminist legal commentators like Carol Smart and Dorothy Stetson are not wrong to criticise Summerskill's focus on the welfare of first wives (without apparent concern for the women husbands went on to form new families with),<sup>115</sup> or to argue that her views served to reinforce women's dependency. They are also correct to assert that Summerskill identified women's economic vulnerability within marriage but did not identify the *institution* of marriage as the problem, which went against the grain of the second wave feminist thinking emerging at that time. Yet this is one of the reasons why examining her view is important historically. That Summerskill identified as feminist and represented older women typically not involved in the women's liberation movement provides

historians with an opportunity to explore the spaces between dominant discourses surrounding divorce reform in the late 1960s.<sup>116</sup> And so it would also be a mistake to dismiss the significance of Summerskill's role because of the criticism levied against her. Through the previously unaccessed sources utilised in this article and by focusing on Summerskill's individual role, an alternative view is therefore possible.

This alternative view, that focuses on the reality of women's structural inequalities in marriage, is something that feminist scholarship has long sought to redress and is not inconsistent with Summerskill's argument. Yes, political and legal rights, such as access to divorce, can create opportunities for women's integration in society. But to take advantage of such opportunities, women need to be able to access resources.<sup>117</sup> If a wife's private role in marriage, such as homemaker and mother, impede her access to opportunities in the public sphere, such as income and/or a pension, she cannot utilise legal rights in the same way her husband can. This experience of structural inequality was pervasive in the letters received by Summerskill. And recognition of the effects of economic vulnerability was evident in Summerskill's fight for reform of financial provision law on divorce too, arguably influenced by these letters and her own feminist activism.

## **Conclusion**

Examining the letters written to Summerskill by deserted wives exposes an important and previously ignored aspect of the history of modern divorce reform. In institutional accounts, Summerskill is mostly associated with the phrase 'Casanova's Charter', seen as encapsulating her opposition to divorce reform because she wanted to prevent husbands from being able to leave their middle-aged wives for younger women too easily. But this arguably misrepresents the importance of Summerskill's role in the Divorce Reform Act 1969. The alternative, feminist analysis of Summerskill presented in this article reveals her pragmatism and unblinking focus on women's realities and experiences, as evidenced in the letters she received. A closer and more comprehensive assessment of Summerskill's speeches reveals she was doing more than simply opposing divorce. Rather, she was demanding recognition of wives' work in the home. She was arguing that divorce without the consent of one of the parties would be problematic if financial matters had not been resolved. And perhaps most importantly, she was making the struggle and frequent destitution of married women visible in parliament. As Leo Abse (somewhat resentfully) recalled, 'it is to her credit, or discredit, that she succeeded in delaying' the Divorce Reform Act 1969.<sup>118</sup>

Importantly, Summerskill was not the only feminist lobbying for greater financial protection for married women. Just as the history of any legal reform cannot be accredited to one individual, one group, one case or one report, Summerskill was only one of many contributing factors behind delay of the Divorce Act 1969 or sweeping reform of financial provision on divorce following this delay. But this does not mean she was irrelevant either. Combined with other pressure groups,<sup>119</sup> her steadfast opposition was instrumental in introducing a system of financial provision that could safeguard the deserted wives that wrote to her. Therefore, instead of viewing Summerskill's intervention on behalf of deserted wives as reinforcing the idea of married women as needy supplicants, her intervention could be seen as part of an important step towards emancipation for women. A wife is much better placed to contemplate divorce if her economic position is safeguarded. If she is in a financially strong position inside the home, she is better equipped to compete with men in the public sphere too. This is why Summerskill, as the 'lone wolf' in parliament,<sup>120</sup> the 'odd' feminist<sup>121</sup> or, as her supporters saw her, the fighter of 'the finest battle to protect innocent wives'<sup>122</sup> should be credited as having a significant role in the history of family law.

---

<sup>1</sup> S Cretney, *Family Law in the Twentieth Century* (Oxford: Oxford University Press, 2003), vii.

<sup>2</sup> Pursuant to section 1 of the consolidating Matrimonial Causes Act 1973.

