



LAW AND ECONOMICS IN JANE AUSTEN

LYNNE MARIE KOHM AND KATHLEEN E. AKERS



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FOR THE GOVERNOR AND
THE BANKERS



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Lynne Marie Kohm: To my husband, for his endurance, his perseverance, and his constant encouraging cheers through all my work. And to my children, who have put up with Jane Austen analogies and law school lectures their entire lives. This book is dedicated to them all. “Her children arise and call her blessed; her husband also, and he praises her.”
Proverbs 31:28

Kathleen E. Akers: To my honorable, kind, and brilliant husband for teaching me all the important lessons of love and economics: “I have loved none but you.” To my parents for their endless wellspring of encouragement and wisdom; and to my brother, truest of friends, for instilling in me a love of literature.

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Acknowledgments

Before Jane Austen's talent for understanding and communicating the intricate connection between love and money to teach the basics of law and economics in relationships inspired this book, they first inspired a course taught in Oxford entitled *Economics, Law & Literature of Marriage: UK & US 1720–2020*, sponsored by Regent University Robertson School of Government and Regent University School of Law for two weeks in the summer of 2015. The material used in that course provided the foundation and development of this book. While it was a graduate level course, taught in eight four-hour class times and three field trips which took us all over England,¹ we covered and uncovered the law and economics behind romance, which are “universal truths” that all individuals can benefit from. The students loved every minute. To that course, to the Regent Law graduate assistants who helped put the course together, to the students who traveled to Oxford for two weeks to take the course, and to that opportunity we acknowledge our great debt. This book is organized in much the same fashion as the course was (sadly minus the field trips). Observing it all illustrated in Austen novels, Jane's acute understanding of the necessary link between law and money in marriage and affairs of the heart lightened and materialized what otherwise could have been dense material. In that course, as in this book, we learned that much of what one could ever want to know about law and economics can be learned from Jane Austen.

We also wish to acknowledge and thank our publisher, Lexington Books, our anonymous reviewer who helped us to hone and improve the book, and a University of Chicago Booth School of Business course of students who so greatly enjoyed a presentation of chapter 2 that they pushed us on to manuscript completion.

Finally, we must most sincerely express our undying gratitude to Jane Austen and her vibrant characters who have helped us in uncovering, learning, and then teaching the basics of economics and law. Where would the world be without Jane Austen? Our hope is that never again will an intelligent reader think of Jane Austen as merely a romance novelist. Hers are works where “the greatest powers of the mind are displayed, in which the most thorough knowledge of human nature, the happiest delineation of its varieties, the liveliest effusions of wit and humor, are conveyed to the world in the best chosen language.”² And for her we are most grateful.

NOTES

1. Our field trips included Blenheim Palace in Oxfordshire (birthplace of Sir Winston Churchill) to consider how the Vanderbilt estate was used to renovate the Palace in 1895 when 17-year-old Consuelo Vanderbilt was forced by her mother, Alva Belmont Vanderbilt, to marry the 9th Duke of Marlboro, Charles Spencer-Churchill, because the English needed funds and the Americans desired social title and rank; Chatsworth House in Derbyshire, the filming site of the 2005 movie *Pride & Prejudice*, home to the Cavendish family since 1549 and still currently inhabited by the Duke and Duchess of Devonshire; and then finally to Charlecote Park in Stratford-on-Avon, one of the first great Elizabethan homes, where in 1558 its owner Sir Thomas Lucy renovated the castle and surrounding grounds by bringing 12-year-old heiress Constance Kingsmill with her £40,000 to marry his 14-year-old son Thomas, who lived a lovely long life together with their 14 children.

2. Jane Austen, *Northanger Abbey*, Chapter 5 (1817).

Introduction to *Law and Economics in Jane Austen*

Jane's Love and Money Insight

In his *Letter to Lord Byron*, W. H. Auden's comments on Jane Austen divulge his thoughts and actual discomfort on her talent for understanding and communicating the intricate connection between love and money. "You could not shock her more than she shocks me"; as she "so frankly and with such sobriety" revealed "the amorous effects" of the "economic basis of society."¹ Every Janeite knows that Jane Austen might have understood human nature just as well as most sociologists and psychologists. What may not be as well known, however, is that she also possessed an acute understanding of the necessary link between the law and economics in affairs of the heart.

Economic concepts and legal principles surround and support every novel Jane Austen produced. In fact, much of what one could ever want to know about law and economics can be learned from Jane Austen. Whether you are knowledgeable and well-informed on these matters, or completely untrained in either or both law and economics, the material here is light but substantive, providing an easy understanding of two seemingly complicated disciplines. Examining Jane's works will prove to be at least slightly entertaining while you are learning some basic law and some basic economics.

Law governs human rights and human responsibilities. Economics explains wealth and productivity. This combination quite nearly governs the world. Every one of Jane Austen's novels transacts romantic relationships with this combination. And judges and lawyers love it! When trying to discern why so many judges cite Jane Austen in their legal decisions one journalist answered, "After reading every available opinion, I've come to a rather

banal but beautiful conclusion: Jane Austen is cited as an authority on the complexity of life particularly with regard to the intricacies of relationships.”²

Here, every chapter intentionally fashions a thoroughly integrated discussion of law and economics, diligently integrating the two subjects persistently to show how closely connected they are in everything Austen. While we presume that the reader has a basic understanding of Jane Austen’s novels, it is not necessary to possess a deep and thorough understanding of each one.

In case it has been a long time since you read her stories, we have provided a brief summary of each one below:

- *Sense and Sensibility*: Impoverished by the death of their father, the Dashwood sisters and the men they choose contrast the results of living by common sense decorum with living by unbridled emotion. Intrigue, scandal, and greed puts romanticism on display in illustrative story.
- *Pride and Prejudice*: Elizabeth Bennet is witty and sharp, refuses to marry for money, but rushes to judgment about the men she attracts—a ridiculous clergyman, a clandestine scoundrel, and a wealthy peacock—but when she realizes she has read things all wrong she fears she has lost the only man she respects, Mr. Darcy, the best and richest man of all.
- *Mansfield Park*: Contrasting sisters who married differently—one very poor with another ranked and very rich, a daughter of the first—Fanny Price—is raised by the Bertram family at Mansfield Park where she falls in love. In the context of a sinister undercurrent of both friends and income, Mansfield Park reveals that wealth and rank does not translate to wisdom and sense, or happiness.
- *Emma*: Centered around a wealthy young woman who thinks she is a matchmaker but needs no marriage herself, Emma Woodhouse learns the hard way that she is mistaken in just about everything. One of Austen’s most admired heroes, Mr. Knightley, is the paragon of virtue who saves Emma from herself.
- *Persuasion*: Anne Elliot has an elegance of mind and a sweetness of character, but she was persuaded to refuse the marriage proposal of Captain Frederick Wentworth who, eight years earlier, was no captain and had only himself to recommend him. This social satire of landed gentry provides the context for these ill-fated lovers whose tender emotions endure despite their circumstances.
- *Northanger Abbey*: Austen’s gothic humor is on display when she introduces Catherine Morland to the kind Henry Tilney who invites her to his family home of Northanger Abbey, where Catherine’s overactive imagination and naïveté reveal her genuine character. “No one who had ever seen Catherine Morland in her infancy would have supposed her born to be an heroine.”

- *Lady Susan*: This succinct epistolary novel exposes the morals of a culture where women must rely on men for support, as the machinations of the gorgeous, seductive, witty, and wicked Lady Susan captivates nearly every man she meets, seeing even her daughter simultaneously as a burden and a rival.

Using Austen's vibrant characters, the initial basics of economics and law are covered in chapter 1, laying a foundation and setting the stage for the rest of the book. From family income to the wealth of nations, economic principles are defined and illustrated. Legal rights and obligations connect with those principles and are revealed in the culture of Regency England. *Northanger Abbey* and *Mansfield Park* are both knotted love stories titled after estates in land, while *Emma* focuses on the romantic foolishness of an independently wealthy woman who never leaves home. Even though Mr. Knightley might proclaim in *Emma*, "Business, you know, may bring money, but friendship hardly ever does," this chapter teaches just how very inexorably intertwined are relationships and money. The reader will learn how legendary English economist Adam Smith's timeless concepts integrate and move relationships in a national economy, as well as other economic principles such as opportunity costs, and even economies of grace. This chapter also introduces the reader to concepts of economics and legal principles surrounding family law issues including the law and economics surrounding land estates, marriage proposals, how love connects with law, as well as the socio-legal economic connections both then and now. Designed to grasp the attention of the knowledgeable and the untrained alike, this chapter sets the stage for the rest of the book.

The law and economics of dating and the social rules of how men and women connect are covered in chapter 2. From pursuing the eldest son of a large family estate to online dating, this chapter considers the legal and economic elements of a well-contemplated match before it happens. Focusing on subjects such as the law of primogeniture, title and status, maximizing economic utility in dating, assortative mating, the dating market, socio legal rules of how people connect, limits on women, women's legal and economic status in the past and today, online dating, and elements that really drive all dating decisions. Rather than bore the reader with these opaque concepts alone, this chapter uses Jane Austen's characters and scenarios to teach the reader how these and other legal and economic principles control the dating market. One of the primary lessons comes from the lovely but devious Mary Crawford, as she contrives to marry well, to the point of even hoping for the death of an eldest son in *Mansfield Park*.

Legal and economic implications of sexual intimacy are explored in chapter 3. Discussing fully Austen's greatest but initially quite loveable libertines, John Willoughby in *Sense and Sensibility* and George Wickham in *Pride and*

Prejudice, this chapter explores the legal and economic implications of sexual intimacy in all its shades. Beginning with offering a thorough understanding of supply and demand, it also covers legal changes that have affected sexual decision-making, creating a more competitive sexual market, sex and men, sex and women, opportunity costs, discount rates, and transaction costs. This will seem like a particularly impolite, even slightly racy chapter as it illustrates how sex and money from the beginning tend to be at the root of most relationships.

Marriage economics are detailed in chapter 4. A shallow review of Jane Austen's fiction might conclude that women in her novels always marry rich—the superficial critique against every Austen work. But many of her most beloved heroines marry men of little to no wealth, particularly those who live on a clergy salary, such as Elinor Dashwood and Edward Ferrars in *Sense and Sensibility*, Fanny Price and Edmund Bertram in *Mansfield Park*, and Catherine Morland and Henry Tilney in *Northanger Abbey*. Austen was a mold breaker and trend setter, as chapter 4 discusses, particularly in terms of aiding the transformation of marriage into a consent-based institution. This chapter focuses on the legal requirements for marriage entry, and helps the reader really understand what exactly happened between Lydia Bennet and George Wickham. Reviewing characters throughout *Pride and Prejudice* in terms of economic supply and demand, this chapter reveals that marriage is a legal and economic tool well utilized by both men and women, rich or poor, in the marriage market. It also covers formal and substantive requirements for marriage entry, marital consent, marriage fraud, the breach of a promise to marry, custom and honor, marriage markets, women and market supply, men and market demand, legal and economic costs and benefits of marriage, and social benefits of marriage.

Chapter 5 expands on the marriage market by examining the legal and economic incentives for marriage that subtly control the relationships between women and men still today. Discussed at length in this chapter, law connects with economics in marital support and marital property. For example, *Sense and Sensibility* considers the forays into love of two impoverished but genteel sisters. When they become entangled in undecided romances with men whose financial legacies are eventually withdrawn, forcing the alteration of original marital plans, it becomes painfully obvious how strongly incentives matter in marital decisions. Readers might call Jane's work simple love stories, but the educated reader knows each novel to be a masterpiece of the law and economics of marriage incentives. Building on the marriage introductions in chapter 4, this chapter explains marriage incentives, revealing that marriage and the surrounding bargains are much more significant legally and economically than they may even be socially. Chapter 5 covers marital contracting, mutual support in marriage, marital property, incentivized idleness, duty as a marriage incentive, spousal support in divorce,

marriage incentives in death, marriage as political and social power, social groups, status and rank, social groups and gender bias, and men and marriage incentives.

Children are the topic of chapter 6, covering the law surrounding parental rights and responsibilities and the economic aspects of development of human capital in families. It opens and closes with a discussion of Jane Austen's view of children, then considers legal rights and duties of parents. Is Lady Susan Vernon persecuting or providing for her daughter, Frederica, by working so hard to marry her off to the ridiculous and incredibly rich Sir James Martin of Martindale in *Lady Susan*? Did Mr. Weston lose his parental rights to his son Frank when his wife died in *Emma*? Or was he taking advantage of an opportunity to gain economic freedom for his two-year-old son by sending him off to live thereafter with his wealthy aunt and her husband? The chapter covers inheritance and death of parents, illegitimacy, best interests of the child, human capital, child poverty, marriage as affecting child poverty, and an economic approach to families. Legal policy and economic potential where children are concerned litter Austen's novels. This chapter connects those children with current events facing American and British children today.

Jane Austen's mastery of story subtly educates. A prolific novelist for a woman of her time, Jane's apparent notions on this pathos tactic might be revealed in her character's pronouncement on fiction in *Northanger Abbey*:

"Oh! It is only a novel!" replies the young lady, while she lays down her book with affected indifference, or momentary shame. "It is only *Cecilia*, or *Camilla*, or *Belinda*"; or, in short, only some work in which the greatest powers of the mind are displayed, in which the most thorough knowledge of human nature, the happiest delineation of its varieties, the liveliest effusions of wit and humour, are conveyed to the world in the best chosen language.³

The principal connections between love and money shine brightly in Austen's stories, but also remain evident in modern men and women, a fact that will recur in each chapter. Austen historian Margaret Doody summarizes, "The past recurs in the present. Like it or not, we bump into it."⁴ The possibility remains that we may or may not fully comprehend how connected happiness is with love, law, and money, but Jane can show us. She simultaneously teaches us about the law and economics of love, with romance providing the canvas for her art. Tracing the steps of key characters and their family relations we will access and unlock the legal and economic implications of love, while being educated and entertained Jane Austen style. In fact, this book will prove that much of what one could ever want to know about law and economics can be learned from Jane Austen.

NOTES

1. Margaret Drabble, "Introduction," in *Sense and Sensibility* (Signet Classics, 1989), ix.
2. Matthew H. Birkhold, *Why Do So Many Judges Cite Jane Austen in Legal Decisions?* (Electric Literature, April 2018), https://electricliterature.com/amp/p/52e44f96fd81?__twitter_impresion=true.
3. Jane Austen, *Northanger Abbey* (John Murray, 1817), Chapter 5.
4. Margaret Doody, *Jane Austen's Names: Riddles, Persons, Places* (University of Chicago Press, 2015), 11.

Chapter One

The Basics

Love, Law, and Economics According to Jane

When Mr. Collins endured a refusal of his marriage proposal from Elizabeth Bennet in *Pride and Prejudice*, he summed up love, law, and economics. “Your portion is unhappily so small that it will in all likelihood undo the effects of your loveliness and amiable qualifications.”¹ Economic concepts and legal principles undeniably surround romance. In fact, any law about family seems to always boil down to love and money. No one illustrates these concepts in such an entertaining and educational manner better than Jane Austen. Gripping the attention of the knowledgeable and the untrained alike, Jane maneuvers us through the lives and escapades of her characters in the most thought-provoking ways, using concepts lawyers and economists recognize and distinguish without her readers consciously comprehending it, much less appreciating the many basic principles which underlie everything she penned. A basic grasp on these disciplines is our first order of business in exploring her genius in these areas.

Studying for the law was a common profession in Regency England, and many young men attended to an education to prepare for the law. A basic understanding of legal regulations and the rule of law laid the foundation for society both then and now. Economics combined with that law fundamentally form the basis of culture and civilization.

