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A Legal Comparison of Mixed Jurisdictions: The Influence of England on Scotland

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1 Introduction

Throughout history people have fought for their rights through political parties, protests, and the expression of their opinions as they perceive political systems to be a reflection of the People. Society is not only mirrored through the political sphere but also through the legal sphere as it enables them to obtain negative and positive freedoms.

The term 'legal system' can be defined multiple ways as it covers an area of law starting from global or international law, to the regional level such as European Union law but also the domestic level which is why we will base ourself on the following definition of legal system for this research thesis: 'A legal system is a procedure or process for interpreting and enforcing the law' (Legal Information Institute, 2023), this will be focusing on jurisdictions pertaining to states. To complement the concept of legal systems, 'the doctrine of legal families seeks to establish common groups, identifying similar legal practices, activities and subject matter and thereby classifying the entirety of global legal transactions and activities into "families" according to particular criteria' (Dölemeyer, 2010).

While there is not a set categorisation for legal families, countries such as England, United States and Canada, have been classified as a having a 'common law' legal family but not every theorists have been of the same idea. In 1928, Wigmore had addressed the same legal family, as the 'Anglican' legal family (Siems, 2018).

The distinction between a legal family and a legal system is that the former refers to the legal framework found within a jurisdiction, whereas the latter refers to the legal systems as a group that are classified according to common traits and influences. The two most discusses legal systems are: civil law and common law. Due to the fact that they are very common and often the base of countries' legal systems, mixed legal system are not a discussed as much unless one has a specific interest in the law.

Recently, more studies have been conducted on the concept of mixed legal systems which this essay will define as 'combination of more than one body of law within one nation, restricted to an area or to a culture' (Örücü, 2008). Scholars consider that every single legal system is a mix to some extent and adding the word 'mixed' will

depend on how ‘mixed’ it is which is why this paper will only consider systems that define themselves as mixed and are fully based on multiple jurisdictions. This paper will not mention legal families as they no longer considered to be useful categorisations for the future study of law in a globalised world, according to the emerging agreement in modern comparative law (Pargendler, 2012).

There are five main legal system according to (Rom, et al., 2022):

- Common law
- Civil law
- Customary law
- Religious law
- Mixed system

Countries can use multiple of these legal systems in their own territory in order to base their legal system on multiple bodies of the law which will be called ‘mixed legal systems’ or ‘hybrid legal systems’. According to (University of Ottawa, 2021) & (Palmer, 2013) there are eleven types of mixed jurisdictions:

- Mixed systems of civil law and common law
- Mixed systems of civil and customary law
- Mixed system of civil law and Sharia law
- Mixed systems of common law and customary law
- Mixed systems of common law and Muslim law
- Mixed systems of civil law, Muslim law and customary law
- Mixed systems of common law, Muslim law and customary law
- Mixed systems of civil law, common law and customary law
- Mixed systems of common law, civil law, Muslim law and customary law
- Mixed system of civil law, common law, Jewish law and Muslim law
- Mixed system of Muslim law and customary law

The latter demonstrates that the majority of states fall under the category of mixed jurisdictions, (University of Ottawa, 2021). The University of Ottawa focuses on mixed jurisdictions based on civil law and common law. However, they interpret that if a legal system is based on a civil law as well as Muslim law, they will consider civil law as the

dominant strand. This paper regroups the categories that are not considered 'monosystems', meaning purely one main legal system, under the 'mixed legal system' category. Monosystems based on religious law or customary law are not reflected within the numbers. Civil law monosystems represent 23.94% of the world's legal systems, common law monosystems constitute 6.31% of the world's legal systems whereas 68.82% of the world's legal systems are mixed legal systems (University of Ottawa, 2021). This amounts to 99.07% percent of the world's legal systems leaving space for countries with mono systems that fully depend on customary law or religious law. The categories and numbers fully reflect how common mixed jurisdictions are as well as how wide the legal scope of a country can be, however, certain countries contain multiple legal systems because of other country's influence, a dependant status or out of convenience for business due to the increase of globalisation. One of the most prominent examples are Scotland and Quebec because of the country in which they are affiliated to's influence. Both have mixed legal systems based on common law and civil law which might be worth interrogating. Scotland is a geographical area that is considered a nation with a parliament to which it responds to however, the power of the Scottish Parliament is owed to the United Kingdom's parliament under the Scotland act of 1998 which is an act of Parliament of the United Kingdom. Therefore, the Scottish parliament's source of authority comes from the United Kingdom itself. This paper will argue that countries can influence each other on a legal basis, and it will devote its focus to the case of England and Scotland. The aformentioned 'influence' translates to the capacity of the English legal system to have an effect on the Scottish legal system. I will start by introducing the legal history of both countries as well as the potential English influence on Scots law, after, I will elaborate on the similarities between English and Scots law through areas of law such as contract law and defamation law. I will continue the research by underlining the differences between both legal systems through specific areas of law such as criminal law and family law. Finally, I intend on deepening the research through investigating the limits and critics of mixed jurisdictions by analysing the potential confusion it might lead to within the country, the effect it could have on culture and the effect globalisation might have on legal systems. I will conclude this question by summarising the main argument in a concluding paragraph.

2 History

2.1 History of the English Legal System

History is at the core explanation for many of today's structures. A country's legal system is often a reflection of its history, its culture and its traditions. While the United Kingdom is to be a single territory grouping multiple 'sub countries' and assumed to share a similar history, with similar traditions and therefore a similar legal system, it is not the case. An explanation of the term United Kingdom would be 'a sovereign state which includes England, Wales, Scotland, Northern Ireland' (Leyland, 2021) but they are not to be viewed as a reflection of one another. Certainly, some of the devolved nations do share more commonalities between them such as England and Wales and some have underlying differences. The grouping of these countries makes it difficult to assess whether they share commonalities between them because it is a coincidence or because they have influenced each other, especially been influenced by England. Having mentioned that Scotland and England are both part of the United Kingdom, this paper will seek to look into the establishment of the English legal system followed by the Scottish legal system. After looking at the history of both legal systems, a third part will delve into the possible influence England could have had on Scotland as well as the extent of the influence. Due to the fact that both countries have an extensive legal history which cannot be well developed in a few pages nevertheless, this paper will aim to give a historical overview of both legal systems to better comprehend the parallels drawn between both.

Acquiring an understanding of the history of an institution, country or any long-standing concept aids an individual in getting a clear perception on the subject. English history, in general, is complex and involves nuances to be perceived and understood. The English have left their mark in the world through colonising multiple countries such as India and Canada (The Editors of Encyclopaedia Britannica, 2023), philosophers like Locke (Rogers, 2023) and inventions such as the steam engine (The Editors of Encyclopaedia Britannica, 2023). Like the aforementioned examples, England was the source of the common law legal system. The common law tradition was born during the Middle Ages and, exported to the British colonies which is why

approximately 80 countries have implemented it in their own legal systems (Wicker, 2022).

During the Anglo-Saxon and Medieval Period, the legal system relied on trial by ordeal and trial by combat (Leeson, 2012). The guilt or innocence of an individual was determined by physical tests or combat. At the time, the monarchy and the judiciary were closely intertwined, and the current principal separation of powers had not been put in place yet.

During the 12th century, the development of the common law took place with the reforms introduced by King Henry II. The reforms established local juries and traveling judges, which demonstrated the enlargement of the judiciary scope. The King's Bench and other courts were established, and legal circuits were created. The King's bench is 'a division of the High Court of Justice of England and Wales that hears civil cases (as commercial cases) and appeals of criminal cases. used during the reign of a king' (Merriam-Webster, 2023). Progressively, multiple legal concepts as well as courts emerged. The Court of Chancery was created in order to provide equity fairness in cases where common law disappointed (the value placed on the concepts of equity and fairness represent the beginning of the Rule of Law). Magistrates' Courts were introduced for criminal cases and the Court of Great Sessions as well as the Old Bailey were established. During the late 19th century, the Judicature Act merged the common law courts with the Court of Chancery. The merger gave birth to the High Court and Court of Appeal. The High Court 'deals at first instance with all high value and high importance civil law (non-criminal) cases; it also has a supervisory jurisdiction over all subordinate courts and tribunals, with a few statutory exceptions, though there are debates as to whether these exceptions are effective.' (Anisminic Ltd. Appellant and Foreign Compensation Commission and Another Respondents, 1968) whereas the Court of Appeal 'is the highest court within the Senior Courts of England and Wales and deals only with appeals from other courts or tribunals.' (Courts and Tribunals Judiciary, 2023). This act was also useful in introducing the right of appeal in civil cases.

In the 20th century, the Crown Court was established to manage cases involving major criminal offences. The assize courts and quarter sessions courts were therefore replaced. More recently, in 2005, the Constitutional Reform Act separated the Lord Chancellor's role from that of a government minister and affirmed the independence of the judiciary in England and Wales. The evolution of English legal history shows the impact that it has in the creation of the UK uncodified constitution along with the three principles that it must abide by: Parliamentary Sovereignty, the Rule of Law, and the Separation of Powers. The Parliamentary Sovereignty defined by Dicey (a key legal figure in the rise of multiple important legal concepts) as 'Parliament… has under the English constitution the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament'. Parliament is a fundamental institution upon which no legal limit could be placed (Leyland, 2021). Sir Edward Coke invented the Rule of Law which was then developed by Dicey in three principles: the absolute supremacy of Law, equality before law and predominance of legal spirit. The supremacy of the law and the equal application of its principles to all people and institutions are guaranteed by the fundamental principle known as the rule of law. It establishes the principle that no one is above the law, including government officials and authorities, and that all decisions and acts must be taken in line with the laws now in effect. By offering a framework within which people can seek justice, settle disputes, and exercise their rights and freedoms, the rule of law promotes fairness, predictability, and accountability. It upholds the values of law, justice, and the defence of individual rights and is a key tenet of democratic nations (Bingham, 2011). Finally, the separation of powers was created to avoid all powers being in the hands of a Head of State, which could destabilise the other two principles, leading to a dictatorial regime. The separation of powers is doctrine of constitutional law separating three branches: judiciary, executive and legislative. Through the overview of certain meaningful events, it is understood that the English legal history focused on the implementation of new concepts which became visible through the creation of new institutions and new legal methods.