<sup>3</sup> Except for petitions relying on incurable insanity pursuant to the Matrimonial Causes Act 1937.

<sup>4</sup> L Abse, *Private Member* (London: Macdonald, 1973), 180. However, see B H Lee, *Divorce Law Reform in England* (London: Peter Owen, 1974), 117, who argued that K Bruce Campbell QC was the 'toughest opponent' of the Bill.

<sup>5</sup> C Smart, *The Ties that Bind* (London: Routledge & Kegan Paul, 1984).

<sup>6</sup> See e.g., the YBA Wife? (Why Be a Wife?) campaign launched by Rights of Women and the Women's Liberation Movement 5<sup>th</sup> Demand Group in the 1970s, only a few years after Summerskill's campaigns against divorce reform: Smart, *The Ties that Bind*, 223.

<sup>7</sup> Abse, *Private Member*, 181.

<sup>8</sup> *Hansard, Lords Debates*, vol 286, cols 427-428 (8 November 1967).

<sup>9</sup> R Auchmuty, 'Legal History' in R Auchmuty (ed.) *Great Debates in Gender and Law* (London: Palgrave, 2018) 178.

<sup>10</sup> *Ibid.*

<sup>11</sup> F Batlan, 'Engendering Legal History', *Law and Social Inquiry*, 30 no. 4 (2005): 823-851, 847.

<sup>12</sup> The files examined contained more than 283 letters. The sample studied only included letters written by women specifically about divorce reform.

<sup>13</sup> Women's Library, SUMMERSKILL/1/46.

<sup>14</sup> P Summerfield, "'Our Amazonian Colleague": Edith Summerskill's Problematic Reputation' in *Making Reputations: Power, Persuasion and the Individual in Modern British Politics*, eds. R Toye and J Gottlieb (London: I.B. Tauris 2005), 135-150 at 135.

<sup>15</sup> For example, women were unable to join the professions or be awarded degrees until the Sex Disqualification (Removal) Act 1919 was brought into force.

<sup>16</sup> Summerfield, 'Our Amazonian Colleague', 135.