When Adam Smith published *An Inquiry into the Nature of the Wealth of Nations* in 1776, he made handy and understandable concepts of economics to the public and set the stage for economic discussion for centuries to come. While it is quite likely that another book by Mr. Smith, *The Theory of Moral Sentiments* (1759), might have lain on Jane Austen’s writing table, it would also not be unexpected if she was familiar with the economic principles

discoursed upon in his economics work. Smith's economics was not foreign to Regency Era middle-class readers, as without a doubt most possessed at least a basic understanding of economic principles because their lives depended on it. From daily life to inheritance at death, they understood the value of a good income. Smith's copious book details groundbreaking principles of productivity, division of labor, markets and commodities, prices and price fixing, among others, and places each in the context of England at the time. His doctrines of economics, nonetheless, are principles that reveal themselves in everyday life and in everyday relationships. Understanding the productive powers of labor was something that every house manager, farmer, tradesman, and steward had to learn, and every member of the gentry understood at least vaguely that their lives depended upon economics.

THE INVISIBLE HAND AND THE ESTATE

Smith defined economics as the science of wealth, describing the process of wealth growth with reasons and causes of human activity common to all nations and peoples. He created the metaphor of the invisible hand to paint a portrait of the process.

As every individual, therefore, endeavours as much as he can both to employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value; every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. But preferring the support of domestic to that of foreign industry, he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.²

This invisible hand directs economic industry across nations and individuals, while it begins and ends in family life and personal decision-making.

Jane Austen understood this foundational economic concept which governed her time. As a first example, Longbourn, the Bennet home in *Pride and Prejudice*, offers the family a living from the endeavors of Mr. Bennet and his servants based on farming and livestock, creating value and income to support a family. Consider also Donwell Abbey, the home of Mr. Knightley in *Emma*, an estate which supports a mill, a good deal of farming, and a county seat next to the village of Highbury. In contrast, perhaps consider the lifestyle of Mansfield Park in the novel of the same title, which is supported by the ownership and economic efforts of Sir Thomas Bertram and those who work for him in faraway Antigua. An invisible center of production in the novel, Antigua is the source of much of Sir Thomas's wealth and impor-

tance. The owners of these distinct estates direct their industry in such a manner as its product may yield the greatest value for each family unit. Every proprietor, in his desire to promote his own self-interest and that of his family, also unintentionally promotes the welfare of so many others in a larger society. Longbourn provides income for the Bennet family, but also livestock for the people of the village of Meryton, led, as Smith would say, by an invisible hand to promote an end which was no part of its intention. Similarly, Donwell certainly benefits Mr. Knightley, but it also benefits Robert Martin and his family, and many in the areas of Donwell and Highbury, not necessarily part of Mr. Knightley's original intent. Comparatively, the shadowy (slave) plantations in Antigua owned by Sir Thomas Bertram, while providing benefits to the Bertram family, also seem to almost sinisterly be part of a larger economic scheme. Nevertheless, this estate and its owners benefit Fanny Price with an adopted home, and eventually a lifelong romance.

Ostensibly led by an invisible hand to promote an end which was no part of any original intention, each estate in an Austen narrative is a little economy onto itself, while also quietly contributing to a larger economy promoting the public interest. Jane Austen not only understood that the invisible hand of economic incentives directs these realities of home economics, but she also uses them to provide the colorful framework for romance, love, and life.

THE LAW AND ECONOMICS OF ESTATES IN LAND

Estates consist of land (real estate, or real property as lawyers would say) as well as personal property (things that are not land). There exists a special set of rules on the ownership and control of property during marriage. These rules are crucial because they set central incentives or disincentives for couples as they decide to marry and stay married.³ While modern American and British property law assumes an equal partnership view of marriage, women in Regency England were largely prohibited from property ownership in marriage. Under the doctrine of coverture, when a woman married all her property became that of her husband. Families make significant investments in their properties, and upon those investments rests the future of that family.⁴

Because women generally could not own or hold property, most estates were owned by men. Nearly all of the noted estates in Austen's novels are held by men, while the women generally have only a life estate interest in the land. A legal life estate is an estate held for the duration of a specified person's life. That person is also generally merely the possessor of that estate, not an owner. The life estate is a beneficial interest also known as a life interest or a life tenancy. A life tenant is responsible for the general maintenance and upkeep of the property, but has no ownership interest in it.⁵

A life estate was also something enjoyed by clergyman in Austen's time. The Reverend and his family were often given a life estate in the parsonage on a large estate. This was also often called "a living" in Austen's novels. The clergyman had a duty to keep the house in good repair, could improve the house, and farm the garden around the home, but he and his family did not have any ownership interest in it. The parsonage was situated on and part of the estate of the legal landholder where the main house was located. In *Pride and Prejudice*, for example, Mr. Collins's home, Hunsford, is on the estate of Rosings in Kent, where Lady Catherine DeBourgh and her daughter Anne reside. "My small rectory abuts her estate, Rosings Park, and she often condescends to drive by my humble dwelling in her little phaeton and ponies."⁶ Similarly, Mr. Wickham at first rejected the living on Pemberley, in Derbyshire, in the same novel. But after instead demanding a sum of money for his inheritance and having gambled that away, he demanded the living over again, only to meet with Darcy's refusal. In *Sense and Sensibility*, the Delaford estate is owned by Colonel Brandon, and he wishes to give the living of the estate to Edward Ferrars so that he can marry and have a home and family there after his mother abruptly disinherited him. Eventually Edward and Elinor reside in the parsonage at Delaford. "They had in fact nothing to wish for but . . . rather better pasturage for their cows."⁷ These are just a few examples, but in each novel a parsonage is generally located on part of a great estate.

Today, married couples generally hold property jointly, which is known as "tenants by the entirety," where each spouse owns (or as lawyers say "is seised of") an undivided interest in the whole property. Based on the legal notion that when a husband and wife marry they become one new unit, they own real property jointly. If one spouse dies the survivor inherits the entire tenancy—this is called a right of survivorship. A tenancy by the entirety can be held "only by a husband and wife and is not available to any other persons. And it can be acquired only during the marriage. This estate has a right of survivorship, but upon the death of one spouse, the surviving spouse retains the entire interest rather than acquiring the decedent's interest."⁸

Throughout her novels, Jane Austen lauds and endorses those who make good economic use of their property, while mischievously teasing those who hold their property more for spectacle. Consider Sotherton, the estate of Mr. Rushworth, Maria Bertram's betrothed, in *Mansfield Park*. "Having visited many more rooms than could be supposed to be of any other use than to contribute to the window tax, and find employment for housemaids," Mr. Rushworth and Henry Crawford spend a good deal of time contemplating "the possibility of improvements" on the already beautiful estate grounds "with much animation," not for any value improvement, but simply to keep up, possibly, with "his friend Smith's place."⁹ Similarly, *Sense and Sensibility*'s John and Fanny Dashwood cut down Norland's gorgeous and produc-

tive walnut grove to erect Fanny's greenhouse, which would "be a very fine object" and "exceedingly pretty."¹⁰ Indeed, Jane's most ridiculous characters often view topography as prestige. Jane shows her readers much about property itself and what it stands for, while gently chastising those ridiculous characters who value land only as a capricious ornament.¹¹

Equating an estate to one's self-esteem misses the economic target Austen so highly values. Rather, she values productivity as a key part of basic good economy. Productivity—or the amount of goods output per unit of labor or capital input—is scrupulously linked to wages.¹² Because she so highly values personal happiness, some Austen critics may believe she does not value wealth; on the contrary, she perceives its value most keenly. She understood that productivity and growth offer choices in lifestyle, standard of living, and life balance. Production and acquisition are consistent themes with which she plays, and she helps us to understand the positive benefit afforded by each. Economic principles provide a set of tools that can help evaluate and improve a world that is far from perfect; however, economics itself does not direct how to most beneficially and equitably use such tools.¹³ Jane Austen viewed economics as educational, and used economic principles in her socially enlightening commentary as a tool to help explain people's lives.

LAW AND ECONOMICS OF MARRIAGE PROPOSALS

Just as land and its production are basic to well-principled economics, fundamental economic principles also influence family support, particularly in the context of marriage. As Nobel Prize-winning economist Gary Becker has stated, "The family merits the great attention it receives from both scholars and laypersons, for despite major changes over time and enormous variations across social and economic environments, it remains the most influential of all institutions."¹⁴ Both family law and economic scholars tend to agree that being married has a lot to do with economic success.¹⁵ Foundational to American and British economic success is the marital commitment, providing a solid and stable family structure as the underpinning for economic growth. Sadly, for some in America, the lack of family structure for those individuals in never-formed families can effect a failure to realize such economic success.¹⁶

These principles permeate *Pride and Prejudice*. Even the obsequious Mr. Collins understands that economics has a great deal to do with marriage. He visits Longbourn with the express purpose of making a marriage match for himself with one of the Bennet sisters to compensate them for his inheriting the Longbourn estate. Upon the death of Mr. Bennet, the rest of the family will be made homeless by the entail of Mr. Bennet's estate to his cousin, Mr.

Collins. Rather than doom the sisters to such an ill fate, Mr. Collins independently and affirmatively decides that the best solution is to marry one of them so they all may remain living in the home. During his proposal to Elizabeth he expounds on this plan:

it remains to be told why my views (toward matrimony) were directed to Longbourn instead of my own neighborhood, where I assure you there are many amiable young women. But the fact is, that being, as I am, to inherit this estate after the death of your honored father (who, however, may live many years longer), I could not satisfy myself without resolving to choose a wife from among his daughters, that the loss to them might be as little as possible when the melancholy event takes place—which, however, as I have already said, may not be for several years. This has been my motive, my fair cousin, and I flatter myself it will not sink me in your esteem. And now nothing remains for me but to assure you in the most animated language of the violence of my affections.¹⁷

To add insult to injury, Mr. Collins concludes with his knowledge on the math of Elizabeth's lack of economic stature:

To fortune I am perfectly indifferent, and shall make no demand of that nature on your father, since I am well aware that it could not be complied with, and that one thousand pounds in the four per cents, which will not be yours till after your mother's decease, is all that you may ever be entitled to. On that head, therefore, I shall be uniformly silent; and you may assure yourself that no ungenerous reproach shall ever pass my lips when we are married.¹⁸

Mr. Collins is fully aware of his marriageable assets on the proverbial marriage ledger, and all of Elizabeth's liabilities. As if to further highlight the red ink in her economic ledger, despite her "manifold attractions," he insinuates her beauty and charm will never balance her lack of inheritance adding that her "portion is unhappily so small that it will in all likelihood undo the effects of your loveliness and amiable qualifications."¹⁹ His rude affront with full knowledge of the legal and economic benefits he has to offer does nothing but condemn his own recommendation.

On the other hand, the noble and proud Mr. Darcy is also fully aware of the economic effects and social burdens of an imprudent marriage to a woman of such low social and economic standing. In his first proposal to Elizabeth he declares to her openly how it would be a degradation for him to marry someone of Elizabeth Bennet's status as she is not a woman of fortune, or family wealth, or even family status, even if he is most ardently in love with her.

"In vain have I struggled. It will not do. My feelings will not be repressed. You must allow me to tell you how ardently I admire and love you." Elizabeth's

astonishment was beyond expression. She stared, colored, doubted, and was silent. This he considered sufficient encouragement; and the avowal of all that he felt, and had long felt for her, immediately followed. He spoke well; but there were feelings besides those of the heart to be detailed, and he was not more eloquent on the subject of tenderness than of pride. His sense of her inferiority—of its being a degradation—of the family obstacles which judgment had always opposed to inclination, were dwelt on with a warmth which seemed due to the consequence he was wounding, but was very unlikely to recommend his suit.²⁰

Both Mr. Darcy and Mr. Collins know all too well the importance of economics in any marriage decision, but both men were willing to put that all aside—Mr. Collins for duty, and Mr. Darcy for passion. Elizabeth, a woman who was virtually penniless, refuses to marry either man—one because of his inane nature, and the other, because of his hideous and repulsive pride.

The parallels between Collins's and Darcy's respective proposals, and Elizabeth's reactions, offer some insight into not only the novel's title, but also into the men Elizabeth tangles with. Mr. Collins, while silly and ridiculous, places the continuing of the Bennet sisters in their family home as his primary reason for marriage to Elizabeth, arrogantly assuming she will do so as a matter of economic and family obligation. For rich and status-conscious Mr. Darcy, he is willing to throw it all away (at least the societal status part) and degrade himself for love. Despising the economic duties and disincentives of both, Elizabeth acquiesces to neither. If left to her own decrees, Elizabeth would have fallen for a womanizing insolvent cheat in Mr. Wickham. She proves herself too proud (and romantic) to marry a man with otherwise good intentions—Mr. Collins—and too prejudiced to marry a rich, proud man—Mr. Darcy—all the while being ready and willing to place her heart into the throes of an impoverished, deceiving libertine scoundrel—Mr. Wickham. At least the men making the proposals understood how their actions would alter their own lives as well as the lives of others. Elizabeth is just as naïve in her romantic ideas, and Austen uses Elizabeth's pride and arrogance to teach the reader that marriage economics were of very significant consideration in England 300 years ago, though maybe not always well thought out by the young, romantic women burdened by them.

While teaching us law and economics, Jane Austen unfolds character change in her subjects. Over the course of the story, Elizabeth is transformed from a proud young woman to a person of humility, ultimately realizing her own grave judgment errors.

She grew absolutely ashamed of herself. Of neither Darcy nor Wickham could she think without feeling that she had been blind, partial, prejudiced, absurd. "How despicable have I acted!" she cried. "I, who have prided myself on my discernment! I, who have valued myself on my abilities! Who have often

disdained the generous candour of my sister, and gratified my vanity in useless or blameable distrust. How humiliating is this discovery! Yet, how just a humiliation! Had I been in love, I could not have been more wretchedly blind. But vanity, not love, has been my folly. Pleased with the preference of one, and offended by the neglect of the other, on the very beginning of our acquaintance, I have courted prepossession, and ignorance, and driven reason away, where either were concerned. Till this moment I never knew myself.”²¹

Economic position affects social status, which in turn affects any marriage proposal. In *Emma*, Harriet Smith receives in a letter a very nice marriage proposal from Robert Martin, a local farmer who resides at and works Abbey Mill Farm. Because Emma has already determined that Harriet is raised in social status simply by being her particular friend, she is determined to use her own matchmaking skills to see her marry well—and certainly does not want her to marry a farmer. When Harriet brings the letter to Emma for her advice, Emma is convinced that Robert Martin “is determined not to lose anything for want of asking. He will connect himself well if he can.”²² Upon reading the letter, however, Emma

was surprised. The style of the letter was much above her expectation. There were not merely no grammatical errors, but as a composition it would not have disgraced a gentleman; the language, though plain, was strong and unaffected, and the sentiments it conveyed very much to the credit of the writer. It was short but expressed good sense, warm attachment, liberality, propriety, even delicacy of feeling.²³

Affluent Emma Woodhouse had a hard time fathoming that a common farmer could write so well and feel so much. She was nonetheless shocked that Harriet would entertain the thought of accepting the proposal under any circumstance, and successfully talks her out of its acceptance because no friend of hers should be married to a farmer. “Dear Harriet . . . it would have grieved me to lose your acquaintance, which must have been the consequence of your marrying Mr. Martin . . . it would have been the loss of a friend to me. I could not have visited Mrs. Robert Martin, of Abbey-Mill Farm.”²⁴

Love relationships, particularly those involving marriage, are not uncommonly considered as a bargained for exchange, by economists and lovers alike, full with economic benefits and consequences. Commercial exchanges occur when a certain number of units of one good or service are traded for a certain number of units of another good or service. In an efficient economic market, the price that one party is willing to pay for an extra unit of the good (i.e., their demand for that good) is equal to the price that another party is willing accept to supply an extra unit of that good.²⁵ The “equilibrium” concept in economics, asserts that market prices adjust until the amount that

individuals demand of a good is equal to the amount that is supplied.²⁶ In marriage, the exchange is not always a unit of a good for a price. Rather it can be an exchange of emotional and/or financial objects. For example, there are tax benefits and burdens in marriage, as well as other financial duties, but also financial benefits. Jane Austen found ways to explain the societal views of these benefits or burdens through her characters.