2.2 History of the Scottish Legal System

In a similar manner to England, the Scottish legal system developed during the Middle Ages. Scotland is a devolved region which is important to define as in the recent time it was shaped by ‘a process of decentralisation. It puts power closer to the citizen, so that local factors are better recognised in decision making’ (Gov.uk, 2019). By recalling the devolved status of Scotland, it is rendered clearer that Scotland was able to develop its own legal system. The laws and practices of the various tribes that lived in Scotland served as the foundation for the first legal system there. These eventually became codified in a set of legal texts known as the Leges inter Brettos et Scottos, or the "Laws between Britons and Scots," in the early Middle Ages. Celtic law and culture had a big influence on these laws. The legal system was significantly impacted by Scotland's transition to a feudal system of land ownership and government in the 12th century (Georgetown Law Library, 2022). In accordance with this system, the king gave nobles land in return for their military service and other duties. As a result, there was a hierarchy of authority created, which was reflected in the legal system. Roman law was first studied by Scottish legal scholars in the 16th century, and this had a significant influence on how the Scottish legal system evolved. Roman law served as the foundation for civil law systems throughout Europe, and many areas of Scottish law, such as contract law, commercial law, and property law, bear the imprint of Roman law. Scotland's highest civil court, the Court of Session, was founded in Edinburgh in 1532. Its judges were trained in Roman law, and it was based on the Roman legal system. The court played a significant role in the development of Scottish law and established itself as a key institution in the Scottish legal system. Scotland went through a period of intellectual and cultural renaissance in the 18th century known as the Scottish Enlightenment. Science, philosophy, and literature all made significant strides during this time period, and the legal system also experienced significant changes as a result. The 1707 Union Act was a pivotal moment for Scotland. An important turning point in Scottish history, the Act of Union of 1707 had a profound impact on both the nation and its people. As a result, the Kingdoms of Scotland and England were formally united to become the Kingdom of Great Britain. While Scotland saw economic advantages and prospects as a result of the Act of Union, the Scottish Parliament was abolished as a result, which created tensions and unrest, particularly among Scottish

Presbyterians. People who worried about the loss of Scotland's legal identity, autonomy, and Presbyterian Church sway opposed the Act of Union. As Scottish Presbyterians attempted to safeguard their religious practises and maintain their political independence, the Act of Union also caused legal disputes and difficulties. As Scottish Presbyterians fought to preserve their legal system and safeguard their religious practises, the Act of Union also caused legal disputes and difficulties. Many Scottish Presbyterians, who considered the Act of Union as a betrayal of their theological and political heritage, harboured deep-seated frustrations that were reflected in the unrest that followed it. Legal disputes and discussions played a significant part in determining how Scotland and the newly created Kingdom of Great Britain interacted during the Act of Union and the years that followed (Stephen, 2007). By advancing the concepts of natural law and individual rights, scholars like David Hume and Adam Smith contributed to the formation of Scots law. The Scottish legal system underwent considerable modernization in the 19th century. The Faculty of Advocates and the Society of Writers to Her Majesty's Signet were established to regulate the legal profession, and the court system was reformatted. The legal system continued to develop in the 20th century with the establishment of new courts and the growth of new fields of the law, such as human rights law. A unique and intricate body of law, the Scottish legal system today is a synthesis of Celtic, feudal, Roman, and Enlightenment ideas. It has a significant impact on how justice is administered in Scotland and is regulated by the Scottish Parliament and judiciary. As mentioned previously, Scotland is a mixed legal system, its history mainly focused on the development of civil law within Scotland inspired by the Roman legal system, but it is of importance to mention the presence of common law within the Scottish legal system as well. Scottish common law developed over a long period of time through judicial decisions and custom. Even if both countries use common law, it is not to be mistaken, the use of common law in Scotland did not stem from England even though in this next part, this paper will demonstrate the influence England had on the development of the Scottish legal system if any, and if so, the effects in had on it.

2.3 Influence of the English on the Scottish Legal System

The history of both legal systems gives an overview of how they have both become but, it would be of interest to comprehend that England, being the source of common law, has had an influence on the Scottish legal system. As said before, the common law system in Scotland did not derive from England but it is possible to assume that under the sovereignty of the United Kingdom certain aspects of the English legal system did come to influence Scotland. A crucial turning point was the Treaty of Union, which united the parliaments of Scotland and England in 1707. Although Scotland kept her own independent legal system in areas like property law and criminal law, it resulted in the acceptance of English law as the common law of Scotland. Scotland's adoption of the common law legal system was not easy and was 'accomplished' by employing forceful means. Political pressure, legislation, and the installation of English judges and administrators in Scottish courts were among the coercive techniques used by England to persuade Scotland to embrace the common law legal system. In order to exert control over Scotland and encourage the adoption of English legal procedures, England used its stronger political power (Winder, 1940). The Treaty of Union can be seen as the birth of common law in Scotland which interrupted their civil law tradition. The inclusion of the common law system was done through direct and indirect means. The direct means were composed of: Statutes of UK parliament and the Appellate Decisions of the House of Lords. The indirect means referred to the citation of English precedents in Scottish courts, the citation of English legal literature, members of the legal profession who have studied law in England and Scotland have received an English legal education and the use of common language (Smith, 1954).

The Statutes of the UK parliament and the Appellate Decisions of the House of Lords make for direct means of influencing the Scottish legal system with the English legal principles. English speakers make up the majority of the members of the British Parliament, and they tend to prioritise issues pertaining to their country. The majority of parliamentary draftsmen, who are in charge of enshrining legislative objectives in laws, have legal training in English law, and they frequently do not have an effective understanding of Scottish legal thought and nomenclature. Through the adoption of UK

statutes, the Scottish legal system has frequently been forced to adopt English legal concepts either consciously or unconsciously. Even while it is uncommon for the Legislature to completely repeal Scottish law and replace it with English law, outright anglicisation through statutes has happened in several cases. For instance, despite the Scottish Lords' desire that a list of the existing treason statutes be affixed to the Act, the Treason Act of 1708 substituted the Scottish law of treason with the English law of treason. The application of the English statute of "charities" for income tax purposes in Scotland is one recent example of straight anglicisation. In interpreting the Finance Act, the House of Lords determined that the word "charitable purposes" should have the technical meaning it has in English law. As a result, Scottish courts must interpret English law without the assistance of an expert. Yet there have been times where incorporating English legal principles into statutes has been advantageous, particularly in mercantile law. Many standards developed by renowned English judges have been accepted and adopted by Scottish law, leading to statutory uniformity like the Sale of Goods Act 1893 (Smith, 1954).

In addition, the Appellate Decisions of the House of Lords were also used as a means of directly influencing the Scottish legal system. Following the Union of 1707, civil appeals from Scottish courts to the House of Lords gained legal standing. However, English people with legal training made up the majority of the House of Lords. As a result, judgments in Scottish appeals frequently referred to and used English legal vocabulary and principles. The House of Lords frequently used English solutions (assumed to be universal to) address Scottish issues. Due to English law's impact on Scottish appeals, Scottish law has occasionally ignored distinctive aspects of Scottish legal traditions, such as the lack of a distinction between law and equity, and instead adopted English legal principles. Even though the Scottish Lords of Appeal were established in 1876, the situation didn't significantly change, and the majority of Scottish appeals were still heard in London. The selection procedure for Scottish judges in the House of Lords and the potential loss of Scottish legal talent have both drawn criticism. Regardless of these reservations, a number of illustrious Lords of Appeal have contributed significantly to Scottish law by means of their rulings. The location and structure of the appellate court for Scottish appeals are still up for debate, with

some arguing that Scottish appeals should be heard in Scotland by a court that is predominately Scottish (Smith, 1954).

Albeit direct means were used, they were few compared to the indirect means implemented. One of the indirect means applied was the citation of English precedents to Scottish Courts in cases ‘in pari materia’ meaning in similar cases. Since World War II, about one-fourth of the precedents referenced in the Court of Session have come from English courts, even if many of them have been incorporated into Scottish law or only serve to demonstrate ideas previously accepted by Scottish courts. The majority of these English precedents are rulings from the 20th century involving international law. The common court of appeal to the House of Lords and the accessibility of English law reports throughout Scotland caused Scottish courts to respect English answers where they had previously dealt with a similar issue. This method gained wider acceptance, particularly in mercantile law, where there has been significant assimilation between the two countries' legal systems. An issue with the indiscriminate use of English cases was that judges and practitioners in Scotland who had not studied English law might not fully understand their implications. When using English precedents in Scottish cases, for instance, the distinction between law and equity under English law was not always clear. If English precedents are applied improperly or outside of their intended context, the fundamentals of Scots law may be compromised. The belief that because both Scottish and English law would offer a remedy based on specific facts, the principles of law in both countries arose from the same foundations was a widespread error in the administration of justice in Great Britain. This misconception might cause precedents to be problematically applied to new situations. For instance, it was incorrectly presumed in the case of Donoghue v. Stevenson that the negligence rules of Scotland and England were the same, without taking into account the distinctions between "culpa" in Scottish law and the English tort of negligence. To address these problems, Scottish legal treatises should only occasionally and exclusively cite English decisions where no other pertinent Scottish authority is available (Smith, 1954).