- 
- <sup>17</sup> E Summerskill, 'Party Political Broadcast: Why I Am a Socialist' *The Listener*, 8 April 1948, 582.
- <sup>18</sup> Summerskill had fought for this reform since the 1940s and first introduced legislation to reform the issue of housekeeping savings in the Women's Disabilities Bill 1952.
- <sup>19</sup> See e.g., *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175.
- <sup>20</sup> Interview by Michael Summerskill with Kenneth Robinson, Women's Library, SUMMERSKILL/1/46.
- <sup>21</sup> P Bartley, *Labour Women in Power: Cabinet Ministers in the Twentieth Century* (Palgrave Macmillan, 2019), 7.
- <sup>22</sup> M Phillips, *The Divided House: Women at Westminster* (London: Sidgwick & Jackson, 1980).
- <sup>23</sup> Interview by Michael Summerskill with Barbara Castle, Women's Library, SUMMERSKILL 1/46.
- <sup>24</sup> *Ibid.*
- <sup>25</sup> Interviews by Michael Summerskill with Michael Stewart, Lord Denning and Suzanne Knowles, Women's Library, SUMMERSKILL/1/46.
- <sup>26</sup> Interview by Michael Summerskill with Barbara Castle, Women's Library, SUMMERSKILL 1/46.
- <sup>27</sup> Women's Library, SUMMERSKILL/1/100 and 1/102.
- <sup>28</sup> Pursuant to the Matrimonial Causes Act 1923.
- <sup>29</sup> See R Probert, 'The Controversy of Equality and the Matrimonial Causes Act 1923' (1999) 11 *Child and Family Law Quarterly* 33; S Cretney, *Family Law in the Twentieth Century* (Oxford: Oxford University Press, 2003) 352.
- <sup>30</sup> *Putting Asunder: a Divorce Law for Contemporary Society*, Church of England. Archbishop of Canterbury's Group on the Divorce Law and M Ramsey (London: SPCK, 1966).
- <sup>31</sup> At this time, the Law Commission had only recently been established in 1965. It was (and is) a statutory independent body that keeps the law under review and produces research and consultations on law reform.
- <sup>32</sup> Law Commission, *Reform of the Grounds of Divorce: The Field of Choice* (Cmd 3123, 1966) para.15.
- <sup>33</sup> Now enshrined in section 1(2) of Matrimonial Causes Act 1973.
- <sup>34</sup> Abse, *Private Member*, 169.
- <sup>35</sup> A Gilbert, *British Conservatism and the Regulation of Intimate Adult Relationships* (Portland, Oregon: Hart Publishing, 2018) chapters 2 and 5.
- <sup>36</sup> Cretney, *Family Law in the Twentieth Century*, 354.
- <sup>37</sup> As Cretney has put it, the term is a crude but effective caricature: *ibid.*, 373.
- <sup>38</sup> Lord Stow Hill, HL Debate 30 June 1969, vol 303 col.296.
- <sup>39</sup> Smart, *The Ties that Bind*, 70.
- <sup>40</sup> Law Commission, *Financial Provision in Matrimonial Proceedings* (Law Com No 25, 1969).
- <sup>41</sup> As noted by G Douglas, *Obligation and Commitment in Family Law* (Hart Publishing, 2018), 118 and in *Trippas v Trippas* [1973] Fam 134, CA; *O'D v O'D* [1976] Fam 83, CA.
- <sup>42</sup> See R Auchmuty, 'Legal History', 179.
- <sup>43</sup> See for example, Leo Abse's account of Summerskill's intervention in his memoirs (Abse, *Private Member*, 181), also discussed in part 3 of this article.
- <sup>44</sup> To be clear, this is not the first time Summerskill is recorded as using the phrase 'Casanova's Charter'. She is thought to have coined this term in a speech to the Married Women's Association (Women's Library, SUMMERSKILL/7). Furthermore, this is not the first time she spoke out in Parliament against reform of divorce that would permit divorce by consent; she had a record of speaking against such reform throughout the 1960s. In the earlier Matrimonial Causes and Reconciliation Bill 1963 introduced by Leo Abse, Summerskill condemned it for being a 'husband's Bill, drafted by a man who doubtless means well but has failed to recognise that marriage has different values for men and women'. *Hansard, Lords Debates*, vol 286, col 401 (22 May 1963).
- <sup>45</sup> *Hansard, Lords Debates*, vol 286, cols 421-428 (8 November 1967).
- <sup>46</sup> *Ibid.*, col.421.
- <sup>47</sup> Just over a decade earlier the Royal Commission on Marriage and Divorce opposed this: *Report of the Royal Commission on Marriage and Divorce* (Cmd 9678, 1956).
- <sup>48</sup> For example, in 1968 she delivered a talk titled 'Divorce Without Consent' to the Married Women's Association, Women's Library, SUMMERSKILL/1/99.
- <sup>49</sup> Women's Library, SUMMERSKILL/1/99.
- <sup>50</sup> 'British House Okays Bill Making Divorce by Consent Legal', *The Catholic Transcript* 27 June 1969, 11.
- <sup>51</sup> This story is recounted in her memoirs: E Summerskill, *A Woman's World* (London: Heinemann, 1967).