Consider the declaration by then seventeen-year-old Marianne Dashwood in *Sense and Sensibility* when she quickly sized up Colonel Brandon (spoiler alert: her not-yet-apparent future husband) by discussing how ridiculous it is for a man his age to marry for anything but commercial gain. After Marianne spouts that Brandon is too old to marry, as “thirty-five has nothing to do with matrimony,” her eldest sister Elinor clarifies, “Perhaps . . . thirty-five and seventeen had better not have anything to do with matrimony together. But if there should by any chance happen to be a woman who is single at seven and twenty, I should not think Colonel Brandon’s being thirty-five any objection to his marrying her.” Marianne replies,

A woman of seven and twenty . . . can never hope to feel or inspire affection again, and if her home be uncomfortable, or her fortune small, I can suppose that she might bring herself to submit to the offices of a nurse for the sake of the provision and security of a wife. In his marrying such a woman therefore there would be nothing unsuitable. It would be a compact of convenience, and the world would be satisfied. In my eyes it would be no marriage at all, but that would be nothing. To me it would seem only a commercial exchange in which each wished to be benefited at the expense of the other.²⁷

Even in Marianne Dashwood’s romantic irrationality, she connects the economic dots, though all the same in a most entertaining way. Not recognizing it, Jane Austen’s readers learn lessons in the economic principles of supply and demand through the illustration of a commercial exchange of love.

LOVE AND LAW

Austen readers also unwittingly learn law. Legal principles surrounding love and domestic relationships are generally called family law or domestic relations law. Family law expresses a wide variety of values and objectives. Scholars have observed that law itself reflects differing views on how to best love and structure society.²⁸ The basic rules of family law appear in every one of Austen’s novels. Not only does she subtly offer basic universal rules of family law, but she offers them with a savory richness of understanding not only their importance but also their complexity.

Consider the death of the elder Henry Dashwood at Norland in *Sense and Sensibility*, where Austen illustrates the paternal laws of her time as primary

to families and highlights their effect on women. While the Dashwood women completely relied upon Mr. Dashwood's income in life, they were all left impoverished at his death. The last will and testament of his uncle, the owner of Norland, provided merely a life estate for Mr. Henry Dashwood, the right to enjoy and possess Norland for his life only, while it provided a complete testamentary entailment that skipped over him in favor of his grandson and son, Mr. John Dashwood. His dying words to John revealed how he was trapped by the law surrounding his own life estate which could not reach to his own wife and daughters. In this illustration Austen teaches that spouses have an obligation to each other in life and in death. In life the law calls this marital support, sustenance, or maintenance that allows "one to live in the degree of comfort to which one is accustomed."²⁹ In death this support is called a spousal elective share,³⁰ which generally insures that spouses can never be completely disinherited or left unsupported as a surviving spouse. But if there is no money or value remaining in a deceased spouse's estate, no wealth can pass to a surviving spouse. This becomes the situation Mr. Henry Dashwood found himself in—unable to leave his wife anything other than linen and household effects. Rather, his inheritance "was secured, in such a way, as to leave to himself no power of providing for those who were most dear to him, and who most needed a provision."³¹ Mrs. Henry Dashwood had not even the option to elect for a spousal share because all her husband ever possessed was a life estate in Norland which ended upon his death. The linens were apparently all he really owned.

In a similar way, parents have an obligation to provide financially for their children in life, called child support when families are broken or never formed, but there is no such requirement in death to continue that provision—even for minor children.³² A testator (the maker and signer of a will), with few exceptions, has the absolute right to direct his or her estate as he or she wishes. Mr. Henry Dashwood was passed over for an inheritance in favor of his grandson and had not enough time or opportunity to lay aside an inheritance for his dowry-impoverished daughters. All he could do was to "recommend [to his son John], with all the strength and urgency which illness could command, the interest of his mother-in-law and sisters."³³ Austen educates her readers in the law of family wealth transfer at death even with circumstances of nothing to convey.

Legal rules exist at the end of a marriage in death, but also at the initial entry into marriage. For example, while Marianne Dashwood complained about the advanced age of Colonel Brandon at 35, but her own age would have been a barrier to her marrying anyone. A girl of seventeen, even 300 years ago, could not legally marry without her parent's consent. This may be one reason why Elinor pipes up that thirty-five and seventeen "had better not have anything to do with matrimony together."³⁴ Austen's wit combined with a clear understanding of marriage laws helps us to understand the public

policy behind this minimum age requirement for marriage as one which works to protect a romantic seventeen-year-old from her own fatuous or puerile ideas. More on this subject will be discussed in following chapters.

Marital Contracting

Austen confirms that family law is timeless. Persistent themes of law that were true then remain true today and are pervasive throughout every novel. Important concepts such as conjugality (sexual connections),³⁵ privacy, and contract, embody distinct underlying principles throughout Austen's novels. While much of family law has traditionally been a matter of status, rather than contract, Austen can illustrate the transition law can make back and forth between the two. For example, when Mr. Darcy compels Mr. Wickham to marry Lydia Bennet in *Pride and Prejudice* to adjust her status and save the future societal esteem of the entire Bennet family, Mr. Wickham still makes a financial claim on that status by contract (as we discover Darcy funds), which is struck by Lydia's uncle Mr. Gardner. The sexual liaison between Lydia and Mr. Wickham in seclusion could not maintain privacy in the societal context in which the entire Bennet family resides. Austen uses her characters and their decisions to illustrate for us the legal balancing of rights and duties. She proves herself to be a master at weaving moral obligations into legal obligations.

Reflecting and exposing culture, Austen's work imparts law and economics with a continuous undercurrent mocking society. For example, in Lady Catherine DeBourgh's view, by all rights and family predetermination Mr. Darcy is set to wed her daughter Anne DeBourgh. This design will keep the wealth of each in the family circle. Readers find themselves, however, rooting for Mr. Darcy when he wishes to marry for love (despite his pride and wealth), an element he admired in his own parents' marriage. While Lady Catherine thinks she can impose a moral obligation on her nephew Fitzwilliam Darcy to carry out the wishes of herself and his deceased mother for their preset marriage choice for their children, Austen makes us herald his radical rebel tendencies in his having the nerve to marry a girl of no economic worth—and of mean social status to boot. Austen understands the proper level of deference for tradition and conventional views and practices while also provoking us to applaud the character that pushes the envelope against tradition for the sake of love.

SOCIO-LEGAL ECONOMIC CONNECTIONS THEN AND NOW

Tracing the law and economics of love through Austen's literature is not only entertaining fiction that is pervasively educational, it is also timeless.

Socioeconomic considerations continue to play a major part of the American dream in the twenty-first century, even explaining the economics behind America's marriage decline. Today, men and women are waiting longer to get married, as the percentage of men and women ages 25 and older who have never been married is steadily rising. The gender gap between never-married adults is also on a fairly steep incline, as more men are waiting longer to tie the knot—meaning that the number of never-married men is increasing more quickly than the number of never-married women.³⁶

According to recent research, women in the twenty-first century want to marry a man with a job.³⁷ The number of available employed men, however, throws a kink in that line, as the number of marriageable men with a job is on a declining trend. Tracked by the Pew Research Center by age and race, the numbers of men available to women wishing to marry is barely even across most individuals, and in some cases, women face a ratio of less than one man for every two women.

Upon her niece's request for advice in whether she should accept or decline a marriage proposal, Jane Austen reflected on the future of an unmarried woman. In a letter to her niece, Fanny Knight, she wrote, "Single women have a dreadful propensity for being poor—which is one very strong argument in favor of Matrimony."³⁸ Jane Austen herself accepted a proposal of the wealthy family friend Harris Biggs-Wither one evening, but in a matter of hours she could bear it no longer and reneged on her acceptance, instead reversing course and tendering to the affluent Mr. Biggs-Wither her rejection the next morning.³⁹ She must have initially felt compelled to accept the marriage proposal for his kindness and her security, but the idea of following through made her certainly miserable. (Or maybe she just saved us all the trouble of reading the work of novelist Jane Biggs-Wither!) The opportunity to be wealthy and comfortable came at too great a cost for Jane Austen.

OPPORTUNITY COSTS

A prime economic principle reigns in romance, known as opportunity cost. Opportunity cost, or alternative cost, is what you are giving up, or forgoing, for what you currently have. When something beloved costs too much it will be let go in favor of something else, as the opportunity cost for keeping that thing is simply too great for continuance.⁴⁰ The security Jane would find in marriage to Harris Biggs-Wither possibly carried an opportunity price tag of giving up her hope of marrying for love, which she could not endure. She simply could not trade her desire for a lifelong marriage of compatibility and chemistry for financial security, though some of her characters could. Mr. Willoughby, for example, traded his love for Marianne for fifty thousand

pounds. He counted the opportunity cost, made his decision, but lived to regret it.

Austen explains more in depth the economic concept of opportunity cost in her fictional families. Consider Mrs. Dashwood's action in *Sense and Sensibility*. Continuing at her beloved home, Norland, as long as she could became too costly for her when daughter-in-law Fanny Dashwood takes over as mistress of the estate and treats the Dashwood women as unwanted guests in their own home. The culmination of cost reevaluation occurs, however, when Fanny insults the eldest Dashwood daughter, Elinor, as less than worthy of her brother, Edward Ferrars's, affections and status. The opportunity cost of staying at the house she treasured in the face of such treatment was just too much to endure for Mrs. Dashwood, who chooses almost immediately to remove her impoverished daughters to a relative's cottage in Devonshire.

Or consider the decision of Mrs. Price, in *Mansfield Park*, who was willing to part with her precious eldest daughter (and likely mother's helper), Fanny, so that she could be raised in the better society of her Bertram cousins. The opportunity for Fanny to benefit was worth the cost to herself and her family in leaving their tiny, insignificant Portsmouth home for Mansfield Park. Austen personally understood the consequences of a lack of income and wealth and wrote about it from a perspective that has regaled millions of readers, all the while teaching and illustrating principles of basic law and economics and their consequences to men, women, children, and families.

ECONOMIES OF GRACE

Jane can even educate us on grace and the economy of forgiveness when we least expect or desire it. A prime example here is Elinor's forgiveness of Mr. Willoughby. After learning that Marianne is on her death bed largely due to his betrayal of her affections, he races to her sister's side to be forgiven. Attempting to explain himself, he begs, "You tell me that she has forgiven me already. Let me be able to fancy that a better knowledge of my heart, and of my present feelings, will draw from her a more spontaneous . . . less dignified forgiveness. Tell her of my misery and my penitence."⁴¹ About to acquit him of his guilt, Elinor remains quiet:

Her thoughts were silently fixed on the irreparable injury which too early an independence and its consequent habits of idleness, dissipation, and luxury, had made in the mind, the character, the happiness, of a man who, to every advantage of person and talents, united a disposition naturally open and honest and a feeling, affectionate temper. The world had made him extravagant and vain; extravagance and vanity had made him cold-hearted and selfish.⁴²

With so little scruple, Mr. Willoughby had left her sister to misery, and he reveals that “where I have most injured I can least forgive.”⁴³ Elinor, nonetheless, musters the poise to pardon Mr. Willoughby, assuring him not only of her forgiveness, but of her pity, and even her well wishes for his happiness. Austen reveals an economy of grace generously overflowing in an understanding of the perils of the heart even where a breadth of character was never groomed. While never a mother or a bride, Austen had insight and wisdom that could be transformed into guidance salient even today.

In Jane Austen’s fiction we glean elements of the law and elements of economics throughout each masterpiece. By connecting the economics of dating, sex, marriage, and parenting with laws of family relationships and property transfer through the works of Jane Austen, we are led on an exploration of sexuality, marriage, marital obligation, primogeniture, women’s rights, global trade, inheritance, spousal support, finances, personal security, child bearing, parental obligation, and a host of other issues in each chapter.

From the basics presented here we turn to the beginnings of love—the economic and legal considerations of romance and dating. Everything you need to know about law and economics can be learned from Jane Austen.

NOTES

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3. Brian Bix, *Oxford Introductions to U.S. Law: Family Law* (Oxford University Press, 2013), 153.
4. Charles Wheelan, *Naked Economics: Undressing the Dismal Science* (W.W. Norton & Co., 2002), 209.
5. Bryan A. Garner, *A Handbook of Family Law Terms* (West Group, 2001), 225.
6. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 13.
7. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 50.
8. Bryan A. Garner, *A Handbook of Family Law Terms* (West Group, 2001), 224.
9. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapters 9 and 10.
10. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 33.
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12. N. Gregory Mankiw, *Macroeconomics*, 7th edition (Worth Publishers, 2010), 59–60.
13. Charles Wheelan, *Naked Economics: Undressing the Dismal Science* (W.W. Norton & Co., 2002), 229.
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17. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 19.
18. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 19.
19. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 19.
20. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 34.
21. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 36.
22. Jane Austen, *Emma* (John Murray II, 1815), Chapter 7.
23. Jane Austen, *Emma* (John Murray II, 1815), Chapter 7.
24. Jane Austen, *Emma* (John Murray II, 1815), Chapter 7.
25. Hal R. Varian, *Intermediate Microeconomics: A Modern Approach*, 8th Edition (W.W. Norton & Company, 2010), 310–311.
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27. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 8.
28. Brian Bix, *Oxford Introductions to U.S. Law: Family Law* (Oxford University Press, 2013), 243.
29. Bryan A. Garner, *A Handbook of Family Law Terms* (West Group, 2001), 531.
30. Bryan A. Garner, *A Handbook of Family Law Terms* (West Group, 2001), 208. If a spouse is left nothing by will he or she can elect to take a share of the spouse’s estate as set by state statute.
31. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 1.
32. Only the state code of Louisiana requires a forced share for minor children in a testamentary (a will) or a non-testamentary (intestate) estate. See, for example, Ralph Brashier, “Protecting the Child from Disinheritance: Must Louisiana Stand Alone?” 57 Louisiana. L. Rev (1996), <http://digitalcommons.law.lsu.edu/lalrev/vol57/iss1/4>.
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36. “Record Share of Americans Have Never Married: As Values, Economics and Gender Patterns Change,” *Pew Research Center*, September 24, 2014, https://www.pewresearch.org/wp-content/uploads/sites/3/2014/09/2014-09-24_Never-Married-Americans.pdf.
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41. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 44.
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Chapter Two

The Dating Game

The Economics of Information

Seeking money in relationships was quite common to Jane Austen's eye, and she used her favorite characters to expose them. As when Emma was so repulsed by a marriage proposal from Mr. Elton, the young clergyman of Highbury because, "[h]e only wanted to aggrandize and enrich himself, and if Miss Woodhouse of Hartfield, the heiress of thirty thousand pounds, were not quite so easily obtained as he had fancied, he would soon try for Miss Somebody-else with twenty, or with ten."¹

Making a new romantic association generally begins with the dating scene in America today, but three hundred years ago it began with families and community connections. The law and economics surrounding dating are more substantial than a reader today might expect, but Jane Austen understood all facets of the dating game and what economists call optimization principles, applying such concepts to her masterpieces.

Jane Austen opens *Pride and Prejudice* with the news that Mr. Bingley, "a young man of large fortune from the north of England," has let Netherfield Park. According to local gossip, Mr. Bingley is "quite young, wonderfully handsome, extremely agreeable, and, to crown the whole, he meant to be at the next assembly with a large party."² Obsessed with finding spouses for her daughters, Mrs. Bennet's joy in hearing news of wealthy, handsome Mr. Bingley's imminent move to Netherfield Park may only be imagined until she adopts a strategy to get him to marry one of her daughters. But nothing goes quite as Mrs. Bennet assumes. Despite Mr. Bingley's "easy, unaffected manners,"³ he seems unable to actually make a commitment. Instead, Mr. Bingley relies on his friend Mr. Darcy's direction, and tries to detach himself from Jane Bennet. It all ends happily, however, particularly for Mrs. Bennet,

when Mr. Bingley does return to marry Jane Bennet. While most women do not see themselves as a Mrs. Bennet who goes hysterical when a new marriage prospect moves into town, women today nonetheless, at least initially, evaluate the Mr. Bingleys of life by their wealth, status, attractiveness, and charm.⁴ This is how dating considerations begin.