Moreover, citations used in English legal literature were also used as an indirect tool to influence Scots law. Since the 19th century, Scotland has lacked any

authoritative institutional writings, therefore laws and case law have been the primary sources for the formation of Scots law. Writing legal treatises in Scotland is motivated more by a desire to help people than by financial gain because of the relatively tiny market for legal works and their high price. So even if authors and editors are available, new versions of legal texts cannot be issued often. There are currently no current Scottish works of authority in numerous fields of law due to the effects of the recent conflict and the smaller size of the legal profession in Scotland. In contrast, the English legal profession has never had a shortage of eager and talented writers, even during times of war, because to its larger population, which includes academia (Smith, 1954). Scottish courts and legal works commonly use English legal treatises and journals in areas of law when there is significant convergence between Scottish and English answers. For instance, those on English tort law and those on company law, sales of products, agency, insurance, damages, and income tax are frequently cited in Scottish negligence trials. These English texts frequently make mention of important Scottish rulings. English legal literature has a substantial influence on Scottish legal scholarship, which frequently refers to it in several sections of the law. The use of English legal treatises is safer, however, when used by people who are cognisant of the key differences between the two legal systems, much as the reliance on English precedents. When these distinctions are not taken into account, English law may have an impact on Scottish law that runs counter to its core values (Smith, 1954).

Furthermore, Scottish lawyers who wanted to practise at the bar used to frequently attend law school in other European countries such as France. However, this approach has not been used since the Napoleonic Wars, in part because of Scotland's superior legal education resources. These days, people who want to practice law in Scotland often get their arts degree before pursuing their Scottish legal certificate. As a result, it is usual for aspiring attorneys to earn an arts degree at Oxford or Cambridge before beginning their legal school in Scotland. There, they may learn English law. This indicates that certain members of the Scottish Bar and the South African Bar were already familiar with English law before learning about their respective legal systems. A large percentage of the law professors at Scottish universities have also at some stage studied law in England. The understanding of the accomplishments of English common

law is thought to be useful for Scottish lawyers, especially those active in legal education. Practitioners can avoid conflating the ideas of Scottish and English law by having a basic understanding of English law. In some areas of Scottish university teaching, English influence has occasionally taken an excessively prominent role. Scottish lawyers with a foundation in English law may have a veneration for precedent that is at odds with Scottish legal history (Smith, 1954).

The last indirect method utilised to influence the Scots legal system is the use of common language. The written language in Scottish courts was English even while Scots was the primary language there. In the past, students of Scottish law who went overseas to study had to be able to converse in Latin and at least one other continental language. This is no longer the case, and it cannot be believed that all members of the Scottish Bench and Bar would understand citations from legal books written in Latin or other languages. As a result, from the early 19th century, Scottish practitioners have mostly done comparative law research using authorities and treatises written in English. Literature written in English is the easiest to access, however American and Dominion (the former British colonies) publications are occasionally studied as well. Particularly in the context of a shared ultimate appellate court, the language barrier may act as a barrier against total assimilation by another legal system (Smith, 1954).

3 Differences between English & Scots Law

3.1 Family Law

After seeing how Scots law has been influenced by English law historically, this part will aim to make note of the differences observed between the two legal systems. The differences will be shown through two areas of the law: family and criminal law. These two fields heavily depend on traditions and mentalities which is why it is interesting to note the differences between both. By showing the separation of both law systems, it renders clear that they have not been merged into one single legal system, they are not the same. The two legal systems have their own legal personalities even though they do have some common aspects which will be explored in the next part.

Before devolution, there would be frequent delays and obstacles at Westminster, which caused improvements to be put off for years. It was thought that under this situation, Scottish family and child law suffered significantly. Almost all child and family law issues now fall under the Scottish Parliament's purview as a result of the devolution of powers (Sutherland, 1999). Family law will be defined as the the “body of law regulating family relationships, including marriage and divorce and the treatment of children” (Baxter, 2023). Family law is not usually a standardised area of law as many countries have very different outlooks on matters relating to family. A country’s family law typically holds cultural values that carry importance for the country, it’s a way to further understand a country. An example translating the cultural and general stance of a country is the representation of same sex couples in family law as a married entity or the dismissal of its existence. A country including same sex marriages as part of marriage will reflect as an open minded, liberal country and one that chooses not to do so will be regarded as the opposite (Webb, et al., 2017).

The concept of family law already differs in terms of the main sources English and Scots law base themselves on, this paper will focus on three areas of family law: marriage and cohabitation, divorce and children’s custody.

Focusing on divorce, this paper will hold divorce as “the legal dissolution of a marriage by a court or other competent body” (Saini & Pruett, 2017). Until 2006, both English law and Scots law had very similar divorce laws requiring one of five

requirements to file for divorce. Along with certain changes made in recent years, English law and Scots law differ in terms of granting marriage due to their requirements in order to apply for divorce. English divorce also distinguishes itself with the fact that lifetime earnings are separated evenly between both parties (Trinder, et al., 2017). As for Scotland, the accumulated earnings during the marriage are evenly split, unless evidence shows the need for otherwise (LT Scotland, 2017). English divorce law did not undergo the same reforms Scots divorce law did, but in 2022, the concept of 'no fault divorce' revolutionised England. Dissolution and Separation Act (2020) led to the introduction of 'no fault divorce' meaning that no explanation is required in order to file and obtain divorce (The Law Society, 2022), the aim is to obtain more amicable divorces as that can be less turbulent for couples with children to go through or on a personal level. The new reform has not allowed for new divorce cases to be examples that reflect the law put into place however, the Owens v Owens Case builds precedent (Owens v Owens, 2018). It consists of a case brought to court by Mrs Owens filing for divorce in 2015. This was on the basis of Mr Owens' unreasonable behaviour towards her, inevitably leading to the fall out of the couple's marriage. The Family Division of the English High Court did not rule in her favour. Even though Mr Owens' actions repulsed her to the point where she found it (UK Parliament, 2023), they obtained the same answer at the court of appeal. Mrs Owens was not satisfied with the ruling and in 2018, this appeal was raised again. The verdict of the Supreme Court judges remained the same, even though they found it to be a troubling case. The point raised by the court was that they were solely expected to interpret the law and not change it, leading Mrs Owens to have to wait five years before reapplying for divorce under the premise of the five-year separation if Mr Owens does not consent. (Owens v Owens, 2018). The incapacity of a court to grant divorce even if one of the individuals is dissatisfied in their own marriage demonstrated a need for a change in the law, this judgement would only cause fear in case other individuals wanted to file for divorce sustained by other reasons than a broken marriage. The Supreme Court recognised the difficulty of this case which prompted new legal considerations leading to the new concept of 'no fault divorce'.

Scots divorce law currently differs from English divorce law because the court requires one of five requirements to file for divorce. The Family Law (Scotland) Act 1985, which is a codified norm, serves as the main foundation for Scottish divorce law. Scots divorce law is primarily derived from the Family Law (Scotland) Act 1985, however it's crucial to remember that judicial interpretation and case law also have an impact on how the law is applied and interpreted. In particular divorce cases, judges may interpret and apply the law, setting precedents that may affect upcoming rulings (UK Legislation, 2023). The potential reasons for divorce can only fall under one of these five reasons: adultery, unreasonable behaviours, one year's of separation with consent or two years of separation without consent (The Edinburgh Reporter, 2022). In order to illustrate these requirements this paper will base itself on the Harris (AP) v Harris (AP) Case (2013). In this case, the couple came before the Sheriffdom seeking a divorce. The judgement finds "in fact and law that the marriage has broken irretrievably on the ground of non-cohabitation of the pursuer and defender for a period of two years or more" (Harris (AP) v. Harris (AP), 2013), which leads to the conclusion within the judgement that due to the previously mentioned circumstances, fitting one of the five requirements and agreed upon both parties, the divorce is therefore granted. The judgement indicates that 'there is no possibility for future reconciliation and proceeds to a separation of goods and belongings. This paper bases itself on this particular case, due to the fact that it reflects a typical divorce and contains no exceptions which would render the decision unclear.

As of recently, it is seen that there is a clear difference between the handling of divorce cases in both countries. England has diversified its approach through the implementation of the Dissolution and Separation Act (2020) and the 'no fault divorce', taking into consideration the harsh process surrounding divorce, and has chosen to lift the potential complications that filing for divorce under the previous requirements could have led to. Whereas Scotland continues to follow the laws set out by the Family Law (Scotland) Act 1985, containing the set of potential grounds for divorce. The establishment of the 'no fault rule' has caused a surge in divorce applications (Office for National Statistics, 2023), which could reflect the number of couples that did not have sufficient proof, falling into the reasons set out by the Family Law (Scotland) Act

1985. This could encourage Scotland to implement such a law, allowing married couples to get a divorce without feeling restrained by its country's laws.