- 
- <sup>52</sup> Women's Library, SUMMERSKILL/1/101.
- <sup>53</sup> Law Commission, *Reform of the Grounds of Divorce: The Field of Choice* (Cmd 3123, 1966).
- <sup>54</sup> Women's Library, SUMMERSKILL/1/101.
- <sup>55</sup> Ibid.
- <sup>56</sup> *Hansard, Lords Debates*, vol 286, cols 1294-1296 (8 November 1967).
- <sup>57</sup> Douglas, *Obligation and Commitment in Family Law*, 116 emphasis in original text.
- <sup>58</sup> Interview by Michael Summerskill with Lord Denning, Women's Library, SUMMERSKILL 1/46.
- <sup>59</sup> *Hansard, Lords Debates*, vol 286, cols 422 (8 November 1967).
- <sup>60</sup> *Hansard, Lords Debates*, vol 303, col 1295 (10 July 1969).
- <sup>61</sup> See N Lacey, 'Feminist Legal Theory Beyond Neutrality', *Current Legal Problems*, 48 (1995): 1-38.
- <sup>62</sup> Issues surrounding divorce and issues of financial provision are not coterminous in the male account but the letters show they cannot be separated.
- <sup>63</sup> *Hansard, Lords Debates*, vol 286, cols 422 (8 November 1967).
- <sup>64</sup> Women's Library, SUMMERSKILL/1/100.
- <sup>65</sup> Abse, *Private Member*, 180.
- <sup>66</sup> Women's Library, SUMMERSKILL/7.
- <sup>67</sup> Ibid.
- <sup>68</sup> See R Auchmuty, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women', *Feminist Legal Studies*, 20 no. 2 (2012): 71-87.
- <sup>69</sup> E Summerskill, *Letters to my Daughter* (London: Heinemann 1957), 118.
- <sup>70</sup> Smart, *The Ties that Bind*, 70.
- <sup>71</sup> Interview by Michael Summerskill with Barbara Castle, Women's Library, SUMMERSKILL 1/46.
- <sup>72</sup> Interview by Michael Summerskill with Suzanne Knowles, Women's Library, SUMMERSKILL 1/46.
- <sup>73</sup> E Summerskill, *A Woman's World*.
- <sup>74</sup> Summerfield, 'Our Amazonian Colleague', 141.
- <sup>75</sup> She introduced numerous private members bills seeking to ameliorate inequality, such as the Women's Disabilities Bill 1952 (which was unsuccessful).
- <sup>76</sup> When interviewed by Michael Summerskill, Barbara Castle described Edith Summerskill as 'a bit Hampstead' meaning she saw her as an elite and privileged politician who enjoyed philosophy: Interview by Michael Summerskill with Barbara Castle, Women's Library, SUMMERSKILL 1/46.
- <sup>77</sup> Summerskill, *A Woman's World*. She also admits in her memoirs that she identified as a socialist but found Marx inaccessible and did not read or engage with such texts as many of her Labour contemporaries did.
- <sup>78</sup> See C Gilligan, *In a Different Voice* (Harvard University Press, 1993).
- <sup>79</sup> Women's Library, SUMMERSKILL/1/101.
- <sup>80</sup> 18 December 1968, Women's Library, SUMMERSKILL/1/101.
- <sup>81</sup> Copy of letter to *The Times* 18 December 1968, Women's Library, SUMMERSKILL/1/101.
- <sup>82</sup> Copy of letter to Leo Abse 18 December 1968, Women's Library, SUMMERSKILL/1/101.
- <sup>83</sup> *Hansard, Lords Debates*, vol 286, cols 427 (8 November 1967).
- <sup>84</sup> Law Commission, *Reform of the Grounds of Divorce: The Field of Choice* (Cmd 3123, 1966) para.40.
- <sup>85</sup> Women's Library, SUMMERSKILL 1/99.
- <sup>86</sup> Women's Library, SUMMERSKILL/1/101.
- <sup>87</sup> Ibid., emphasis in original text.
- <sup>88</sup> Ibid.
- <sup>89</sup> Pursuant to the Welfare Reform and Pensions Act 1999. Lack of pension sharing on divorce has been one of the greatest causes of financial inequality on divorce. See H Woodward and M Sefton, *Pensions on Divorce: An Empirical Study* (Cardiff Law School, 2014).
- <sup>90</sup> See for example H Fisher and H Low, 'Recovery from divorce: comparing high and low income couples' *International Journal of Law, Policy and the Family*, 30 no. 3 (2016): 338-371.
- <sup>91</sup> *Hansard, Lords Debates*, vol 286, cols 427-428 (8 November 1967).
- <sup>92</sup> Women's Library, SUMMERSKILL/1/101 emphasis in original text.
- <sup>93</sup> *Hansard, Lords Debates*, vol 286, cols 427 (8 November 1967).
- <sup>94</sup> Ibid., col.426.