Consider the contrivance behind Henry and Mary Crawford's arrival to the neighborhood of Mansfield Park in the novel of the same title. Their hostess sister, Mrs. Grant, "had not waited for [Mary's] arrival to look out for a suitable match for her; she had fixed on Tom Bertram; the eldest son of a baronet was not too good for a girl of twenty thousand pounds."⁵ A young person's behavior and arrival into a neighborhood indicates his or her eligibility and intention in the dating scene. "Miss Crawford was glad to find a family of such consequence so very near them, and not at all displeased either at her sister's early care, or the choice it had fallen on. Matrimony was her object, provided she could marry well."⁶ Dating (or courting as it was sometimes called) with the intent to find a suitable match, among a scarce set of marriageable individuals, immediately transitions into a competitive market scenario for all of Jane's characters, and it usually begins with some careful prodding from the family.

THE LAW OF PRIMOGENITURE

The English laws of primogeniture have tremendous bearing on this targeted dating strategy. Notice that Mary Crawford is "fixed on" the eldest son.⁷ She is not alone in doing so in Austen's works. Lucy Steele, in *Sense and Sensibility*, also focused her sights on the eldest son, an interesting muddle that she maneuvered through masterfully, and will be discussed shortly.

Primogeniture dictated that intestate estates, those where no written will directed otherwise (or what lawyers would call entailed without a testamentary estate plan), were inherited by the eldest son.⁸ An estate distributed by intestacy is directed by default legal rules when there is no will or trust in place to otherwise direct the order of inheritance upon the death of a property owner. And by the law at the time, the eldest son would inherit all the family property. If the eldest son was not available to inherit because he died before his father died (or as lawyers would say he predeceased the decedent), or was never born, as in the Bennet family in *Pride and Prejudice*, the estate would go to the first available male relative within a statutory consanguineous (blood-related) hierarchy, in that case, Mr. Collins. This often left women homeless, as it would have for the Bennet women. The reason for this seemingly incongruous concept was that Britain wanted to preserve intact properties and prevent the nation's wealth from becoming decentralized and divided. While some fathers were able to set aside money for younger sons,

most second and third sons would enter the military, clergy, or law to support their families.⁹ Adam Smith explains in his *Wealth of Nations*, primogeniture and entails prevented great estates from being divided.¹⁰ In order to not weaken the estate by division it had to descend in its entirety to one child alone. According to Smith in his time, “The male sex is universally preferred to the female; and when all other things are equal, the elder every-where takes place of the younger. Hence the origin of the right of primogeniture, and of what is called lineal succession.”¹¹ Smith quickly follows this statement by pointing out the absurdity of the law in both its favor and natural effects. “In every other respect, nothing can be more contrary to the real interest of a numerous family, than a right which in order to enrich one, beggars all the rest of the children.”¹²

Thus, Mary Crawford sets her sights on the elder son, Tom Bertram. But when Tom Bertram in *Mansfield Park* has no interest in Mary Crawford she turns to Edmund Bertram, the second son, and wishes for Tom’s early demise. In her own words, she seems to be rejoicing at Tom Bertram’s declining health and potential death, and states, “I put it to your conscience, whether ‘Sir Edmund’ would not do more good with all the Bertram property than any other possible ‘Sir.’”¹³ Despite his powerful attraction to Mary, Edmund is repulsed by her sentiments, scorning her love when he perceives her greed. When Tom is taken ill after what seems to be too much indulgent partying, Mary Crawford’s true colors are revealed. Austen’s heroine, Fanny Price, saw Mary’s desire for a new primogeniture as “cold-hearted ambition.”¹⁴ It seems Jane Austen does as well, mocking it and the notion of primogeniture in several of her novels.

Circumstances of primogeniture create part of the setting not only of *Mansfield Park*, but also in *Pride and Prejudice* (for the disinherited Bennet sisters) and *Sense and Sensibility* (for the disinherited Dashwood sisters). Under the laws of primogeniture a female child could never inherit an intestate estate.¹⁵ She could, however, be left an inheritance by will, as not all estates passed through intestacy. Wills and settlements were often restricted by an earlier device, and still favored the eldest son in an effort to ensure family estates remained intact and did not have an obligation to support other family members.¹⁶ Understandably, this tradition of keeping family property together often economically devastated the remaining female family members after a husband or father died.¹⁷ Women often had no means to support themselves, as their education was usually limited to art, music, dancing, and language, rather than law, politics, theology, military, or even the option of business.

For example, in *Sense and Sensibility*, when wealthy Henry Dashwood dies his entail (i.e., how his estate is determined to be distributed) requires that his wealth is inherited by the son of his first wife, John Dashwood, as introduced in chapter 1. Notably, if for any reason John was unavailable to

inherit, under the entail, the estate would then go to John's eldest son. This entail immediately impoverished the second Mrs. Henry Dashwood and her three daughters. In the novel, if it had not been for a compassionate cousin, Sir John Middleton, offering use of a country cottage to the women, the Dashwood's situation would have been desperate indeed. For most of the gentry class, primogeniture prevented women from inheriting wealth other than their dowry, keeping them dependent on their male relatives.¹⁸ It also weighted women's preferences toward the eldest son when it came time to consider romance in the dating and marriage market.

Lucy Steele in *Sense and Sensibility* mastered this concept, ordering her love life literally by primogeniture. When the elder son to whom she was engaged lost his fortune *because* he was engaged to her, she ensured her affections transferred to his younger brother, on whom their mother had resultingly permanently fixed the entire family fortune:

The whole of Lucy's behavior in the affair, and the prosperity which crowned it, therefore, may be held forth as a most encouraging instance of what an earnest, an unceasing attention to self-interest, however its progress may be apparently obstructed, will do in securing every advantage of fortune, with no other sacrifice than that of time and conscience.¹⁹

While morally this may be appalling (especially to romantics who value emotional connection between people regardless of money), economically Lucy is acting perfectly rationally. Lucy's example illustrates where economic decisions can fall short of societal expectations of conscience. In economics, this primarily relates to optimal choice theory.

Optimal choice theory describes an ordering of preferences and alternatives based on their relative utility to the chooser (also known as "ordinal utility"),²⁰ theorizing that the chooser will rationally arrive at a result which is his or her optimal choice. Economics can make a positive statement about what is the rational choice for a person, or state what a person should do to maximize utility. It does not, however, make a normative statement about what one *ought* to do morally. Often there exists a dichotomy between efficiency (maximizing utility by the aforementioned invisible hand) and equity. Edward Ferrars, Lucy's first betrothed, displays the opposite conduct of hers. Despite knowing that marrying Elinor, who he loves, would maximize his own utility (or happiness), he chooses to do the honorable thing and will remain true to his promise to Lucy regardless of the monetary (or emotional) consequences upon his own life. One could argue that if honor and love were measurable goods, perhaps Edward's utility maximization depends more on honor than love and thus, he truly is maximizing his utility by being honorable. Regardless, there is still a debate of whether he should have followed his heart or his honor. With this understanding and inordinate mastery, Jane

Austen diametrically places Edward's behavior in direct opposition to Lucy's.

This concept of primogeniture drove many connections in *Sense and Sensibility* particularly. Though young Eliza and Colonel Brandon loved each other and were about to elope in his tale of woe, her guardian (his father) stopped them and required her to marry the eldest son because she had a dowry which the Delaford estate desperately needed. "Her fortune was large, and our family estate much encumbered."²¹ The guardian forced his ward to marry his eldest son to keep her money with the Brandon family estate of Delaford. If the guardian had allowed her to marry the man she loved—his second son, Colonel Brandon—there would be no benefit to Delaford as the second son would not inherit Delaford under primogeniture. Many women were chosen for marriage to a son by families who needed the woman's inheritance. If Eliza's guardian had allowed her to marry the man she loved, her wealth would have gone to Colonel Brandon directly, and not to the Delaford Estate. But as Jane Austen has it turn out, by the time the reader enters the story Colonel Brandon ends up with the entire estate anyway, as his father and elder brother have predeceased him. The damage was done, nonetheless, for poor Eliza.

The concept of primogeniture never caught on in America, as rather the notion of the freedom of disposition, that a person can transfer his or her property at death as he or she wishes, became constitutionally protected as a fundamental right.²² Regulating land estates was then and is now one way of directing economics with the law. Regulating titles and ranks was another way of directing society in a legal order of importance and social status.

TITLE AND STATUS

A man's title or status can also make a big difference in the dating market. Consider again our original example, Mary Crawford in *Mansfield Park*, who is obviously pleased with the fact that Tom Bertram is the son of a baronet. Austen gives insight into the typical societal checklist for a worthy match with Miss Crawford's initial interest in Tom Bertram, noting that he was pleasant, "had easy manners, excellent spirits, a large acquaintance, and a great deal to say; and the reversion of Mansfield Park, and a baronetcy, . . . a real park, five miles round, a spacious modern-built house, . . . pleasant sisters, a quiet mother, and [was] an agreeable man himself."²³ Having made this evaluation, "Miss Crawford soon felt that [Tom] and his situation might do."²⁴ Being the first son of a baronet meant that one day Tom Bertram would assume his father's baronetcy to be Sir Thomas, and the wife of a baronet upon marriage became his Lady. An ambitious woman would seek to date in these circles of title and rank.

Jane Austen amused herself and her readers with her cynical attitude toward status and rank. As a prime example of her sarcasm, Sir Walter Elliot in *Persuasion* is the quintessential model of rank, and Austen proceeds to explain but shatters his title and status most amusingly:

Vanity was the beginning and end of Sir Walter Elliot's character; vanity of person and of situation. He had been remarkably handsome in his youth, and at fifty-four was still a very fine man. Few women could think more of their personal appearance than he did, nor could the valet of any new-made lord be more delighted with the place he held in society. He considered the blessing of beauty as inferior only to the blessing of a baronetcy; and the Sir Walter Elliot, who united these gifts, was the constant object of his warmest respect and devotion.²⁵

Other men of rank are scattered in Austen's novels, such as Sir John Middleton of Barton Park (*Sense and Sensibility*) who was simply identified as "a gentleman of consequence and property in Devonshire."²⁶ But Sir William Lucas's title (*Pride and Prejudice*) is not from any noble line of birth, but rather from having been knighted at court, making it not nearly as valuable as a baronetcy:

Sir William Lucas had been formerly in trade in Meryton, where he had made a tolerable fortune and risen to the honour of knighthood by an address to the king, during his mayoralty. The distinction had perhaps been felt too strongly. It had given him a disgust to his business, and to his residence in a small market town; and quitting them both, he had removed with his family to a house about a mile from Meryton, denominated from that period Lucas Lodge, where he could think with pleasure of his own importance, and, unshackled by business, occupy himself solely in being civil to all the world. For, though elated by his rank, it did not render him supercilious; on the contrary, he was all attention to everybody. By nature inoffensive, friendly, and obliging, his presentation at St. James's had made him courteous.²⁷

A Lord is another critical title of status and rank, and the importance of the father in being a Lord offers consequence to his family. This importance is keenly felt by Mrs. Ferrars in *Sense and Sensibility* when she pronounces the superior value of the match she has chosen for her son, Edward: "Miss Morton is Lord Morton's daughter."²⁸ The Ferrars family thinks about marriage in terms of advancing the family's wealth and social class. Title and rank make a man or woman a superior choice for making a personal connection, particularly one that could lead to marriage. Jane Austen not only reveals that fact but shows her detestation of it in making the Ferrars family quite silly in numerous ways. Jane understood the nuances of economic decision-making when choosing a partner, however, she saw through the shallow, self-utility-maximizing decisions, and also knew the intrinsic value

of love. It is as if Elizabeth Bennet asserts Jane Austen's heart in *Pride and Prejudice* when she proclaims that she is determined that only profound love will induce her into matrimony.

Nonetheless, Jane Austen did value one status—the British Navy, a fact that is clear in *Persuasion*. All the navy brass in that novel are afforded great respect by Austen and granted special treatment by any interested ladies and their parents. But any military status was generally valued in Regency England. General Tilney and his son Captain Tilney in *Northanger Abbey*, Colonel Brandon in *Sense and Sensibility*, and the infatuation with officers in *Pride and Prejudice* are evidence of that. When an eligible man is mentioned with a title or rank attached, his romantic value unsurprisingly rises.

ECONOMIC UTILITY FUNCTIONS IN DATING

Personal variables like money, property, and status discussed above continue with many other elements like beauty and charm. Imagine for a moment that these variables are inputs into romantic decision-making—which, we assert they are. A “utility function” orders certain bundles of goods into a ranked set based upon one's preferences.²⁹ In romantic relationships, these “bundles” could be conceived as wealth and property, beauty and charm, or infinite other combinations of personal qualities. Jane Austen uses Mary Crawford in *Mansfield Park* to demonstrate this concept in a romantic setting. Mary lists the primary variables or inputs that go into a woman's economic utility function in the dating and marriage market during Jane's era: money, social status, land, and family—these were the elements she, and many others, valued most. To Mary, money was, and might still be for many today, preferred most and weighted the highest of these inputs, with social status following close behind, as a high social status was generally accompanied by more money. A woman at that time, and still today, had to possess certain qualities of her own as inputs into the man's utility function to attain him. Variables that women brought to the table at that time might be money in the form of dowry, family status, beauty, and classical education. One thing common about these desirable qualities is that to those who demand them *more is always better*—more wealth, more beauty, more charm, equates to being more desirable in general. Choices, however, reveal an individual's preferences, such as Mr. Darcy choosing Elizabeth over Anne DeBourgh (revealing his preference for love over status and money), Mary Crawford choosing to pursue Edmund over Tom Bartram (revealing her preference for opportunistic gain and Edmund's personality over Tom himself), or Anne Elliot choosing Captain Wentworth over Mr. Elliot (revealing her true love and perfect constancy above all else).³⁰

Having described the variables that men and women input into their romantic utility function, we now face the inevitable concept of budget constraint. A woman with minimal sought-after qualities may not necessarily attain a sought-after man, and vice versa, therefore the budget constraint places a restriction on the dating market. For example, consider a dating market with only two variables: charm and money. As shown in figure 2.1, Mr. Collins preferred Elizabeth most, Charlotte Lucas next, and preferred someone like Mary Bennet least of all. His preferences were determined by the desirable qualities that each of these ladies possessed. The combination of charm and money that Mr. Collins possessed, however, could not attain Elizabeth (as she preferred a suitor with substantially more charm), but it could obtain Charlotte Lucas. Sadly, Mary Bennet did not have enough charm and money to make herself preferable to Mr. Collins. While Elizabeth did not possess the quality of having a large fortune or being well educated—qualities that would traditionally have made her more sought after—she still possessed a certain level of variable inputs (beauty, charm, wit, and other qualities) that made Mr. Collins and Mr. Darcy fall for her. By marrying Charlotte Lucas instead, Mr. Collins reached the highest level of utility he could while subject to his own personality constraints—he made an efficient choice. The straight line in the figure represents Mr. Collins’s budget constraint in the categories of charm and money, and the points on the curved lines represent the level of these qualities that Elizabeth, Charlotte, and Mary possess, respectively.

To belabor the example further, Mr. Collins was looking for beauty, some dowry, and the opportunity to create mutual happiness for all parties in his search for a wife. Thus, in his utility function, he gets more utility as his potential wife is more beautiful, has more dowry, and more people (specifically Lady Catherine) are happy from his match. He is constrained, however, by, let’s say, his ridiculousness. Thus, he is not able to attain Elizabeth, as shown in the graph above. Similarly, poor Mary Bennet does not possess enough of the amiable qualities Mr. Collins is looking for to catch his eye. He does the very best he can do, that is, he optimizes his choice in the marriage market. This is the romantic optimal choice theory in action.

Mary Crawford in *Mansfield Park* is helpful here as she lays out the explicit utility function for a female in the Regency era, and it may be surprisingly similar to a woman’s utility function today, and she states that clearly. “I would have everybody marry if they can do it properly: I do not like to have people throw themselves away: but everybody should marry as soon as they can do it to advantage.”³¹ Those advantages can be categorized into what we discussed above: budget constraints and utility preferences.