Family law does not limit itself to divorce, in this section of the paper, children's custody will be the main topic as the laws surrounding it differ in England and Scotland. Due to the mixed legal nature of the Scottish legal system and the various legal traditions, terminology, and cultural backgrounds of each jurisdiction, there are disparities in child custody laws between England and Scotland. These variations reflect Scotland's complicated legal system and emphasise the importance of taking into account each jurisdiction's unique legal system in addressing child custody issues. Child Custody will be noted as "the legal right or duty to care for someone or something, especially a child after its parents have separated or died" (Cambridge Dictionary, 2023). English law tends to focus more on the parents than on the children themselves, as can be seen at the beginning of each judgement. The latter often starts by an analysis of the parent's circumstances, religious background, and education, mentioning their marital status, their residence and more. Children are referred through the parents' circumstances without going too much into depth. The judgements often contain the words 'mother', 'parent', 'father', 'caretaker' more frequently than they cite the children's initials or the word 'child' and tend to focus on the parents' situation while leaving the children aside even if the case is centred around them. The courts do mention that their objective is to ensure that the children are kept safe, that they will choose what, in their opinion, is best for them (according to the law) yet the children are not often asked their own opinions on the matter.

To illustrate the usual process of custody or 'child arrangement', the K v L Re M, N (2019) will be representative of the said process. This case is perceived to be the "a typical child arrangement case" (Bolch, 2019). This child arrangement case concerns a mother that took the children with her while leaving her husband, claiming he was abusive. The husband went to court seeking to get custody of the children, as well as for them to be in minimal contact with the mother. The court found that the father did entertain abusive behaviour towards the mother which prompted the father to submit himself to a psychological evaluation by a psychologist to examine the situation. The latter did indicate a risk in alienation of the father by the mother, but the court decided

to get a second opinion from a psychiatrist which did not end up sharing the previous psychologist's point of view. While the psychologist was in favour of the change, the psychiatrist was not. Judge Williscroft found a preference for the psychiatrist's findings; she was dubious that changing the children's home and caretaker would be good for them because she was not convinced that entertaining direct contact between the father and his children would be safe. The judgement was concluded by an order to follow a year of 'play therapy', the children would be in a neutral environment with a psychiatrist where they feel comfortable expressing their feelings, desires, and fear. By considering what they express during those sessions, changes will be made accordingly (K v L Re M, N, 2019). It is clear that the children are being included within the decision but, the initial analysis concerns the parents, the caretaker attributed depends on the parents' evaluations, relationship towards each other yet there was no mention of understanding that the children wanted. They were solely relevant when making a final decision even though the scope of the hearing is to identify which parent would satisfy the children's need in the healthiest way (K v L Re M, N, 2019).

Scotland operates with an alternative approach to the subject of child custody. Scotland's child custody laws are more oriented towards the 'child first' approach that aims to get the child's opinion. Through the facts, the child is usually placed on who is best fit to raise the child yet always keeping in mind the child's concerns and thoughts. Scots law regarding children has become the subject of multiple debates surrounding whether children are given too many rights; this is apparent in their child custody laws. The case examined in the case of Scotland is a symbolic one: Mr Patrick v Mrs Patrick (2017) (Mr Patrick v Mrs Patrick, 2017).

The names used in this case are pseudonyms, this case surrounds the issue of a father requesting to have contact with his three children. With the allegations coming from the children's mother claiming of sexual abuse by the father, a clinical psychologist, Dr Khan met and spoke to the children in order to gather information about their experiences with the father. Sheriff Anwar found that both parents did not get along with each other however, the children did not claim any instances surrounding sexual abuse, which is why the Sheriff granted indirect contact with his children. The Sheriff also strongly suggested the father to seek counselling and help from

professionals to examine his previous parenting choices. The Sheriff did rule in favour of the father spending time with his children. This case is proof of Scotland's emphasis on the rights of children because the Sheriff chose to leave a letter to children concerned at the end of the judgement addressed solely to them. The aim of this was to clarify why the Sheriff made the decisions that he made during the judgement (Mr Patrick v Mrs Patrick, 2017). He addresses them by thoroughly explaining his thought process and highlighting the importance of forgiveness, giving the father the chance to make up for his mistakes. The judgement is clearly oriented towards the children's best interests as phrases such as 'in the best interests of the children' are repeated throughout the judgement, reemphasising the primary importance of the children (Mr Patrick v Mrs Patrick, 2017).

3.2 Criminal Law

The devolution process led to the creation of the Scottish Parliament codified in the Scotland Act 1998. The reaffirmation of the establishment of a Scottish Parliament is found in this act, stating that 'There shall be a Scottish Parliament' (UK Legislation, 2011). This now has legislative authority over topics like family law and criminal law (Mooney, et al., 2014).

Scotland's criminal justice system can now be more fully customised to the specific requirements and national priorities thanks to devolution. The analysis of the difference in multiple areas of family law in England and Scotland is not enough to give a strong indicator of how often differences can be spotted in both legal systems. In this section, this paper will be examining the contrasts between both criminal fields. To demonstrate the divergence of the practices, observing multiple areas of criminal law will underline the objective stated above. The areas consist of the location of trials, the jury, the breach of peace and the verdict. Criminal law is not a devolved issue in Scotland; rather, the UK Parliament retains the authority to pass laws in this area. As a result, the fundamental standards and structure of criminal law are established at the UK level. The execution and administration of criminal justice have, however, experienced significant devolution in Scotland, notwithstanding the fact that criminal law itself may not be devolved. This includes the development of the Scottish Parliament as well as unique Scottish organisations like the Scottish Courts and

Tribunals Service and the Crown Office and Procurator Fiscal Service. These institutions operate and make decisions with a certain amount of autonomy.Judicial interpretation is primarily to blame for the variations between Scottish and other UK criminal legislation. Within the boundaries established by the UK Parliament, Scottish courts have the power to interpret and apply the law. As a result, distinctive legal precedents, and interpretations unique to the Scottish environment can be developed (Mooney, et al., 2014).

The Scottish legal system also has its own distinct historical, cultural, and legal traditions, which may potentially be a factor in the distinctions in the criminal law. The common law and civil law traditions are both incorporated into Scotland's legal system, creating a unique approach to criminal justice.

Firstly, when looking at the locations at which the trials occur, England's system is much more centralised. According to (Scott, 1977), 98% of criminal cases are tried at Magistrates court leaving the rest to the Crown Court. Scotland however bases its criminal law on three different courts: the High Court of the Judiciary, the justice of the peace courts and the sheriff courts (Scottish Courts and Tribunals, 2023). They are all administered by the Scottish Courts and Tribunals Service. The Scottish Court System is administered by the Scottish Courts and Tribunals Service. ("Scottish Criminal Justice System - sccjr.ac.uk") However, even though all courts can be used to try criminal cases, the High Court of the Judiciary usually treats the most serious cases including murder and rape.

Secondly, the composition and importance given to the jury differs in both countries. A jury will be defined as "a body of persons legally selected and sworn to inquire into any matter of fact and to give their verdict according to the evidence" (Merriam-Webster, 2023). In England, the jury is composed of twelve jurors for a criminal trial (gov.uk, 2023), which differs from Scotland that holds 15 people as members of the jury (Scottish Courts and Tribunals, 2023). For an English jury to deduce that a person is guilty of the crimes that he has been accused of, the jury needs a unanimous vote otherwise that person will not be found guilty (The Crown Prosection Service, 2022). The Scottish system has taken a different approach in that the guilty verdict will be delivered by a simple majority, as in 50% of the jurors will find this

person guilty, specifically eight of the fifteen jurors (Scottish Government, 2021). Moreover, the number of jurors is currently being discussed to be brought down to twelve in Scotland, but nothing has been done yet. If that were to happen, the idea would be to keep eight as the number of jurors needed to give value to a guilty verdict. The idea suggested is due to the overwhelming number of people a victim must look at to get their story across, the example of raped woman was given when she admitted that delivering her story in front of fifteen unknown people was intimidating (Cowan, 2023). The English's reason for the need for a unanimous decision is due to the fear of convicting a person that is in fact innocent whereas the Scottish argue that their third type of decision makes up for the ambiguity brought by a torn jury.

Thirdly, the next aspect that varies between both systems in the criminal law sector is 'certain laws'. Certain laws that are considered a punishable offense in one country are not necessarily perceived as punishable in the other. An example reflecting this argument is the breach of peace in Scotland. The breach of peace is defined as "conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community…conduct which does present as genuinely alarming and disturbing, in its context, to any reasonable people" (Blackwater Criminal Law, 2022) which stems from one of the main cases setting precedent which is the *Smith v Donnelly* (2001) case (Crime.Scot, 2013). The *Smith v Donnelly* consists of a case where Pamela Smith was accused of breach of peace as she blocked traffic by lying down in the middle of the road while participating in a demonstration against nuclear weapons at the Faslane Naval Base. She claimed that because the offense of breach of peace was too ambiguous, charging her would violate her human rights. The High Court rejected her claim, resting their argument on the fact that it would be undesirable to have a general definition of the term. Defining a general term would make it difficult to take into consideration every instance that could be filed under this offense. The court ruled that to support a conviction for the breach of peace the action must be "flagrant". The appeal was denied but this case served as further documentation to understand what is classified as a breach of peace.

Finally, the last point that this paper will cover in regards to the differences noticed between both criminal systems is the verdict. Most legal systems tend to find a

criminal guilty or not guilty of the charges they have been accused of. The former is the case for England (Cowan, 2023), Scotland though distinguishes itself from other legal systems as it has three different verdicts (Lammasniemi, 2022). The three are guilty, not guilty, and not proven, the latter is used when the jury believes that the defendant is guilty but that there was not enough evidence to prove the person's involvement. The unusual verdict is often used for cases of rape, which led to the current controversy surrounding this verdict. The Scots legal system is starting to reflect on the possibility of potentially removing the 'not proven' verdict, as certain studies have shown that the jury would be more prone to rule 'guilty' for sex offender cases which have been often dismissed by juries (44%) (Rape Crisis Scotland, 2018). An example of a case strongly reflecting the aforementioned concerns is the *AR v Stephen Daniel Coxen* (2018) (AR v Stephen Daniel Coxen, 2018). This case is an appeal after the first ruling which was dismissed after the pursuant did not have enough evidence to prove that she had been raped. For that reason, the final verdict was 'not proven'. The case was reopened years later where the pursuant got compensation after the ruling of the All-Scotland Sheriff Personal Injury Court (a specialised court within the Scottish court system). The first ruling showed the complexity of proving rape allegations as well as the jury's tendency to choose a 'not proven' verdict due to the lack of evidence (AR v Stephen Daniel Coxen, 2018).