- 
- <sup>95</sup> Lord Wilberforce and Lord Upjohn were very worried about this according to Lord Denning: Interview by Michael Summerskill with Lord Denning, Women's Library, SUMMERSKILL 1/46.
- <sup>96</sup> Interview by Michael Summerskill with Bill Deeds, Women's Library, SUMMERSKILL 1/46.
- <sup>97</sup> Summerskill supported Edward Bishop's Matrimonial Property Bill 1969 which sought to introduce a form of deferred community of property which pooled assets acquired during the marriage. It was ultimately withdrawn when the Government agreed to give a Bill drafted by the Law Commission time, and that it would pass.
- <sup>98</sup> See also: E Cooke, A Barlow and T Callus, *Community of Property: A Regime for England and Wales?* (Nuffield Foundation, 2006).
- <sup>99</sup> S Cretney, 'Community of property imposed by judicial decision', *Law Quarterly Review*, 119 (2003): 349-352. However, research also indicates that the 'clean break culture' is still prevalent: J Miles and E Hitchings, 'Financial remedy outcomes on divorce in England and Wales: Not a 'meal ticket for life'', *Australian Journal of Family Law*, 31 no. 2 (2018): 43-80.
- <sup>100</sup> Hansard, Lords Debates, vol. 305, col. 500 (6 November 1970).
- <sup>101</sup> Records of the Women's Library, SUMMERSKILL 1/99.
- <sup>102</sup> J E Todd and L M Jones, *Matrimonial Property* (1972).
- <sup>103</sup> D Stetson, *A Woman's Issue: The Politics of Family Law Reform in England* (Oxford: Oxford University Press 1983), 209.
- <sup>104</sup> Although see Douglas who credits her as advancing the 'modern view': Douglas, *Obligation and Commitment in Family Law*, 116.
- <sup>105</sup> Smart, *The Ties that Bind*, 71.
- <sup>106</sup> Abse, *Private Member*, 180.
- <sup>107</sup> Stetson, *A Woman's Issue*, 149.
- <sup>108</sup> Abse, *Private Member*, 180.
- <sup>109</sup> *Ibid.*
- <sup>110</sup> See, for example, her work with the Married Women's Association in S Thompson, 'Married Women's Property Act 1964' in *Women's Legal Landmarks: Celebrating the history of women and law in the UK and Ireland*, eds. E Rackley and R Auchmuty (Oxford: Hart Publishing, 2018).
- <sup>111</sup> 10 July 1969 Hansard col 1289-90.
- <sup>112</sup> *Ibid.*
- <sup>113</sup> Women's Library, SUMMERSKILL/1/100.
- <sup>114</sup> Douglas, *Obligation and Commitment in Family Law*, 117.
- <sup>115</sup> Smart, *The Ties that Bind*, 71. For example, see Summerskill's speech to the National Council of Women conference reported in the press: 'It will be grossly unfair if the older woman who has given her life to the home and to the children for many many years is discarded for another woman, and at the same time loses all her economic security'. 'Divorce Bill Unfair, Says Baroness'. Conference on Divorce Law Reform took place on Thursday 1 February 1968.
- <sup>116</sup> A Green, 'Individual remembering and 'collective memory': Theoretical presuppositions and contemporary debates', *Oral History*, 32 no. 2 (2004): 35-44.
- <sup>117</sup> See V Sapiro, *The Political Integration of Women: Roles, Socialization, and Politics* (University of Illinois Press 1984).
- <sup>118</sup> Abse, *Private Member*, 180.
- <sup>119</sup> For example, the Married Women's Association, the Council of Married Women, the National Council of Women and the Six Point Group, which were all groups she was connected to.
- <sup>120</sup> Interview by Michael Summerskill with Barbara Castle, Women's Library, SUMMERSKILL 1/46.
- <sup>121</sup> Abse, *Private Member*, 180.
- <sup>122</sup> Women's Library, SUMMERSKILL 1/100.