Despite the fact that this optimal choice decision-making process may seem boiled down to mathematical formulas, there is another variable worth discussing: emotion. Emotion, of course, plays a role in falling in love, but

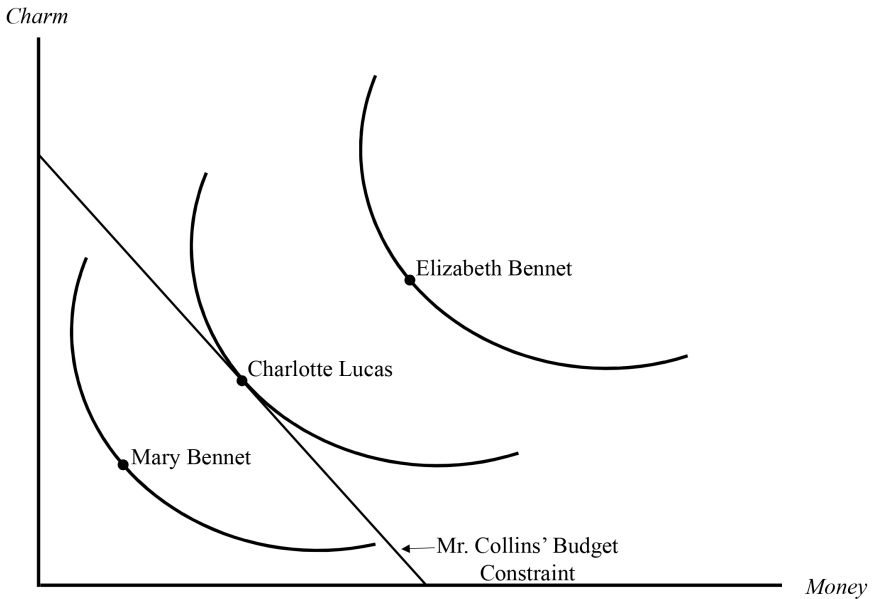


Figure 2.1. Mr. Collins's Budget Constraints

other variables like beauty, charm, and money can influence the emotion variable. Think of Harriet Smith in *Emma*—she was constrained by certain personal qualities. She was pretty and good-tempered, but the mystery around her parentage made her a match that no gentleman would then desire. The emotional variable played a great deal of weight in Harriett's utility function and her ordinal ranking of individuals. Her affections changed very quickly from ranking Robert Martin highest in her regard to Mr. Elton to Mr. Knightly, and finally back to Robert Martin. Her budget constraint, however, only allowed her to attain the final man. Emotion may carry more or less weight for some individuals, and Austen scholars have proffered that emotions in Jane Austen's novels typically lead to bad decisions. Keeping one's emotions in check, such as Elinor Dashwood or Anne Elliot were able to do, allowed those characters to strategically use their emotions for their later gain.³² Allowing emotions to rule decision-making does not always result in the best outcome, as with Marianne Dashwood or Harriet Smith. This is something to keep in mind for not only this current discussion, but also in future chapters.

ASSORTATIVE MATING

While dating is a method or process of matching men and women of different qualities, economists refer to this progression as assortative mating. Dr. Gary Becker explains, “an efficient marriage market usually has positive assortative mating, where high-quality men are matched with high-quality women and low-quality men with low-quality women.”³³ Jane Austen formalized this in her works (as we described above), and she particularly used her character Emma Woodhouse to try to subvert this principle. Emma’s key experimental subject was the aforementioned Harriet Smith.

Emma is continuously working to raise Harriet’s status through her potential matches. Upon being welcomed to Emma’s home, Hartfield, Harriet was “so artlessly impressed by the appearance of everything in so superior a style to what she had been used to” that Emma was determined to give her encouragement for her own future social status.³⁴ “Those soft blue eyes, and all those natural graces, should not be wasted on the inferior society of Highbury and its connections. The acquaintances she had already formed [with the Martins who are farmers] were unworthy of her.”³⁵ So Emma first tries to connect her with Mr. Elton, Highbury’s arrogant young clergyman. When that backfires in a proposal to Emma from Mr. Elton, which she rejects immediately, Emma then attempts to connect her with Frank Churchill, a gentleman set to inherit a large estate. Emma is so successful at making Harriet think she can marry into that higher social status that Harriet falls in love with the most admired hero of their society, Mr. George Knightly. When this happens, however, Emma finally recognizes that Mr. Knightly is far above Harriet’s social status, and that she wishes to claim Mr. Knightly as her own. All the while Robert Martin, the farmer, a man of Harriet Smith’s level of quality (as Becker would say) or within her romantic budget constraint (as we would say), is desperately in love with Miss Smith. By the end of the novel Robert’s proposal to Harriet is finally accepted, and everyone is happy—especially Emma.

Austen vividly illustrates an efficient dating market with positive assortative mating at work using the ridiculously clueless Emma to demonstrate.

DATING MARKETS

What we see in these connections are actually markets of potential husbands and wives where families and communities cultivate that storehouse. The Bath Pump Room in *Northanger Abbey* exposed a type of dating meat market, one might say. “Every creature in Bath . . . was to be seen in the Room at different periods of the fashionable hours.”³⁶ Men and women and their families frequented this location to connect.

When families connect with each other, as Becker says, they “induce a relation between the altruisms in different nuclear families.”³⁷ That is to say, they realize that their social connections are helpful to each other. For example, the Bennets and Lucases would host social gatherings at their homes to encourage connections for their daughters. Families also realize that they may gain future legal connections with each other (by marriage), which would necessarily yield greater connections. Those connections are either desirable or undesirable, fostering altruism between the families under certain desirable circumstances or not. Consider the example of the Ferrars family with the Dashwood family in *Sense and Sensibility*. Mrs. Ferrars was pleased to have her daughter Fanny marry John Dashwood because he had substantial financial assets and the future inheritance of Norland as the eldest son. She did not approve, however, of her own son, Edward, connecting with Elinor Dashwood as a “penniless” woman. Fanny makes her family’s disapproval perfectly clear to Mrs. Dashwood in their discussion regarding Edward and Elinor’s growing attachment, noting “Mrs. Ferrars’ resolution that both her sons should marry well, and the danger of attending any young woman who attempted to draw him in.”³⁸ Edward’s mother intends him to marry a woman of high rank and fortune, while the notion of being “drawn in” by a woman was a common term that reflected the high desirability of marriage for women, because it offered women a higher social status, greater affluence, more power, financial security, and it was this notion that made almost all women subject to suspicion of such designs.³⁹

These are Austen’s illustrations of marriage markets. Accordingly, the term “marriage market” is used metaphorically by economists to signify that the mating of human populations is highly systematic and structured. In fact, just as it was in Regency England, so it is based on the connections of family and community today. Becker discusses this as an aspect of current American culture when he states “persons in a marriage market often use intermediaries as ‘brokers,’ participate in church socials, attend coeducational schools, and take part in other activities designed in part to bring eligible persons together, and advertise their services in many ways.”⁴⁰ The market is simply where and how people interested in a romantic partner connect. As described above, each individual’s utility function, attraction variables, and budget constraint subtly determines the outcome in this market. While we do not want it to sound like a marriage decision can be boiled down to a purely objective decision-making process, in economics, practically any market can be simplified into a workable formula. Emotion is just a variable that some people like to think determines most romantic outcomes; however, emotion is exogenous and serves as yet another factor included with other variables. Austen illustrates this with Elinor Dashwood and Edward Ferrars so well, as while they are highly attracted to each other initially and have sincerely strong (albeit hidden) emotions for each other, it nonetheless takes the entire

story to bring them together because they are able to control the weight of their emotional variables and better react to the many other variables involved in their family connections.

Dating requires searching for those key marriageability indicators in that marriage market. As we learned in chapter 1 that often means the man has to have an income. Charlotte Lucas in *Pride and Prejudice* recognizes the value of a man with a position and wealth, as she “accepted [Mr. Collins] solely from the pure and disinterested desire of an establishment, cared not how soon that establishment were gained.”⁴¹ After Elizabeth rejects Mr. Collins’s proposal, Charlotte is quick to begin her “scheme” as Jane Austen calls it, to engage his affections in rebound.

Sir William and Lady Lucas were speedily applied to for their consent and it was bestowed with a most joyful alacrity. Mr. Collins’s present circumstances made it a most eligible match for their daughter, to whom they could give little fortune, and his prospects of future wealth were exceedingly fair.⁴²

Rejected marriage proposals bring the marriage market into more perfect clarity as they can reveal the rank order of certain individuals’ preferences. Jane Austen uses Mr. Elton, the village clergyman in *Emma*, to illustrate this point. Upon Emma’s rejection of his marriage proposal, he immediately sets out for Bath, where he has “pressing entreaties of some friends” whom he doubtless hopes will assist his further romantic connections in rebound of Emma’s rejection. “Mr. Elton being the adoration of all the teachers and great girls in [Mrs. Goddard’s] school” left this seemingly plentiful dating market to a more profitable one of the wealthy ladies in Bath.⁴³ Nonetheless, Austen uses Emma’s response to Mr. Elton’s departure to illustrate how appalling were his objectives in desiring a connection with Emma, the richest woman in the village.

Contrary to the usual course of things, Mr. Elton’s wanting to pay his addresses to her had sunk him in her opinion. His professions and his proposals did him no service. She thought nothing of his attachment, and was insulted by his hopes. He wanted to marry well, and having the arrogance to raise his eyes to her, pretended to be in love; but she was perfectly easy as to his not suffering any disappointment to be in love. . . . He only wanted to aggrandize and enrich himself, and if Miss Woodhouse of Hartfield, the heiress of thirty thousand pounds, were not quite so easily obtained as he had fancied, he would soon try for Miss Somebody-else with twenty, or with ten.⁴⁴

The law terms Mr. Elton’s objectives as a marriage of convenience, entered into for social or financial advantages rather than out of mutual love.⁴⁵

Similarly, Maria Bertram of *Mansfield Park* is used by Austen to show the folly of “rushing-to-worth” in a marriage market by quickly engaging

herself to the silly, tubby simpleton Mr. Rushworth. Her aunt had a lot to do with this, as Mrs. Norris's hope was that her favorite niece, Maria, would be "well married," leading her to often think of matchmaking "when they were in the company of men of fortune, and particularly on the introduction of a young man who had recently succeeded to one of the largest estates and finest places in the country."⁴⁶ Mr. Rushworth was the chosen suitor for Maria because, while he "was a heavy young man, with not more than common sense . . . there was nothing disagreeable in his figure or address,"⁴⁷ he had a house in town, and he had an impressive income of twelve thousand pounds a year. Some family members disapproved of so much weight on financial variables, but remained silent on the matter, probably due to the social pressure of the time. For example, the fact that Maria's happiness would "centre in a large income" was more than a little frustrating to her brother, Edmund, but, such a match was so socially acceptable that "no one felt a doubt of [the absent Sir Thomas's] most cordial pleasure in the connection."⁴⁸ As every reader of *Mansfield Park* learns, that "Rush" to "Worth" does not, however, create true happiness for Maria, as her straying infatuations with Mr. Crawford eventually end in her divorce and poverty, a matter which we discuss with more depth and focus in chapter seven.

General Tilney in *Northanger Abbey* stands tall as another example of the power of family approval or disapproval. When the General sees the growing attachment between his son, Henry, and Catherine Morland, he is all attention when he hears of rumors regarding her potential fortune from the Allens, the kind family that has invited her to Bath with them. When the General learns the truth, that the Allens have no intention of leaving any such fortune to Catherine, he turns completely against her. General Tilney's misunderstanding of Catherine Morland's fortune, or lack thereof in *Northanger Abbey* is another Austen illustration of pitiable parental concern focused on wealth, rather than the happiness of his children, another area of law and economics discussed in depth in chapter six.

SOCIO-LEGAL RULES OF HOW PEOPLE CONNECT

Family connections were of first consideration in the match-making scene. Obsessed with finding spouses for her daughters, Mrs. Bennet's joy in hearing news of wealthy, handsome Mr. Bingley's imminent move to Netherfield Park in *Pride and Prejudice* is seemingly silly to her husband, but necessary for the girls' future security. In Austen's novels, parents critically evaluated potential matches for their sons and daughters based on age, wealth, and social status.

Community connections were almost equally vital. *Pride and Prejudice* opens with the well-known Austen statement, which underlies the family and

community object of dating: "It is a truth universally acknowledged, that a single man in possession of a good fortune, must be in want of a wife."⁴⁹ Jane understood the universality of certain dating rules. Historically, procuring a suitable match was treated as an important undertaking.⁵⁰ Families often invested heavily in providing their daughters a "season" in London in order to solicit marriage offers.⁵¹ After coming out in Society, young women had a single duty to find a suitable match. Marriage to a desirable candidate with wealth and social status was a woman's crowning achievement, with parents and extended family managing the selection process, as we have seen.

Jane Austen discusses a girl's coming-out process in *Mansfield Park* when Miss Crawford is puzzled over whether Fanny Price is "out" yet: "[Fanny] dined at the Parsonage, with the rest of you, which seemed like being *out*; and yet she says so little, that I can hardly suppose she *is*."⁵² Edmund Bertram answers that "[m]y cousin is grown up. She has the age and sense of a woman," but he honestly acknowledges, "the outs and not outs are beyond me."⁵³ In analyzing whether Fanny was out in the dating market, Miss Crawford explains that the distinction between out and *not* out was generally clear in Austen's time: "Manners as well as appearance are, generally speaking, so totally different. . . . A girl not out has always the same sort of dress: a close bonnet, for instance; looks very demure, and never says a word."⁵⁴ Almost like flipping a switch, in coming-out, or entering the dating scene, a girl went from plain and taciturn to beautiful, confident, and even boisterous. After coming out into society, under the guidance of a chaperone, a young woman began targeting a suitable match.⁵⁵ And if a girl had an elder sister, only after her sister secured her own fortune did she become free to enter the market. For example, practically from the moment Charlotte Lucas becomes engaged to Mr. Collins in *Pride and Prejudice*, her younger sisters "formed hopes of *coming out* a year or two sooner than they might otherwise have done."⁵⁶ They can now enter the dating market as they will no longer be in competition with their older sister once she is married. Beauty, charm, and money would of course provide a competitive advantage for a girl and her sisters in the market for finding a husband.

Social laws of dating connections in Austen's time, and to some extent now, obviously utilized various family and community informational avenues, but also had privacy protections built into the process as well. Waiting to enter the dating scene was never a young girl's desire, as further evidenced by the fact that even the youngest Bennet sisters were in the market at just fifteen and sixteen (notably before the elder sisters were married). There were, however, dangers to such socializing, as the law would try to protect such young girls with statutory rape laws, privacy concepts, and various other child protections. For example, a girl younger than eighteen would be protected then and now, from consenting to sexual intercourse with an adult

by criminal prosecution of that adult. This notion promotes the policing of young girls' protections by the adult men around them. Family privacy was and still is a highly valued basic theme of family law. It is the notion that the state should not attempt to regulate certain matters within the family, such as relationships between children and parents, and relationships between spouses, unless there is clear and convincing evidence that a real harm or an injury is being perpetrated in the family.⁵⁷ Protections afforded to families and their members helped to strengthen the family bond. In the context of dating, parents were, for the most part, in charge in Regency England.

Of course, the model of ridiculous parent matchmaker could be none other than Mrs. Bennet. In *Pride and Prejudice* Mrs. Bennet is in torturous delight over the arrival of new eligible suitors in the area, keenly feeling her responsibility to match her daughters with Mr. Bingley, a man of large fortune who was "quite young, wonderfully handsome, [and] extremely agreeable," and Mr. Darcy, a wealthy man with "fine, tall person, handsome features, [and] noble mien."⁵⁸ Most importantly the economics surrounding the match played the largest role in pairing up young women and men. In many instances in Jane's novels, it is either the young women trying to make a match with a man who had a healthy income (like the Bennet sisters), or the scoundrel trying to win the heart of a girl with a large dowry (like Mr. Wickham in that novel, Mr. Willoughby in *Sense and Sensibility*, or Mr. Elton in *Emma*).