The various aspects that found criminal law are therefore different in England and Scotland proving the difference in the criminal systems that both use.

Family and criminal law in England and Scotland have proven to hold crucial differences that are to be taken into account when comparing their legal systems, as it is common to assume that Scotland abides by the same Acts and cases that England uses. The main reason for their divergence is the Scottish devolution. The autonomous Scottish Parliament has the power to enact laws that are only applicable to Scotland, allowing it to mould the legal system to the needs and values of the Scots. Due to this devolved authority, there are differences in family and criminal law between England and Scotland that reflect the various cultural, social, and historical backgrounds of each country. These variations show how regional differences must be taken into account while analysing and comprehending the legal landscape and how devolution has

affected legal systems. Even though multiple differences have been underlined between the Scottish legal system and the English legal system, it would not be accurate to affirm that the English and Scottish are drastically different as will be demonstrated in the next section.

4 Similarities between English & Scots Law

4.1 Contract Law

Nations have always influenced each other, whether it was cultural, economic or political strategies or even behaviour wise, countries have never been able to fully remain stuck in their ways. While some may believe Scotland and England do have the same legal system, the aforementioned sections of the law demonstrate how different both can be. It was clear that their legal systems based themselves on different sources which might not coincide with one another, yielding contrasting results. At the same time, some believe both systems to be distinct from one another because they view both countries as separate nations, which would mean that there would be no reason for them to be similar. Referring to the historical influences discussed beforehand, this section will attempt to demonstrate the commonalities seen in these legal systems today.

The first legal similarities that this paper will be analysing are those found in contract law. English and Scottish contract law are often regarded as fake brothers but through the similarities in the formation and privity of a contract, an understanding concerning why they are perceived to be brothers will be acquired. Before exploring the commonalities, it is of significance to comprehend what contract law refers to. Contract law is a widely treated area in law which can be defined as 'the body of law that relates to making and enforcing agreements. A contract is an agreement that a party can turn to a court to enforce. Contract law is the area of law that governs making contracts, carrying them out and fashioning a fair remedy when there's a breach.' (Legal Career Path, 2023)

The formation of a contract shares three similar characteristics in both countries: offer, acceptance, and intention to be legally bound. An offer in England is classified as 'an expression of willingness to contract on specified terms, made with the intention that it is to be binding once accepted by the person to whom it is addressed.' (Allen & Overy, 2016) whereas in Scotland '(a) the proposer must intend that it will result in a contract if accepted, and (b) the proposal must be which, after taking any relevant enactment or rule of law into account, could be given legal effect as a contract if accepted' (Scottish Law Commission, 2017). The meaning attributed to the word offer

is the same which affirms that an offer will be identified as so in both countries. A case often used to illustrate the concept of an offer is Storer v Manchester City Council (1974). The plaintiff in Storer v. Manchester City municipal (1974), Mr. Storer, applied for a municipal dwelling using a points-based allocation method. He had received a letter from the council offering him a home, but they later retracted the offer after realising their error. Mr. Storer demanded performance of the agreement on the grounds that the council's letter was a legally binding offer. Whether or not the council's letter qualified as an offer was the main contention in this case. The letter was seen by the court to be more of a hint of a future allocation of a house under certain circumstances than a legally binding offer. The court emphasised that for an offer to be legally enforceable once it is accepted, it must be specific, unambiguous, and stated (LawTeacher, 2013). Storer v. Manchester City Council emphasises the necessity that an offer must have a specific level of certainty and be conveyed with the goal to create a legally binding agreement regarding the definition of an offer. The case makes it clear that merely expressing an intention or hinting at a potential arrangement does not qualify as a legal offer. Instead, an offer should show a prompt desire to enter into a legal agreement, subject to the offeree's acceptance. As a result, Storer v. Manchester City Council emphasises the necessity of precision, certainty, and a purpose to establish a legally enforceable agreement, which helps to clarify what constitutes an offer. It emphasises how crucial it is to assess the impartial interpretation of the parties' statements and actions to decide if an offer has been made. The latter is often used in English law as a case that fully defines the concept of an ‘offer’. Looking at the points made, it is possible to deduce that it fits into the Scottish definition of an ‘offer’ as well with the presence of a proposal having the potential to be given legal effect as a contract if accepted and the proposer having the intention that it will result in a contract if it is accepted. Ergo, the definitions attributed symbolise a similarity.

Acceptance is also viewed and defined as a similar notion. After an offer, it is necessary to obtain acceptance which is seen as ‘a final and unqualified expression of assent to the terms of an offer.’ (Allen & Overy, 2016) as interpreted in English law, however Scots law describes it as ‘any reference to acceptance of an offer is to—(a) a statement (in whatever form), or (b) conduct (of whatever kind),of the offeree which

shows the unqualified assent of the offeree to the offer' (Scottish Law Commission, 2017). While observing both, the English definition is more ambiguous however, the use of the words 'unqualified assent' are seen. The example of Carlill v Carbolic Smoke Ball Co (1893) frequently used in English law as a case law representing the concept of acceptance will be used to observe whether the definitions attributed to 'acceptance' are fitting. The defendant, Carbolic Smoke Ball Co, promoted a product called the "smoke ball" that they claimed could prevent influenza in Carlill v. Carbolic Smoke Ball Co (1893). Anyone who used the smoke ball as instructed and then had influenza was eligible for a £100 award from the corporation. Despite purchasing and using the smoke ball, Mrs. Carlill still got the illness. She requested the reward, but the business refused to pay her, claiming that no genuine contract existed. Whether Mrs. Carlill's use of the smoke ball qualified as acceptance of the company's offer and resulted in a legally enforceable agreement was the main question at hand in this case. The court determined that Mrs. Carlill had accepted the offer when she fulfilled the ad's requirements, and a legal contract had been created as a result. The court emphasised that when such acceptance was communicated to the offeror, it could occur by conduct or performance of the desired act (Carlill v. Carbolic Smoke Ball Company, 1893). Carlill v. Carbolic Smoke Ball Co emphasises that acceptance can happen through conduct or performance as opposed to just a formal message when relating it to the definition of acceptance. Mrs. Carlill's use of the smoke ball in accordance with instructions was regarded as acceptance because it complied with the requirements outlined in the advertising. The case establishes the idea that, so long as the accepting party does the required act with the intention of accepting the offer, acceptance can be inferred from behaviour. Therefore, Carlill v. Carbolic Smoke Ball Co. is used to give meaning to acceptance in contract law by showing that acceptance can be achieved through conduct and that the conduct of the accepting party must be consistent with the conditions set forth in the offer. It proves that acceptance can be deduced from the offeree's actions and performance and does not necessarily require verbal communication. The definition cited at the beginning, representing English law's conception of acceptance as said before, was vast and through this case shows that behaviour can qualify as acceptance. The Scottish definition mentions conduct that shows assent to the offeree of the offer, which is found in this case. Therefore, it can be

assumed that the Scottish and English law definitions give way to the same principle of acceptance.

Another characteristic found to be similar between both countries' legal system is the intention to be legally bound. On one hand, English law writes intent as: 'the parties must intend their agreement to be legally binding' (Allen & Overy, 2016). On the other hand, Scots law interprets intent as 'where the contracting parties or the promisor 'engage' with another person (who may potentially be innominate, the engagement being directed to the world at large) so as to demonstrate an intention to create, and be bound by, a legal obligation' (Brown, 2021). The case of Balfour v Balfour (1919) is often used to convey what the meaning of intent will be held up to in English law. In Balfour v. Balfour (1919), a husband and wife who were then residing in Ceylon (now Sri Lanka) were the parties in the case. Due to medical reasons, Mrs. Balfour had to return to England. Mr. Balfour had pledged to send her a monthly allowance until she could come back and live with him. The couple eventually got divorced, and Mr. Balfour stopped sending the money. Mrs. Balfour filed a lawsuit for breach of contract on the grounds that their arrangement was a binding legal contract.The main question in this case was whether the husband and wife intended to enter into a binding contract. The court ruled that there is a presumption against the desire to establish legal links in domestic or social agreements. The agreement between Mr. and Mrs. Balfour was determined by the court to be a simple social and domestic arrangement without the essential purpose to establish legal responsibilities. Mrs. Balfour's claim was therefore rejected. Balfour v. Balfour emphasises the significance of the parties' desire to establish legal relations by relating it to the definition of intent in the establishment of a contract. The case demonstrates that there is a presumption against the existence of such an intention in domestic or social agreements. It demonstrates the requirement of an objective intention on the part of the parties to be bound by the terms of the agreement in order for it to be enforceable as a contract. In spite of being supported by consideration, not all agreements will be regarded as legally binding contracts, as the case of Balfour v. Balfour indicates. A crucial prerequisite for the establishment of a contract is the existence of a desire to establish legal relations. The case serves as a reminder that, especially in social or domestic arrangements, the

parties' subjective intents might not be enough to prove the requisite intent for a contract to exist. Balfour v. Balfour thus emphasises the significance of the parties' objective desire to be legally bound, which helps to clarify intent in the establishment of a contract. It establishes that, until it can be blatantly shown differently, the presumption is against the presence of such intention in certain sorts of agreements, such as those of a social or domestic nature. The definition attributed to the word intent consequently does correspond to the theory of intent in Scots law.