On the other hand, when a man or woman had no family or few community connections, the dating scene was much more challenging. For example, in *Emma* Austen uses two women to show the concerns over a want of connection. Jane Fairfax is orphaned, and can't be afforded by her aunt, so she is sent off to be raised by a wealthy naval family. She is a mystery to her community in nearly every way. In contrast, Harriet Smith "is the natural daughter of nobody knows whom,"⁵⁹ is likely illegitimate, and has a hard time mixing in the Highbury dating scene.

LIMITS ON WOMEN

Austen questioned the deeply ingrained societal expectations which valued a woman only for her beauty, wealth, and social status.⁶⁰ She insinuates often that many other variables are valuable (wit, intelligence, kindness, etc.). Several factors facilitated Regency society's view of women, namely limitations on employment, education, and property ownership. Women were quite forced into a dating market by limited or nonexistent education options. A young woman's education was generally limited to the fine arts, as *Pride and Prejudice's* Caroline Bingley noted, "[a] woman must have a thorough knowledge of music, singing, drawing, dancing, and the modern lan-

guages, . . . [and] must possess a certain something in her air and manner of walking, the tone of her voice, her address and expressions.”⁶¹ As Austen’s character Anne Elliot in *Persuasion* explains to Captain Harville, “Men have had every advantage of us in telling their own story. Education has been theirs in so much higher a degree; the pen has been in their hands.”⁶²

Employment was also frowned upon, with a governess being the only quasi-acceptable career option for spinster women, and even that was not well-respected, did not pay well, and did not offer the most desirable working conditions.⁶³ In *Emma*, Austen showcases the challenge of a woman with accomplishment and beauty but without fortune or husband when the beautiful and talented Jane Fairfax is forced to consider employment as a governess. In a lively discussion, Mrs. Elton insists that finding a suitable governess position for Jane would take work and effort: “Your inexperience really amuses me! A situation such as you deserve, and your friends would require for you, is no everyday occurrence, is not obtained at a moment’s notice; indeed, indeed, we must begin inquiring directly.”⁶⁴ Jane’s attempt to suggest employment options in “offices for the sale . . . of human intellect” are met with ridicule by Mrs. Elton.⁶⁵ Fortune, however, smiles on Jane when her fate as a governess is ultimately forestalled by a promise of marriage from Frank Churchill. Marriage alone elevates her from the working class.

WOMEN’S LEGAL AND ECONOMIC STATUS TODAY

Opportunities for women have radically changed since the early nineteenth century. Today women own property, make contracts, and earn advanced degrees. The Married Women’s Property Act of 1848 provided that a woman’s property, even upon marriage, “shall continue her sole and separate property.”⁶⁶ This certainly took the pressure off dating, allowing women to experience much more independence in the marriage market as a result. Equally influential is the fact that rising educational opportunities for women have now eclipsed those of men, according to the Pew Research Institute. From 1994 to 2012 women have outpaced men in college enrollment.⁶⁷

As a practical outcome of this, women’s higher education level is associated with improved outcomes in the labor market such as higher earnings, lower poverty, and lower unemployment.⁶⁸ As of 2013, 75.1 million women comprised 47.4 percent of the workforce.⁶⁹ At the same time that women’s workforce participation has exponentially risen, men’s workforce participation has fallen from about 89 percent in 1948 to 75 percent in 2009.⁷⁰ These changes in education and workforce accessibility mean that women are significantly more likely to have jobs than they were fifty years ago, while the opposite is true for men.

Today women are not as dependent on male income support in the household, and at the same time, many women find the assortment of available men from which to select a husband less appealing,⁷¹ as discussed in chapter 1. All of these elements affect the law and economics of dating and have even worked to change the assortative process itself. While Jane Austen could only hope for such progress for women as modern society has achieved, the economics surrounding the marriage market have changed dramatically since her time.

ONLINE DATING

The ability to swipe through potential dating connections presents women and men today with a new evaluation process. Left not only to their families and communities, partners currently can be chosen by photos and summaries by age, wealth, looks, personality, and a host of other factors. In Regency England then and now, this posture is part of what some would call the dating game. Modern online dating trends indicate that millions of women and men still evaluate partners based on remarkably similar criteria as that used generations ago. Men and women today, however, simply use a computer to filter matches based on evaluators such as wealth, social status, looks, and education. Since *Match.com* launched in 1995 as the first internet dating website,⁷² searching for dates online has rapidly proliferated. Today, over 91 million people around the world use such websites,⁷³ spending nearly \$1.75 billion annually.⁷⁴ Dating matching is based on objective factors, with users inputting a list of what they are seeking in a match, such as age, geographical distance, height, body type, education, job status, relationship status, religious background, and ethnicity.⁷⁵ A computer algorithm then begins the matchmaking process.⁷⁶ Now the second most common way for couples to meet, setting up social links that were previously nonexistent,⁷⁷ these websites use technology to filter potential spouses based on variables similar to what parents once utilized to determine match suitability. Now, for individuals wanting help with the matchmaking process, a computer algorithm can evaluate and match people based on factors such as economics and social status.

Regardless of how a reader might be vexed with an Austen character who is intent on marrying for money like Lucy Steele, statistics show that women today “click” more on men with a higher income.⁷⁸ It is axiomatic that better physical looks engender more responses for all users.⁷⁹ Women are still, at least initially, seeking the same things in a man that they have for generations—wealth, good looks, and social status—only now the selection process is arranged by computer algorithms instead of parents or members of the local community. So while women have generally experienced a dramatic

change in legal status, this fact has not changed the criteria for initially evaluating a potential spouse. This speaks again to Jane's understanding of the universality in matchmaking. Exploring the historic changes in the dating game from arranged marriage to online dating reveals Jane Austen's timeless wisdom and wit in individual's efforts to find happiness.

During the Regency Era, status was evaluated by ranks, titles, and wealth; today, social status is evaluated by education, earning capacity, and even job title.⁸⁰ Unsurprisingly, in online dating everyone prefers a match with a similar education to themselves, but with a higher income level.⁸¹ In fact, for women the single most important factor in reviewing potential spouses is the man's employment: 78 percent of American women who have never been married say it is "very important" that their future spouse has a "steady job."⁸² On dating websites, women are 8.9 percent more likely to contact a man with an income in the range of \$150k to \$200k than a man who earns \$35k to \$50k per year.⁸³ And, apparently, today it is "statistically less likely you'll find a future sweetheart at a bar, school or work than on the Internet."⁸⁴

Many of today's dating selection evaluators remain remarkably similar to those of generations past. While it is true that "modern dating can become a remarkably crass form of self-merchandising,"⁸⁵ the scene in Regency England was not that different, even with all their British social formality and reticence of emotional display. Consider Lydia Bennet's behavior in *Pride and Prejudice*. The flirtatious, voluptuous teen was happy to become an easy mark for the unscrupulous Mr. Wickham, thinking she was catching a husband though not comprehending how her illicit sexual connection with him would ruin her family. One could see how Lydia's ability to make herself easily available would have also made her a good candidate for many market options today, from social pick-up opportunities to online searches, in her mother's encouragement to actively seek a spouse.

WHAT REALLY DRIVES THE DECISION

Jane Austen understood that the choice of a spouse is a matter of tradeoffs and incentives. Each character makes the optimal choice given his or her preferences, attainability (budget constraint), tradeoffs between costs and benefits, and incentives for making a decision that will affect the rest of one's life, with the purpose of maximizing his or her utility function. When examined under our economic and legal framework, each couple paired (or thankfully not paired) in Jane's novels can be boiled down to each individual's optimal choice given their incentives, preferences, and decision-making equations aligning, which resulted in the optimal choice of a mate.

For the unhappy couples that certainly exist, it is a matter of 1) imperfect information and 2) their future discount rate. First, no one entering matrimony ever obtains all the information regarding one's spouse; however, many unhappy couples are subject to imperfect information about certain character flaws of his or her spouse prior to making a matrimonial decision. Having more information about a future spousal candidate may explain why research is predicting that marriages created in a society with online dating tend to be stronger.⁸⁶ Readers see this desire for information from Marianne Dashwood when she asks Sir John what he knows about her latest infatuation, Mr. Willoughby. Not satisfied with simply knowing his hunting skills, she asks with desperation, "But what are his manners on more intimate acquaintance? What are his pursuits, his talents, and genius?"⁸⁷ Though Sir John is puzzled, we understand that Marianne is trying to get as much information on Willoughby as she can, to determine if her emotions are well-placed. Reconciling this distance between facts and feelings has not altered over the centuries, as individuals may not know how much weight he or she places on the emotional variable, which can work to blind one when "in love."

Secondly, many individuals have a higher discount rate for the future—meaning that person values present happiness above future or long-term happiness. A discount rate is part of the calculation of present value when performing a discounted cash flow analysis—for example, calculating how much a certain sum of money, such as an annuity, that one receives in each year for the next ten years is worth in total at one point today. In matters of the heart, having a higher discount rate means that an individual may lend greater weight to that emotional variable (which influences nearly all romantic decisions) in the *present* moment, discounting his or her future happiness as less valuable than present pleasure. Here with Marianne, her inability to get real information on Willoughby causes her to place more weight on the emotional variable than on the facts. Had she known Willoughby had a reputation for philandering and gambling debts, she may have weighted those facts and how they might impact her future more heavily than her present feelings. In the circumstances at hand she valued present happiness over future contentment. It is not ironic that Jane Austen allowed for Marianne to be rewarded with future long-term contentment with Colonel Brandon after having her heart broken over her poor judgment with Mr. Willoughby.

The emotional variable is an important piece in optimal decision-making—it can make one decision optimal at the moment, but without the full information about the changeableness of one's feelings or the true nature of one's spouse, it can miserably mislead. Giving greater weight to this emotional variable creates more willingness to make inefficient tradeoffs—preferring happiness of the moment rather than long-term rationality. Marianne Dashwood's extremely heavy weight given to her emotions—the focus of *Sense and Sensibility's* serious commentary on the liabilities of romanti-

cism—caused her to overlook many of the imperfections in Mr. Willoughby that her sister Elinor fairly perceived. Marianne’s imperfect information about him caused her to make the momentarily emotional decision immediately and fall in love with Mr. Willoughby; painfully yet ultimately thankfully for Marianne, Mr. Willoughby’s preferences were aligned elsewhere (his pocketbook) and he made a different optimal choice. She guesses the sad outcome of this had they continued together, in that he might soon have learned to rank his financial demands above the demands of his heart, leaving her victimized by her own conduct of uniting with him. But as we have noted, it all works out for her in the end.

Tradeoffs are extremely important in this context as many characters make their decision of whether or not to fall in love based on a cost-benefit analysis. That cost-benefit analysis is on pragmatic display in *Pride and Prejudice* as Jane Bennet wonders whether she could marry Mr. Bingley when his sisters dislike her. Her sister Elizabeth advises, “If, upon mature deliberation, you find that the misery of disoblighing his two sisters is more than equivalent to the happiness of being his wife, I advise you by all means to refuse him.”⁸⁸ Jane Bennet wants to make the optimal choice for her own happiness and she is actively weighing the variables—Mr. Bingley’s sisters negatively affect her utility function. Given all her information about Mr. Bingley, his sisters, and her own preferences and attributes, she chooses to pursue Mr. Bingley.

This type of strategic thinking in dating is nothing new. But Austen’s embedded emphasis on strategic analysis teaches us about the world 300 years ago, but also the world today. Each relationship seeker has a strategy—realized or not—for dating and human connection. The same cost-benefit analysis and optimal choice decision-making framework is employed on a moment by moment basis just as it was then, if not even more often today. For an extreme example, consider *Tinder*. The fad dating app, while not always meant to be taken seriously but more for entertainment or to search for “hook-ups,” can be seen through the romantic optimal choice framework: 1) guy scrolls through pictures of girls, 2) guy analyzes how they look and are they what he would consider attractive, 3) guy finds an attractive girl and wonders if he is attractive enough for her, 4) he considers his tradeoffs if he pursues her (i.e., what will my buddies think if I say I met this girl on *Tinder*? Or if I get rejected?), 5) his incentives to find a girlfriend or hook-up may outweigh his analyzed tradeoffs, and he may or may not “swipe right” and try to contact said attractive girl. If he does so, the outcome of this exchange now depends on the same romantic optimal choice framework for the attractive girl. *Bumble*, another online dating tool, turns the tables a bit allowing only women to make the first move, but follows a similar concept of ordering preferences and weighing tradeoffs.⁸⁹ Some have likened this process to game theory, as a game theorist starts with the economic premise that indi-

viduals make decisions based on an analysis of the costs and benefits, which is a premise displayed throughout Austen's work.⁹⁰

Romantic associations began with a sort of dating scene in Regency England of families and community connections discussing the eligible potential matches. The law and economics surrounding dating were well understood by Jane Austen's characters. Today, social media can advance the same selection process with a different *modus operandi*. Nonetheless, each method allows a person to isolate the qualities he or she seeks in a partner without any transaction costs. The next chapter reveals how Jane draws out and connects laws surrounding sexual intimacy with economics of interests, separating and connecting legal issues for men and women.

NOTES

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21. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 31.

22. See generally Robert H. Sitkoff and Jesse Dukeminier, *Wills, Trusts, and Estates Tenth Ed.*, (Wolters Kluwer 2017), Chapter 1.
23. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 5.
24. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 5.
25. Jane Austen, *Persuasion* (John Murray, 1817), Chapter 1.
26. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 4.
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39. Jane Austen, *The Annotated Sense and Sensibility*, edited by David M. Shapard (Anchor Books, 2011), 41.
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43. Jane Austen, *Emma* (John Murray II, 1815), Chapter 17.
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46. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 4.
47. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 4.
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Chapter Three

Sex and Money

The Economics and Laws of Sexual Intimacy

Regardless of the allure of romantic idealism, the laws and economics surrounding romance and sexual intimacy do not essentially focus on love. Rather, they actually tend to focus on the raw ingredients of sex and money. “Well, it is the oddest thing for me, that a man should use such a pretty girl so ill! But when there is plenty of money on one side, and next to none on the other, Lord, bless you! They care no more about such things!”¹

Despite what her readers may think of her prudishness, or her lack of worldly experience in love, many of Jane Austen’s characters prove that real and actual connections exist between sex and money, which can sometimes create painful or helpful combinations in what they may together contrive. A principle that Jane Austen understood well is that sex and money work together to both connect and separate men and women.

SUPPLY AND DEMAND

Economics can tell a story about human sexual and mating behavior. Economic theories, however, are complex but apply just the same to human sexuality. A thorough analysis will demand going far beyond a primitive understanding of supply and demand but beginning with the basics is helpful.

Sexual relationships, today and throughout history, fairly function through a supply and demand economy. Supply and demand principles explain the interaction between the consumer demand for a resource and the supply of that resource. This interaction determines a price for the resource as well as a quantity or availability supplied to consumers at that price. A

supply and demand graph can be helpful to understand how the basic concept works:

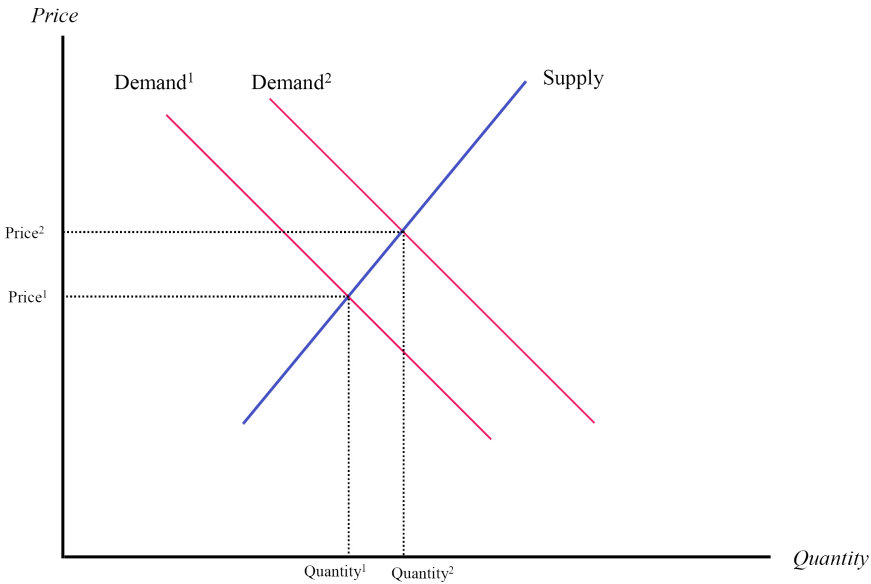


Figure 3.1. Supply and Demand Related to Quantity and Price

The chart above shows how the price of a product is determined by a balance between production at each price (supply) and the desires of those with purchasing power at each price (demand). The point at which the quantity demanded equals the quantity supplied is called the “equilibrium price.”² According to one Austen scholar, “Austen’s theory of value is that the value of a good is determined by what people will exchange for it in market transactions. The value of a good cannot be reduced to its attributes or the labor that went into making it, but depends on the entire context of how the good is exchanged, including how many people want it and how badly, and how many people have it to sell.”³ The diagram shows a positive shift in demand from *Demand*¹ to *Demand*², resulting in an increase in the price and quantity sold of the product. A positive shift eventually results in a return to the original market equilibrium prices and quantities, as Adam Smith explains how these dynamics work:

The increase in demand, besides, though in the beginning it may sometimes raise the price of goods, never fails to lower it in the long run. It encourages production, and thereby increases the competition of the producers, who, in order to undersell one another, have recourse to new divisions of labour and new improvements of art, which might never otherwise have been thought of.⁴

In other words, the *Supply*¹ would increase to *Supply*³ and the equilibrium price would be effectively the same as before, as shown in figure 3.2.

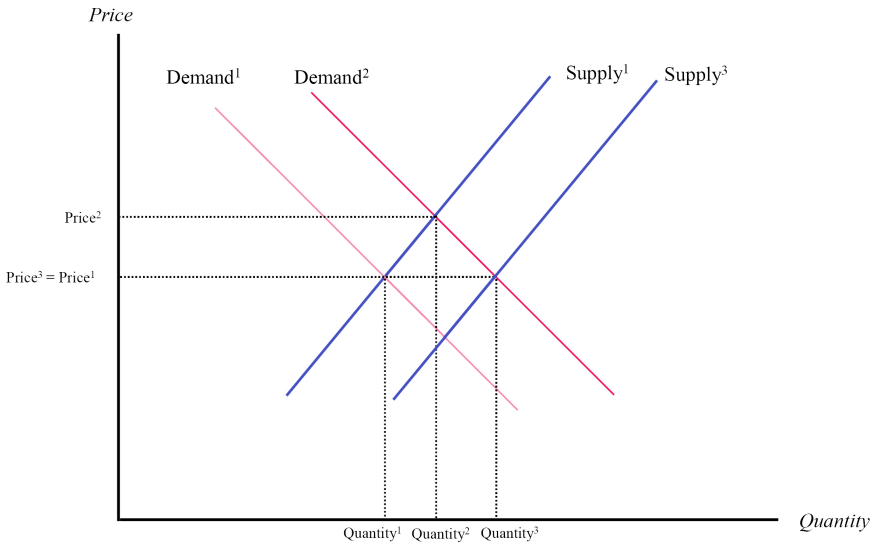


Figure 3.2. Market Equilibrium

Applying these notions to sexuality involves a degree of intimate association analysis. The Austin Institute for the Study of Family and Culture (Austin, not Austen) compiled research from various social scientists to explain the phenomenon of sexual supply and demand in human relational connections.⁵ Picking up where we left off in the last chapter, the annual revenue of the online dating industry hit an all-time high of \$1.049 billion in 2014.⁶ At the same time, marriage in the United States in the twenty-first century hit a historic low: 31.1, or 31 marriages per 1,000 unmarried women (which means for every 1,000 unmarried women in the United States, 31 of those previously single women tied the knot in the previous year; for comparison, in 1920, the national marriage rate was 92.3).⁷ Exploring this paradox may lead us to understand that men and women think differently about sexual intimacy, rather than both having altered preferences from the past.

Sex can be considered an exchange between sexual partners—each partner gives something of themselves. Men connect sex to romance less often than women do, whereas women are likely to have sex for reasons beyond simply pleasure; for example, to express and receive love, to secure a partner, to be desired, or to obtain personal status or security.⁸ It is generally considered a resource mostly controlled by women, and as such, we examine it from the perspective of women in the position of suppliers and men in the position of consumers/demanders. The context of pricing analysis may describe this best—women supply something men demand. The price of sex

can vary, from nothing, to a few drinks and some compliments, or a few dates, to lifelong marriage for a large estate, or exoneration of an estate. On the other hand, for some women and some men, sex might not be an option apart from the cost of marriage, or some emotional commitment of love. This could be considered the marginal cost of sexual intimacy. In economics, firms in a perfectly competitive market will set prices equal to marginal cost. This means their price will be equal to the cost of producing one extra unit, and they will earn zero economic profit.⁹ Romance, however, is not a perfectly competitive environment because not all women and men are perfect substitutes for one another—some are more beautiful, wealthier, smarter, more charming, and so on. A woman who is more desirable to men can charge a price premium and set the price of attaining her (to an average man) well above her marginal cost. The more desirable a man is to an exceptionally beautiful and rich woman, the lower she must set her price to attain this man.

In the context of supply and demand, people will not pay more for something that is easy to find. This is the economic principle of *scarcity*. A scarcer resource generally commands a higher price. Alternatively, the higher the supply of sex, the lower its price. But how did the price of sex decline? Before contraceptives, casual sex was a much rarer occurrence, because of the higher possibility of impregnation. People more often waited to marry before engaging in sexual relationships. Even if sex did not mean marriage would ensue, it could mean serious commitment, and potentially lifelong responsibility (at least in child support). Jane Austen comments on the almost cultural license for men to take a somewhat *laissez-faire* attitude toward sexuality (sometimes though with consequences) through some of her key characters. Consider Mr. Wickham in *Pride and Prejudice*, Mr. Henry Crawford in *Mansfield Park*, and Mr. Willoughby in *Sense and Sensibility*.

George Wickham almost eloped with fifteen-year-old Georgiana Darcy to lay claim to her 30,000 pounds under the laws of *couverture*, but for Mr. Darcy's instantaneous interference. Then in Meryton, he flirted with Mary King when he discovered her family fortune, until some watchful extended family shipped her away from his clutches. Elizabeth remembered, "His attentions to Miss King were now the consequence of views solely and hatefully mercenary; and the mediocrity of her fortune proved no longer the moderation of his wishes; but his eagerness to grasp at anything."¹⁰ But he eventually fell for the allure of another fifteen-year-old—Lydia Bennet—who believing that they were eloping together, did not imagine him prepared only for the intimacy, stalling in any willingness to marry her. The girls' Aunt Gardiner explains,

Mr. Darcy asked him why he had not married your sister at once. Though Mr. Bennet was not imagined to be very rich, he would have been able to do

something for him, and his situation must have been benefited by marriage. But he found, in reply to this question, that Wickham still cherished the hope of more effectually making his fortune by marriage in some other country. Under such circumstances, however, he was not likely to be proof against the temptation of immediate relief.¹¹

Until Mr. Darcy exposed Mr. Wickham and promised to compensate him to complete the marriage, her reputation would have been unwittingly ruined, along with that of the entire Bennet family. Mr. Darcy used money to trade for Lydia's marital security.

You know pretty well, I suppose, what has been done for the young people. His debts are to be paid, amounting, I believe, to considerably more than a thousand pounds, another thousand in addition to her own settled upon her and his commission purchased. . . . When all this was resolved on . . . the wedding took place, and all money matters were then to receive the last finish.¹²

While Mr. Wickham had shortsightedly only charmed and bargained for an exit with free sex, he was induced by dollars to agree to a bargained-for marriage. Although he had previously charmed everybody with his pleasant looks and good manners, he was discovered to be a dishonest rascal. "Everybody declared that he was the wickedest young man in the world; and everybody began to find out, that they had always distrusted the appearance of his goodness."¹³

The adultery scandal in *Mansfield Park* also illustrates divergent exchanges. Shortly after weeks of professing his undying love for Fanny Price, Henry Crawford reprehensibly runs off with Maria Bertram Rushworth, who has been married just six months to the wealthy but silly Mr. Rushworth. Mr. Price handed Fanny the newspaper account of the matter proclaiming, "A little flogging of man and woman, too, would be the best way of preventing such things."¹⁴

Fanny read to herself that it was with infinite concern the newspaper had to announce to the world a matrimonial fracas in the family of Mr. R. of Wimpole Street; the beautiful Ms. R., whose name had not long been enrolled in the lists of Hymen, and who had promised to become so brilliant a leader in the fashionable world, having quitted her husband's roof in company with the well-known and captivating Mr. C., the intimate friend and associate of Mr. R., and it was not known, even to the editor of the newspaper, whither they were gone.¹⁵

Shock, shame, and despair surrounded Maria Rushworth's decision to abscond with Mr. Crawford. Hers was a singular adultery, as only she was married to another person,¹⁶ and having entered into voluntary sexual intercourse with someone other than her spouse, she alone was the guilty party. In

America today, many jurisdictions qualify adultery as a crime, however, it is rarely prosecuted. Divorce may be granted with proof of adultery in states that still permit fault divorce.¹⁷ Maria's husband divorced her for adultery, traditional grounds for a fault-based divorce at common law, dissolving the marriage forever. She lost every penny of the vast wealth she had obtained in her husband's protection in his unilateral divorce, and she lost her standing in society, tainting forever her own character and future life, along with that of the entire Bertram family. Henry Crawford having made the conquest, with no financial cost to himself, left Maria behind as he moved on to the rest of his life, while she was ruined, impoverished, and isolated for the remainder of hers. Proof of adultery, even today, is a legal foundation in many states, for denying spousal support to an adulterous spouse.¹⁸ Maria's example shows the catastrophic consequences of extramarital sex for women in Jane's time.

Similar to the consequence-free ease with which Henry Crawford could pursue sexual enjoyment is the model of John Willoughby in *Sense and Sensibility*. Mr. Willoughby enjoyed a carefree bachelor gentlemen's life. In addition to his own estate of Combe Magnum in Somersetshire, he was also set to inherit the Allenham estate in Devonshire. Until the very moment he realizes he has fooled around and fell in love with Marianne Dashwood, he is discovered to have left another woman, Eliza (the daughter of Eliza Williams, Colonel Brandon's first love), the ward of Colonel Brandon. He left Eliza pregnant ("with child" as it was phrased then) and alone without any intent to support her in any manner whatsoever. Mr. Willoughby acknowledges his error by comparing his relationship with Eliza to his feelings for Marianne:

Her affection for me deserved better treatment, and I often, with great self-reproach, recall the tenderness which, for a very short time, had the power of creating any return. I wish—I heartily wish it had never been. But I have injured more than myself; and I have injured one whose affection for me (may I say it?) was scarcely less warm than hers, and whose mind—Oh! how infinitely superior!¹⁹

Willoughby essentially deserted two women—Eliza because he would take no responsibility, and Marianne because she had no money. Elinor Dashwood scolds him accordingly for his treatment of Eliza:

Your indifference, however, towards that unfortunate girl—I must say it, unpleasant to me as the discussion of such a subject may well be—your indifference is no apology for your cruel neglect of her. Do not think yourself excused by any weakness, any natural defect of understanding on her side, in the wanton cruelty so evident on yours. You must have known, that while you

were enjoying yourself in Devonshire, pursuing fresh schemes, always gay, always happy she was reduced to the extremest indigence.²⁰

He protests her reproach, but nonetheless has rushed into marriage with Miss Grey, heiress of 50,000 pounds. As previously noted, Mrs. Jennings, the kindly but wealthy and meddlesome neighbor, sums up the situation. "Well, it is the oddest thing for me, that a man should use such a pretty girl so ill! But when there is plenty of money on one side, and next to none on the other, Lord, bless you! They care no more about such things!"²¹ In these scenarios and through her characters, Austen was not necessarily intimating that women ought to move on from heartbreak without concern, but rather she was providing a reproachful commentary on the fact that men seemed to be nearly without consequence in their sexual exploits, while women were left economically, emotionally, socially, and irreparably reduced and isolated for the same behavior. She despairingly highlights how Regency women suffered eternally for the same actions that men enjoyed almost routinely.

LEGAL CHANGES AFFECT SEXUAL DECISIONS

Reproductive freedom has been advanced by a string of constitutional case law in the United States, from a liberty interest in contraception for married people secured by marital privacy in *Griswold v. Connecticut*,²² to using that privacy rationale to secure the same freedoms for single people in *Eisenstaedt v. Baird*,²³ to a liberty interest based on privacy in abortion in *Roe v. Wade*.²⁴ These decisions have risen largely from a combination of legal positivism and technological advances in contraceptive options. Today, women and men can engage in sexual activity and avoid pregnancy, averting some of the consequences Austen spelled out in her stories. Contraceptives have effectively put the mating market in disarray, placing a large divide between marriage and sex, which in the past has been a line drawn between the sexes. These advances have in some ways brought into bright clarity that more women want marriage and/or some serious commitment, while men simply want sex, and can expect it because of contraception possibilities. Financial connections with sexual intimacy can seem less significant or important when the cost of sex is minimal, and the results can be thwarted or cheaply discarded.

The legal expansion of reproductive liberty interests has worked to not close the divide between men and women in matters of sex and money, but to simply clarify it. Romance is sometimes lost in a culture of sexual expectations. Women may be compromised in their relationships with men by their own acquiescence to arguments made by a lover based on the availability of contraception and abortion. Romantic relationships have, as a direct result of this availability, become more sexually focused in culture generally. Since there is almost no cost, if both partners do not have specific reasons for when

and why to engage in an intimate step in the relationship, sex is merely something that goes along with it. Sexual intimacy without consequence can still leave physical evidence and emotional sting, which Austen so capably commented on in her own time.²⁵

Surprisingly, the realities of life post-*Roe* can impact women almost as negatively as they did for English gentry and can be factors that might keep a woman from pursuing legal action against a man who has fathered her child.²⁶ In Austen's settings a woman could not generally refuse to give birth to a child, but a man could refuse to support her and the child. That is precisely what happened in *Sense and Sensibility* when Mr. Willoughby abandoned Eliza, as discussed above. As Elinor perceives, "One observation may, I think, be fairly drawn from the whole of the story—that all Willoughby's difficulties have arisen from the first offence against virtue, in his behaviour to Eliza Williams. That crime has been the origin of every lesser one and of all his present discontents."²⁷

Abortion law today, however, allows a woman, and a man, to refuse the child. Some may say that if the unmarried pregnant woman had abortion available to her, she may not have been abandoned by the man, or at least would have been able to move on with her life free of the burden of a child. Refusing to have an abortion today, however, can also leave a woman all alone with the burden of a child and society. Some may suppose she has no one to blame but herself for not making the abortion decision, much like a gentry woman found with child was often blamed for her conduct. The legalization of abortion has not solved this problem for women.

Laws and social norms tend to place limited controls on individual behavior. Nonetheless, sexuality and intimate partner jurisprudence have affected and potentially injured relational aspects between men and women. Sexuality and privacy notions have been expanded and modified because of the foundation for constitutional privacy that was developed in the line of contraception cases. Those changes have widely applied to male-female relationships generally to create new dynamics of sexual intimacy. This change in relationship dynamics due to legal and social alteration has likely become more of a problem for women than for men. Because women outnumber men in the marriage market, as discussed in chapter one, this allows men to often call the shots and be more selective in the short term, causing some women to have to lower their "prices" in order to outcompete other women, creating an environment for the rise in easy sexuality, cohabitation, and the decline of marriage.