Through three main concepts forming the concept of a contract, it has been seen that the definitions attributed to the concepts were in fact complementary. The case law often referenced in English law showed that the Scots law definition could have been applied as well as both hold similar characteristics defining each word. It reaffirms the influence English law had on the Scots law. Nevertheless, it is crucial to point out that a fourth characteristic of the formation of contract necessary in English law is not regarded in Scots law. Consideration is not viewed as obligatory to form a contract in Scotland (Marshall, 2010) therefore, it can be hypothesised that the whole of contract law is not identical but similar.

4.2 Defamation Law

In order to explore the extent of the similarities between the Scots system and English law, underlying commonalities between both systems in areas are law that could be considered specific and niche would sustain the argument that influence on legal influence on Scotland did occur. Scottish defamation law was recently altered through the newly published: The Defamation and Malicious Publication (Scotland) Act 2021. This act is said to be a step towards an alignment between the English and Scottish courts. According to the standards established by the Reynolds v. Times Newspapers Ltd (2001) case, the publication of remarks in the public interest was previously protected in Scotland under the Reynolds defence. To further comprehend the Reynolds defence, the case involving Reynolds defence will be explained. Reynolds v Times Newspapers Ltd (2001) was an important case that clarified the concept of qualified privilege in relation to the publication of defamatory political information. In this case, the plaintiff, a former Taoiseach of Ireland, sued a British newspaper publisher for publishing an article alleging that he had misled parliamentary and cabinet

colleagues while in office. The defendants claimed qualified privilege as a defence. However, the House of Lords, in their judgement, declined to recognise a generic qualified privilege for political information, as it would not adequately protect reputation. Instead, they affirmed the existing common law approach, which allows for qualified privilege to apply to political information when there is a duty to publish and an interest in receiving the material. The court emphasised the importance of freedom of expression by the media as a watchdog on matters of public interest. They also noted that in cases involving political information, courts should be cautious about concluding that publication is not in the public interest. The court stressed the value of media freedom of expression as a watchdog on issues of general interest. They also stated that courts should exercise caution when determining whether publication of political material is not in the public interest (LawTeacher, 2013). This decision gave rise to the Reynolds defence, a framework for determining whether qualified privilege applies to the publication of political material that is defamatory. The Reynolds defence has been superseded by the defence of publication on a matter of public interest as a result of the adoption of the Defamation and Malicious Publication (Scotland) Act 2021. In order to qualify for this defence, a defamatory statement must have been made in the public interest and the complainant must have had a good faith belief that the statement was made in the public interest. Notably, the Reynolds defence was also eliminated in England, resulting in nearly the same public interest test in both countries. In both Scotland and England's defamation laws (LawTeacher, 2019), this alignment demonstrates the shared understanding of the significance of safeguarding remarks made in the public interest and encouraging responsible journalism.

The similarities found between both do not limit themselves to the abolishment of a concept but extend themselves to other concepts within defamation law such as the honest opinion defence. Similar developments in defamation law regarding the defence of "honest opinion" have been adopted in Scotland and England (reference similarities). The Defamation and Malicious Publication (Scotland) Act 2021 introduces the "honest opinion" defence, which will replace Scotland's present reliance on the "fair comment" defence, which protects expressions of opinion under certain circumstances (Scottish Government, 2019). The idea of fair comment in Scotland's defamation law will be

replaced with the idea of an honest opinion. In contrast to statements of truth that can be protected from defamation charges, the defence of fair comment now permits the expression of opinion. The defence's effectiveness and use have been constrained, nevertheless, by the technical difficulty and unknowns surrounding it. The suggestion is to give the common law defence a statutory foundation and rename it "honest opinion" in order to overcome these concerns. Given that the definition of public interest has evolved over time, the proposed defence of honest opinion would no longer require the comment to be on a subject of public interest. To qualify as an opinion under this defence, a statement must list the supporting documentation. The requirement that the comment or view be sincerely held by the author would still apply. Concerns have been raised regarding how this clause can stifle the right to free expression for writers who employ rhetorical strategies like parody or satire. There are debates about whether the condition that the facts upon which the comment is based must be expressly declared or implicitly specified requires a qualification. Overall, the goal is to ensure that the defence is clearer, easier to understand, and more adapted to defending free speech while preventing malicious or dishonest remarks from being made. Notably, this strongly resembles England's defence of "honest opinion". England's 'honest opinion' can be found in its Defamation act (2013). The replacement of the common law defence of fair comment with a new defence of honest opinion in England's defamation law is covered in Section 3 of the commentary (UK Government, 2013). The requirement that the view be on a topic of public interest is removed from the new defence, which simplifies and clarifies some components. Three requirements must be satisfied for the defence to be effective: (1) the statement complained of must be an opinion statement; (2) the statement must state the reasoning behind the opinion, whether in general or specific terms; and (3) an honest person could have formed the opinion on the basis of any fact that existed at the time of publication or anything that was asserted as a fact in a privileged statement that came before the statement complained of (UK Government, 2013).The third condition's objective examination looks at whether an honest person might have developed the opinion based on pertinent information or a confidential remark. There are remedies for cases where the defendant is not the author of the statement, and the defence can be lost if the claimant can show that the defendant did not hold the position. Fair remark is no longer a common law

defence, but case law can still be used to understand the new statutory defence. In addition, Section 6 of the 1952 Act is abolished because it is no longer essential in light of the new strategy and deals with actions involving claims of fact and expressions of opinion. These nations' defence legal standards emphasise how crucial it is to defend the free expression of honest opinions while separating them from representations of fact. While looking at the explanation, and the requirements constituting the concept of ‘honest opinion’ in both countries, it is blatant that they resemble one another. The significant difference stems from the fact that England made the change earlier. Therefore, one could deduce that although the historic legal influence England had on Scotland is undeniable, that does not mean that England has stopped influencing the current Scottish legal system. The harmonisation of the 'honest opinion' defence in defamation cases brings Scotland and England closer together. The influence that continues to carry over in these modern times is not unforeseen but continues to be strong. With Scotland theorising potential independence from the United Kingdom, it would not be obvious to assume that they still draw considerable influence from England, epicentre of the United Kingdom. The influence English law exercises over Scots law was present in the past, is sustained to this day and will probably continue over time.

5 Limits & Critics of Mixed Jurisdictions

5.1 Incoherence and Confusion in a Nation that is Torn Apart

Due to their previous worries that their culture and identity would be lost or overshadowed in light of their ties to England, the people of Scotland were apprehensive regarding Scotland's autonomy. In this chapter, the limits of mixed jurisdictions will be explored, starting with the potential legal and cultural incoherence that can be encountered as well as how the combination of multiple legal systems might not yield an optimised outcome. As a result of the coexistence of many legal systems and cultural practises, mixed jurisdictions can cause incoherence within a nation. The combined use of two or more legal structures results in this discrepancy, which makes it challenging to achieve uniformity and predictability in the application of laws. As a result, the vagueness and inconsistency of laws originating from many sources may give rise to legal problems.

Scotland is good example of a hybrid jurisdiction with aspects of both common law and civil law. Due to the coexistence of these two legal systems in Scotland, interpreting and applying the law is complicated and difficult. Judges rely on precedents and earlier rulings in common law proceedings, whereas in civil law trials, the emphasis is on statute rules and legal concepts. It may be confusing and inconsistent for both individuals and legal professionals to efficiently traverse the legal environment because of the interaction between these two systems (Örücü, 2008).

Additionally, mixed jurisdictions may raise questions about potential cultural repercussions. In a single jurisdiction, the effect of many legal traditions might reveal inherent cultural variety, which might be a source for disputes and divergent societal values. For example, the contrast between common law and civil law in a mixed jurisdiction might draw attention to discrepancies in legal theories, social conventions, and cultural perspectives on legal issues. These distinctions can make it difficult to develop a consistent legal system that recognises and respects the various cultural backgrounds present in a society (Örücü, 2008).

An example portraying the challenges that might arise when training lawyers in mixed jurisdictions would be that of Scotland and England. The term “lawyer” covers

two different jobs: solicitors and barristers (advocates in Scotland). ‘The difference between barristers and solicitors is that a barrister mainly defends people in court, publicly speaking as an advocate on their behalf, whereas a solicitor primarily performs legal work that takes place outside of the courtroom’ (Chartlands Chambers, 2023). ‘The right of an advocate to be heard in legal proceedings. Barristers have full rights of audience in all courts. Traditionally, solicitors only appeared in the county courts and magistrates' courts but they may now obtain higher rights of audience in the Crown Court, the High Court, the Court of Appeal, and the House of Lords’ (Oxford Reference, 2023).

Similar paths lead to becoming a solicitor in Scotland and England, albeit it is imperative to reiterate that prospective solicitors must first qualify to practise law in their respective nation. The attainment of a qualifying law degree is required in both jurisdictions, but Scottish solicitors must also complete the Diploma in Professional Legal Practise (DPLP) and a two-year traineeship, while English solicitors must complete the Legal Practise Course (LPC), a two-year training contract, or the SQE (Solicitor Qualification Exam) and two years of work experience. Solicitors have an additional procedure to go through in order to practise in the other jurisdiction (The Faculty of Advocates, 2023). The Qualified Lawyers Transfer Scheme (QLTS) assessment is required of English lawyers who want to practise in Scotland, whereas the Solicitors Regulation Authority (SRA) requalification standards must be met by Scottish lawyers who want to practise in England (Solicitor Regulation Authority, 2021). Before practising law in Scotland or England, solicitors must go through these prequalification procedures to ensure they have the knowledge and abilities required for each jurisdiction.

It is necessary to take into account that individuals who possess the necessary qualifications in one jurisdiction would often need to go through a separate process to practise in the other jurisdiction in order to become a barrister or advocate in Scotland or England. In order to become an advocate in Scotland, one must first become a solicitor by earning a law degree, passing the DPLP exam, and completing a traineeship. They can then submit an application to the Faculty of Advocates, go through additional training, and pass exams like devilling to become fully trained

advocates (University of Edinburgh, 2022). In order to become a barrister in England, a candidate must first get a law degree or a non-law degree, then pass the Bar Professional Training Course (BPTC). Applicants can obtain pupillage—a period of supervised training—after successfully completing the BPTC and before becoming licenced barristers. Additional steps like requalification and assessment are typically required to meet the requirements of the respective legal profession in the desired jurisdiction in order to practise in the other jurisdiction, whether it be Scottish advocates practising in England or English barristers practising in Scotland (Bar Standards Board, 2023).

Another limit of mixed legal systems is that they can lead to the approval of laws that are viewed as harmful or objectionable. An example of such is South Africa with the adoption of the English law "common purpose" theory (du Plessis, 1998) – in which the South-African legal system combines elements of both Roman law and English common law (Rautenbach, 2013), making it a mixed jurisdiction. According to the doctrine of common purpose, if two or more persons agree to commit a crime, each will be held accountable for the actions of the others that are related to their common (Weiner, 2020). An individual could be found guilty of murder under this concept even though they did not directly cause or assist in the death of the victim because of their affiliation with a group of people who shared the goal of killing someone. The common purpose idea is acknowledged and utilised within the framework of the common law heritage in South Africa's mixed legal system. The application of criminal law principles is still shaped and influenced by common law principles that have been evolved via case law and judicial rulings. During the period of apartheid, when the legal system was employed as a tool to manage political dissent and riots, this doctrine, which deviated from civilian norms of criminal law, was often used. Another rule acquired from the common law history is the strict liability of the press for defamation. The press can be held legally liable for defamatory remarks it publishes, regardless of their intent or knowledge of the statement's inaccuracy. This is known as strict liability of the press for defamation. In other words, even if the media outlet had no malice aforethought or awareness that the claim was untrue, they could still be held accountable for the damage the defamation produced. These instances demonstrate that the adoption of specific

rules from a mixed legal system might have unfavourable effects and may not be consistent with the values or principles of the receiving jurisdiction. The results of a mixed legal system rely on the particular mixed rules. Simply combining different legal systems does not ensure a favourable or commendable outcome. Policy-makers and judges who are involved in mixed legal systems must make sure that the systems grow in a way that maximises the advantages of choosing the best rules from both civil and common law systems while minimising the danger of adopting ones that are harmful towards the citizens (du Plessis, 1998).

5.2 Effect of Globalisation

Another limit impacting the growth of mixed legal systems is globalisation. As the world increases in terms of interconnectedness, legal systems adapt through changes in their legal systems to accommodate new firms, the people... However, the growth of mixed legal systems might not remain the same type of mixed legal systems that already exist such as Scotland. The interdependencies and difficulties brought on by globalisation pose a threat to the conventional view of law as a wholly state-centric mechanism. Global terrorism, the climatic catastrophe, economic, financial, social, and humanitarian challenges all serve as reminders of the complexity of a globalised human race (Delmas-Marty, 2020).

In the context of globalisation, the idea of sovereignty needs to be rethought. There are drawbacks to both universalism, which strives for a global perspective, and sovereignism, which retreats within national communities. These two must be reconciled through an interactive strategy that integrates the accountability of national communities with the goals and duties of the global community. Internationalising sovereignism entails incorporating international treaties into domestic law, whereas contextualising universalism entails modifying it to fit particular contexts. The use of international standards by national judges leads to them becoming European or even global judges. The poor balancing of universalism and sovereignism needs a "legal tinkering" procedure that substitutes more complicated forms for binary logic. There is no perfect international law that is consistent with all national and international legal systems. Instead, to solve the problems of globalisation, lawyers reinterpret and mix already existing laws (Delmas-Marty, 2020).

Thinking through complexity is necessary to regulate globalisation through law. The legal system is multifarious, interactive, combinatorial, and evolutionary in a globalised society. To manage the ambiguous character of international legal issues, "fuzzy logic", which evaluates the degree of proximity to reference norms, becomes important. As long as transparency and rigour are upheld, "fuzzy logic" permits reasonable and predictable reasoning. When addressing ambiguous circumstances, legal reasoning must be flexible (Delmas-Marty, 2020).

In order to control the world effectively, a variety of public and private players must pool their knowledge, resolve, and power. Local and regional governments, courts, and public prosecutors work with states to form global governance. Global regulation is heavily influenced by organisations like the International Criminal Court and the Court of Justice of the European Union (Bekou, et al., 2021).

The control of political and economic power also involves civil society actors, such as individuals, NGOs, associations, trade unions, and private economic operators (Gallin, 2000).

The metaphor of networks and clouds better captures the complexity and volatility of contemporary societies, which are in constant flux just like the law itself (Delmas-Marty, 2020).

Globalisation has quintessentially increased the interconnection between legal systems, bringing nations closer together. As a result, legal theories have been borrowed and implemented common legal norms have been developed, and mixed or hybrid legal systems have emerged. A tendency towards increased convergence and mixity in the global legal environment is suggested by the increasing meshing of legal systems, even though legal families still retain their distinctive traits (Shapiro, 1993).

In conclusion, the traditional view of law as a state-centric tool is challenged by globalisation. An interactive, multidimensional strategy that blends sovereignism and universalism is required in light of globalisation. Global governance necessitates the pooling of knowledge, will, and power from various actors, and the law must change to reflect the complexity of a globalised human race. Since the law is always changing, flexibility is required to successfully address the problems posed by globalisation.

6 Conclusion

In conclusion, the information in the previous chapters highlights that Scotland's legal system has been significantly influenced by the English legal system. The historical context of Scottish law shows the influence of English common law, particularly after the Act of Union in 1707. Despite maintaining its own distinctive legal traditions, Scotland's combination of common law and civil law features made interpreting and applying the law complex and difficult.

The variances in legal approaches and guiding concepts are highlighted by the differences between the criminal and family justice systems in Scotland and England. Scottish family law, which is founded on civil law principles, is distinct from the common law-based system in England. Similar to how Scottish criminal law differs from English criminal law, it contains special elements and terminology. However, it is crucial to recognise that in these areas, English legal precedents and developments have had an impact on the Scottish legal system.

In addition, there are significant parallels between the English and Scottish legal systems. Both states' contract laws are similar in that they both rely on common law ideas like offer, acceptance, and consideration. Similar to how English common law ideas have influenced Scottish law, there is a major overlap between the two countries' defamation laws.

The consideration of the limitations and criticisms of hybrid legal systems, however, draws attention to the difficulties and potential risks of incorporating components from many legal traditions. Complexities, contradictions, and potential cultural clashes have resulted from Scotland's coexistence of common law and civil law. In order to create a coherent and harmonious legal system, this emphasises the necessity for careful consideration and adaptation of legal principles.

It is therefore evident that Scotland's legal system has been influenced by the English legal system. Scotland's legal environment has been impacted by the historical, substantive, and procedural contacts between the two jurisdictions. Although Scotland has preserved its unique legal traditions, the presence of English common law components and the difficulties posed by hybrid legal systems show the English legal

system's continued effect on Scotland. Legal professionals and individuals acting inside the Scottish legal system must comprehend and navigate this interrelationship between legal systems.

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8 Summary

The traditions and culture of the nation are reflected in the history of the English legal system. Despite being a part of the United Kingdom, the legal systems in England, Wales, Scotland, and Northern Ireland each have distinctive features of their own. The English legal system, which has its roots in the common law tradition and dates back to the Middle Ages, has had a significant impact on the legal systems of many other nations. Over the ages, it experienced numerous modifications that resulted in the creation of various courts and the concepts of equity and justice. The Crown Court was founded in the 20th century to handle significant criminal trials, and the Constitutional Reform Act upheld the judiciary's independence.

Similar to how English law evolved during the Middle Ages, Scottish law did so under the influence of feudalism and Celtic law. Scottish law was significantly influenced by Roman law, particularly in the fields of contract and property law. The creation of Scottish law was greatly aided by the Court of Session, which was established in the sixteenth century. Both beneficial and negative consequences on Scotland's legal system resulted from the Act of Union, which combined Scotland and England in 1707. Legal problems and instability resulted from the Presbyterian Church's influence and Scotland's legal identity being questioned. After been modernised in the 19th and 20th centuries, the Scottish legal system now combines concepts from the Celtic, feudal, Roman, and Enlightenment periods.

Particularly following the Treaty of Union in 1707, the Scottish legal system has been affected by the English legal system. England used a variety of tactics to convince Scotland to embrace the common law legal system, including political pressure and the appointment of English judges. The Scottish civil law tradition was broken by the Treaty of Union, which made English law Scotland's common law. Indirect methods of influence included the employment of English precedents and legal material in Scottish courts, while direct methods included UK parliamentary acts and House of Lords appellate rulings. The Scottish legal system was forced to incorporate English legal ideas and standards, which occasionally resulted in full anglicization. However, there have also been circumstances where it has been desirable to incorporate English legal concepts into Scottish statutes, particularly in mercantile law. Overall, the

development of the legal systems in England and Scotland over time has been complicated and influenced by a variety of factors.

Due to Scotland's devolution process, the Scottish Parliament now has legislative jurisdiction over fields like criminal and family law. Significant disparities between Scottish and English family laws emphasise the distinctions between the two countries' legal systems. The Dissolution and Separation Act (2020), which was recently put into effect in England, established the idea of "no fault divorce," which does away with the requirement that there be a specific cause for filing for divorce. The Family Law (Scotland) Act 1985, on the other hand, continues to constitute the basis of Scottish law and provides five particular grounds for divorce: adultery, unreasonable behaviour, one year of separation with consent, or two years of separation without consent. Scottish divorce law normally splits accrued earnings during the marriage unless evidence recommends an other course of action, in contrast to English divorce law, which divides lifetime earnings equally between both spouses.

In terms of child custody, English law frequently prioritises the demands and interests of the parents over those of the children. Analysing the circumstances of the parents is frequently done before discussing the children in judgements. Rarely are children's opinions sought in these situations. Scottish child custody rules, on the other hand, place a higher priority on a "child first" strategy that aims to take the kid's viewpoint and best interests into account. The acquisition of information regarding the child's experiences and thinking is prioritised by the Scottish judicial system. Scottish courts often consider who is more qualified to care for the child in child custody issues, taking the youngster's worries into account.

Criminal legislation itself is set at the UK level and is not devolved, although Scotland has seen a large amount of devolution in the implementation and administration of the criminal justice system. This includes the growth of the Scottish Parliament and distinctive Scottish institutions like the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, and others that exercise some autonomy.

Judicial interpretation is one of the key elements causing the distinctions between Scottish and English criminal law. Within the confines established by the UK Parliament, Scottish courts have the authority to interpret and apply the law, which has resulted in the creation of distinctive legal precedents and interpretations specific to the Scottish context.

Common law and civil law traditions are both incorporated into Scotland's legal system, which helps to explain its distinct approach to criminal justice. This, together with Scotland's unique historical, cultural, and legal traditions, may have a role in the differences between Scottish and English criminal law.

There are a number of significant distinctions between Scottish and English criminal law. First, there are considerable differences in the places where trials take place. The criminal justice system in England is more centralised, with the Magistrates Court hearing the vast majority of cases and the Crown Court hearing a much smaller part. The High Court of the Judiciary, justice of the peace courts, and sheriff courts are Scotland's three criminal law courts, with the High Court hearing the most serious matters like murder and rape.

The jury's makeup and importance differ between the two nations as well. A jury in a criminal trial has fifteen members in Scotland compared to twelve in England. A guilty verdict also needs to be unanimously agreed upon in England, although in Scotland, a simple majority of eight of the fifteen jurors is sufficient.

The existence of specific laws that are regarded penal offences in one country but may not be in the other is another observable distinction. For instance, Scotland has a precise definition for the crime of breach of peace, which is based on conduct significant enough to frighten the general public and pose a serious threat to the community. The way these laws are interpreted and put into practise can affect how the criminal justice system functions.

Finally, different decisions are made in criminal instances. In Scotland, there is a third possible finding in addition to guilty or not guilty, called "not proven." This decision is made when the jury finds the defendant to be guilty but that there is not enough evidence to establish their involvement. There has been debate and discussion

about maybe deleting the "not proven" judgement because it is frequently used in rape cases.

These disparities between the criminal laws of England and Scotland serve as a reminder of the benefits of devolution and the independence of the Scottish judicial system. The legal systems of the two nations do share some similarities, and they are not radically dissimilar from one another, despite these variances.

In terms of contract law, the legal systems of Scotland and England are identical. Both frameworks acknowledge the significance of an offer, an acceptance, and a desire to be bound by a legal obligation in the creation of a contract. In Scotland, an offer must be a proposition that, if accepted, can be given legal force as a contract. In England, an offer is an indication of a desire to enter into a contract on certain terms. Both systems define acceptance as an unequivocal indication of agreement to the terms of an offer that can be expressed through action or performance. Another feature that unites both English and Scottish law is the requirement that the parties show an objective intention to establish legal duties. Nevertheless, is important to keep in mind that while consideration is required to create a contract under English law, it is not in Scotland. Even while English and Scottish contract law share some parallels, it's crucial to understand that while historical influences contributed to the similarities, the legal systems are not exactly the same.

There are significant similarities between Scottish and English defamation laws. Both jurisdictions have enacted changes to more closely align their defamation laws. A universal threshold for the publication of defamatory statements in the public interest was established by the Reynolds v. Times Newspapers Ltd. case in 2001. This standard is known as the Reynolds defence. However, a new defence of publication on a topic of public interest has now supplanted the Reynolds defence in both Scotland and England. This agreement shows that both nations recognise the value of protecting statements made in the public interest and encouraging ethical media.

The use of the "honest opinion" argument in both jurisdictions is another similarity. This defence has become accessible in Scotland thanks to the Defamation and Malicious Publication (Scotland) Act 2021, which eliminates the reliance on the

"fair comment" argument from the past. Similar to this, the common law defence of fair comment was replaced with the defence of honest opinion in England's Defamation Act 2013. The requirements for the defence are similar, focusing on the fact that the statement must be founded on facts or statements stated in a privileged statement, express the logic supporting the statement, and constitute an opinion. Both arguments seek to maintain the right to an honest expression of opinion while separating it from a declaration of reality.

The aforementioned parallels between Scottish and English contract laws and defamation laws demonstrate how English law continues to have an impact on Scotland's legal system. Despite talk of possible independence, Scotland continues to be significantly influenced by English law.

The last part of the essay seeks to understand what limits mixed legal systems could be confronted with. The first limit addresses legal ambiguities and incoherences. It is difficult to create uniformity and predictability in the execution of laws due to the prevalence of numerous legal frameworks, which leads to ambiguity and inconsistency. Due to the relationship between these two legal systems, Scotland, a hybrid jurisdiction having aspects of both common law and civil law, has difficulty interpreting and applying the law. For people and legal experts navigating the legal system, this might be confusing.

Mixed jurisdictions could also be a source of confusion in terms of potential cultural effects. Combining several legal traditions may bring out differences in legal theories, social mores, and cultural viewpoints on legal matters. Creating a coherent legal system that respects the many cultural backgrounds prevalent in a society can be difficult due to these variances.

Adding that, rules that may be deemed damaging or unpleasant risk being adopted as a result of hybrid legal systems. For instance, when South Africa adopted the "common purpose" doctrine from English law, people were found guilty of murder based on their membership in a group that had the same murderous intent. During the apartheid era, this departure from customary criminal law was frequently employed to quell riots and political unrest. A similar example would be in regards to common law's

strict liability of the press for defamation makes the media legally liable for offensive remarks even if they weren't made with malice aforethought or with awareness of the truthfulness of the statement.

These illustrations show how adopting certain regulations from mixed legal systems may have negative consequences and may not be consistent with the values or guiding principles of the receiving jurisdiction.

It is of utmost importance to ensure that mixed legal systems are developed in ways that maximise the advantages of choosing the most appropriate legislation from both the common law and civil law systems. While doing so, it is of substance to minimise the risk of establishing laws that would be detrimental or at odds with the fundamental beliefs and values of the jurisdiction.

The last point addressed refers to the current jurisdictional structure challenged by globalisation. The global interconnection of society necessitates legal systems' adaptation to new actors and concerns. Mixed legal systems may not develop according to the established patterns observed in places like Scotland, nevertheless. The traditional state-centric conception of law is challenged by the interdependencies and complexities that come with globalisation. Global problems like terrorism, climate change, and economic hardships serve as a reminder of how complex a globalised society is. In this situation, it is necessary to reevaluate the idea of sovereignty and strike a balance between universalism and sovereignism using an interactive method that combines domestic accountability with international obligations. To meet the difficulties of globalisation, this calls for the absorption of international treaties into local law as well as the reinterpretation and blending of current laws.

Managing the complexities of legal regulation of globalisation demands analytical thinking. In a globalised society, the legal system becomes diverse, interactive, combinatorial, and evolving. In analysing the degree of proximity to reference norms while handling unclear international legal situations, "fuzzy logic" becomes significant. When dealing with complex situations, legal reasoning must be flexible. Collaboration between a variety of public and private actors, such as local and regional governments, courts, public prosecutors, international organisations, civil

society actors, and private economic operators, is necessary for effective global governance. Without a global government, the conventional notion of the separation of powers cannot be directly implemented; therefore, it is essential to preserve a dynamic balance through competing forces and the gathering of knowledge, will, and power. The law itself is always evolving, reflecting the complexity and turbulence of modern communities.

The state-centric vision of law is challenged by globalisation, which calls for a multifaceted, interactive strategy that combines universalism and sovereignism. The law must change to reflect the complexity of a globalised society, and global governance necessitates the pooling of information, will, and power from various actors. To properly address the issues brought on by globalisation, flexibility and adaptive legal reasoning are required.

By taking into account the historical context, the differences underlined between the English and the Scottish legal system (through the family and criminal law fields), as well as their similarities (contract law and defamation law) and the potential limitations that could be placed onto mixed legal systems (incoherences and globalisation), this paper can affirm that England law influences Scottish law and will continue to do so as long as the current institutions do not change. With the potential Scottish referendum, the Scottish legal system could aim to substitute its current legal system with an alternative one.