CREATING A COMPETITIVE SEXUAL MARKET

As we have discussed, statistics reveal that while more women want to settle down, there are fewer marriageable men in the marriage market.²⁸ This allows more men to be picky, even insisting on sexual commitment, forcing women to lower their prices closer to the marginal cost for sex, and as a result lowering women's sexual "profits," or benefits (such as pleasure or commitment). A lower price, coupled with the short-term noncommitment that now comes as a result of contraceptives, results in women becoming more substitutable. Not having a long-term commitment means a man does not have to be as picky in choosing who he engages with, thus increasing competition between women and in turn causing women to lower the price for sex to appeal to what men want. So while men may or may not be afraid of commitment, market imbalances can put them in the driver's seat. And unlike women, whose fertility clocks end at an earlier age, men's virility does not expire until well after a woman's. This has caused the average age of marriage in the United States to continue to rise.

Competition for the best relational connection does not, however, have to be done only by lowering the price of sex. The decline in marriage could potentially (and likely) cause it to become a type of luxury good called a "Veblen" good. When the demand for a certain item increases as a result of a price increase, this is called a Veblen good—think of a Rolex watch or a Lamborghini sports car.²⁹ A woman who knows what she wants in a man and is willing to hold out for it may become more attractive and sought after in doing so, albeit to the right man—being worth the chase, or the hunt so to speak, for a man looking for a long-term partner. Not just "playing hard to get" but rather increasing the price of sex by holding out to a later point in the relationship. Jane Austen intimated this in that while it was Mr. Willoughby who chose sex, and later money, over holding out for love, he was also the one who suffered for it. It was too late when he realized Marianne would have been worth it:

Willoughby could not hear of [Marianne's] marriage without a pang; and his punishment was soon afterwards complete in the voluntary forgiveness of Mrs. Smith, who, by stating his marriage with a woman of character, as the source of her clemency, gave him reason for believing, that had he behaved with honour toward Marianne, he might at once have been happy and rich. That his repentance of misconduct, which thus brought its own punishment, was sincere, need not be doubted; nor that he long thought of Colonel Brandon with envy, and of Marianne with regret. . . .

For Marianne . . . he always retained that decided regard which interested him in everything that befell her, and made her his secret standard of perfection in woman; and many a rising beauty would be slighted by him in after days as bearing no comparison with Mrs. Brandon.³⁰

In an interesting conclusion, the Austin Institute posed the theory that men tend to act as well or poorly as the women in their lives permit.³¹ If women collectively demanded a higher market price, and greater male investment, this could lead to fewer premarital partners, and more marrying.³² However, this strategy would be difficult. Consider a traditional economic example of the “Prisoner’s Dilemma.”³³ Two partners in crime held as prisoners are questioned in separate rooms. Each prisoner can either confess or deny the crime they committed together. If both deny, they spend some time in prison but not much—this is the *best* outcome for the prisoners together. If one prisoner deviates from this best outcome and confesses, while the other prisoner denies, then the prisoner who confessed ends up well off and spends no time in jail, but his partner spends a long time in jail—this is a less than optimal outcome for the prisoners together. If both prisoners confess, then both are punished—this is the *worst* outcome for both prisoners combined. A simple diagram can explain this:

Prisoner 1 Denies, Prisoner 2 Denies <i>Best Outcome (Payoff: -1, -1)</i>	Prisoner 1 Confesses, Prisoner 2 Denies <i>Suboptimal Outcome (Payoff: 0, -6)</i>
Prisoner 1 Denies, Prisoner 2 Confesses <i>Suboptimal Outcome (Payoff: -6, 0)</i>	Prisoner 1 Confesses, Prisoner 2 Confesses <i>Worst Outcome (Payoff: -3, -3)</i>

Figure 3.3. The Prisoner’s Dilemma

Despite the fact that the best combined outcome for both prisoners results when they both deny the crime, each has an incentive to deviate from their collusion. Rationally, since both prisoners think they are made better off individually by confessing, both are expected to confess, and they will end up in the worst outcome.

The Prisoner’s Dilemma can be altered slightly when thinking about dating and romance. Strategic thinking overall is crucial to Austen’s characters, and it has been suggested that Austen intended to explore strategic thinking theoretically and not just practically.³⁴ Women would not all have the incentive to successfully collude in a competitive sexual market because many would have the incentive to deviate (lower her price) to undercut the next woman in the market and gain a man she otherwise might not have been able to, akin to Lydia Bennet’s decision to elope with Wickham when she thought

every other woman was in love with him. The Prisoner's Dilemma diagram can be slightly adjusted to reflect Elizabeth and Lydia. In figure 3.4 below, when either girl falls in love with Mr. Wickham, a less than optimal outcome occurs; however, we potentially suggest that the best outcome would have been if each girl had overcome Wickham's charms (i.e., did not fall in love) with Mr. Wickham at least because Mr. Darcy would not have had to financially save the Bennet family's honor and presumably would have still won Elizabeth's heart by ensuring Jane and Mr. Bingley's happiness. In the story, Elizabeth is rewarded for her wisdom in seeing through Mr. Wickham and her fortitude in not falling for him.

<p>Elizabeth Overcomes, Lydia Overcomes <i>Best Outcome</i></p> <p>No harm to Bennett family, not necessary for Darcy to expend money to save them</p>	<p>Elizabeth Overcomes, Lydia Falls <i>Suboptimal Outcome</i></p> <p>Darcy saves the Bennett family out of love for Elizabeth</p>
<p>Elizabeth Falls, Lydia Overcomes <i>Suboptimal Outcome</i></p> <p>Unknown outcome, but Bennet family ruined nonetheless</p>	<p>Elizabeth Falls, Lydia Falls <i>Worst Outcome</i></p> <p>Unknown outcome, but ends in scandal and poverty for entire family</p>

Figure 3.4. The Bennet Dilemma

These facts and outcomes were only sometimes, and even then imperfectly, understood by Austen characters, but they were nonetheless always understood perfectly by Jane herself.

SEX AND MEN

Sexual dynamics were reflected in many of Austen's characters, and those diminuendos sometimes got the men involved in trouble. A few men were involved in illicit sexual connections with underage girls, something we've already discussed in chapter 2 as statutory rape in current American law and a bit in this chapter earlier.

Not to pick on him but consider again John Willoughby in *Sense and Sensibility*. When it is discovered that Eliza Williams, the ward of Colonel Brandon, is pregnant, and that Mr. Willoughby is the father, his character loses its gentlemanly shine. Colonel Brandon describes:

Little did Mr. Willoughby imagine, I suppose, when his looks censured me for incivility in breaking up the party, that I was called away to the relief of one,

whom he had made poor and miserable; but had he known it, what would it have availed. . . . He had left the girl whose youth and innocence he had seduced, in a situation of utmost distress, with no creditable home, no help, no friends, ignorant of his address! He had left her promising to return; he neither returned, nor wrote, nor relieved her.³⁵

Colonel Brandon feels a duty that the family honor must be defended, and he challenges Mr. Willoughby to a duel. When Elinor asks the Colonel if he has seen Willoughby, he replies,

“One meeting was unavoidable.” Elinor, startled by his manner, looked at him anxiously, saying: “What! Have you met him to—” “I could meet him in no other way. Eliza had confessed to me, though most reluctantly, the name of her lover, and when he returned to town, which was within a fortnight after myself, we met by appointment, he to defend, I to punish his conduct. We returned unwounded, and the meeting, therefore, never got abroad.” Elinor sighed over the fancied necessity of this; but to a man and a soldier, she presumed not to censure it.³⁶

Mr. Willoughby faced the consequences of his sexual liaison with Eliza in a private duel with Colonel Brandon—where each was unharmed. But that was all. Whether Mr. Willoughby could be sought for child support is not likely in Regency England as nothing in his conduct was actually punishable by law. Colonel Brandon’s duel challenge is to defend Eliza’s honor. Though dueling was illegal it was a fairly common practice especially among soldiers and those of the upper class. Duels were justified as a means to punish certain conduct (such as sexual seduction or betrayal) that was not punishable under the law, and to *ex ante* deter such behavior.³⁷ Otherwise, male sexual affairs were unpunishable.

Mr. Willoughby did, however, face some economic losses as a result of his conduct, as we have discussed. He lost his inheritance of Allenham, when Lady Allen found out his indiscretion. Financial loss from sexual freedom was Mr. Willoughby’s gravest lot, but he eventually recovered even that with Lady Allen’s later forgiveness.

Not to pick on him either, but Mr. Wickham is another significant villain, as we noted, first attempting to elope with Georgiana Darcy but being thwarted at the last moment by her brother in *Pride and Prejudice*, and later setting his sights on Miss King in Meryton, but her family sends her away before any damage can be done. Lydia Bennet delivers what she calls “capital news” when she announces, “There’s no danger of Wickham’s marrying Mary King. . . . She is gone down to her uncle at Liverpool: gone to stay. Wickham is safe!” But Elizabeth Bennet understands who’s really in danger and responds, “‘And Mary King is safe!’ added Elizabeth, ‘safe from a connection imprudent as to fortune.’”³⁸

While Elizabeth is thinking only of Mr. Wickham seeking money in marriage, the true danger he presents to these young underage girls is not fully known until he leaves his regiment taking Lydia to London when she thought they were eloping to Scotland. "It was not on her side a *scheme* of infamy," meaning a plan to live together without marriage.³⁹ Mr. Wickham knew she offered no money, only a sexual opportunity. Leaving his regiment for his own reasons, he was more than happy to take a young, infatuated Lydia along as well. Prostitutes were usually the only sexual companions for unmarried men at this time, but Lydia offered a "step up from that."⁴⁰

Men's consequences in sexual liaisons existed to an extent but were not nearly as devastating as those connections would be for women.

SEX AND WOMEN

In her limited child-like knowledge, Lydia Bennet was completely ignorant of how her sexual liaison with Mr. Wickham affected her own future, her sister's future prospects, and the reputation of her entire family. At the time, running away to live with a man outside of the bounds of marriage was considered nearly the worst sin a woman could commit, and one that would forever affect her by most likely preventing her from ever entering decent society and marrying a respectable man.⁴¹ A woman's family would be likewise tainted with the immorality her actions signified. Decent community members would have no part of their society as a result of a sexual scandal. Lydia was almost certainly "lost forever" in a social sense, as well as potentially in a moral sense.⁴²

While rape or its accusations could ruin a man, and certainly destroy the life of a woman, a consensual sexual encounter would generally harm the man less than it would the woman and her family. Consider on the other side Eliza in *Sense and Sensibility*. While Mr. Willoughby lost his inheritance of Allenham, Colonel Brandon expounds on what Eliza has lost in the affair, compared to what Marianne could have lost:

To suffer you all to be so deceived . . . sometimes I thought your sister's influence might yet reclaim him. But now, after such dishonorable usage, who can tell what were his designs on her? Whatever they may have been, however, she may now, and hereafter doubtless will, turn with gratitude towards her condition, when she compares it with that of my poor Eliza, when she considers the wretched and hopeless situation of this poor girl . . .⁴³

Eliza is now in disgrace. It would be difficult for her to even attain the most basic things in life, as lodging houses would not normally admit a woman forever bound by this stigma.⁴⁴ Colonel Brandon compares Eliza to her mother, the woman he first loved, whom he is convinced would have been

happier dead, as he retorts, “happy had it been if she had not lived to overcome those regrets. . . . But can we wonder . . . that she should fall?”⁴⁵ He sees Eliza’s fall into adultery as a terrible crime, which was a standard sentiment at that time, and reflects the resolute societal insistence on female chastity.⁴⁶ In fact, a woman like Eliza would have been completely vulnerable as well as financially dependent upon the man who seduced her. She would also be dependent on him for any potential social respectability after the fact should he be willing to live with her and offer protection.⁴⁷ Unmarried childbearing was then and is now the essence of a never-formed family. Today economists see it as the greatest contributor to a very noticeable gap in marriage and income inequality.⁴⁸

Consider the different perspective of Isabella Thorpe in her pursuit of a relationship with Captain Tilney in *Northanger Abbey*, while she was engaged to James Morland at the same time. Isabella is a young woman who behaves scandalously but is always trying to make herself agreeable for personal profit. She is manipulative, self-serving, scheming, and unfaithful, exemplifying the timeless mold of scheming women of questionable morals that populate Austen’s works, and in this case creates dilemmas for the naïve protagonist, Catherine Morland. Isabella manages to win the heart of Catherine’s brother James but finds that he is too poor to marry her soon. While she looks elsewhere for money and rank (assets James Morland does not possess) Isabella meets her match in Captain Tilney, who seduces her (when she might be thinking she is seducing him) and then leaves her in a lurch with little hope of forming another engagement after such a scandal. While she was able to attain James Morland, she lowers her price of sex in order to have a chance at Captain Tilney (who is not interested in anything long-term), which then reduces any benefits she could gain (either from James or Captain Tilney). Instead, though the novel glosses this over, Isabella’s ultimate fate is not pleasing. She cannot regain the engagement she has lost in Catherine’s brother after her dalliance with Captain Tilney, despite her entreaties to Catherine, and simultaneously loses her friendship with Catherine as well:

So much for Isabella . . . and all our intimacy! She must think me an idiot . . . but perhaps this has served to make her character better known to me than mine is to her. I see what she has been about. She is a vain coquette, and her tricks have not answered. I do not believe she had ever any regard either for James or for me, and I wish I had never known her.⁴⁹

Catherine is shocked at how this woman has treated her and her brother, yet in her innocence she cannot figure out what Isabella and Captain Tilney were about together. She tries hard to work out why some men and some women do the things they do:

“There is but one thing that I cannot understand. I see that she has had designs on Captain Tilney which have not succeeded; but I do not understand what Captain Tilney has been about all this time. Why should he pay her such attentions as to make her quarrel with my brother, and then fly off himself?”

[Henry answers.] “I have very little to say for Frederick’s motives, such as I believe them to have been. He has his vanities as well as Miss Thorpe, and the chief difference is, that having a stronger head they have not yet injured himself.”⁵⁰

Austen uses Henry Tilney to explain to her naïve readers and to Catherine that there are some women who will use men, and some men who will use women. The end result of the passage, nonetheless, sadly names Isabella as “not having any heart to lose.” The honorable Henry, taking his brother’s part, surprisingly further asserts that if she had a heart, she might have received different treatment from the Captain and men generally, by making a comparison with Catherine. “But your mind is so warped by an innate principle of general integrity, and, therefore, not accessible to the cool reasonings of family partiality, or a desire of revenge.”⁵¹

Comparatively today, cohabitation has become the refuge for many not quite interested in marriage. Still, cohabitating couples confess they enjoy a lower level of commitment than married couples, according to a survey of 5,000 people.⁵² The level of doubt and suspicion among unmarried cohabitating couples was two and a half times the amount of concern about commitment detected among married couples. In fact, mistrust among cohabitating couples was palpable in that nearly one in six people in unmarried relationships admit they are worried about their partner’s loyalty.⁵³ This type of empirical research makes the claim that marriage and cohabitation are the same fairly untenable. So while living with a lover may seem the ultimate rendezvous, as it seemed for Maria Bertram, Lydia Bennet, and others, the level of commitment is clearly not enough to remove distrust among the parties today. For Maria, the result was that Henry left her when he moved on to the next conquest. Lydia was much more fortunate. These examples illustrate that the standards each man had for a cohabitant were lower than their standards each held for a wife. This also explains the differing level of commitment for each.⁵⁴

Sexual freedom has changed some of what Jane Austen illustrated in her works, but it has not changed everything. Some of the greatest consequences to women remain single motherhood. Changing norms of sexuality lead many men and women to decide marriage is not necessary. Higher cohabitation rates and lower marriage rates today are illustrated by the numbers, as young adults are getting married at dramatically lower rates than the previous generation. In fact, it is estimated that more than 30 percent of millennial women will be unmarried by 40 if the current trend continues, which is almost twice the number of Generation X women,⁵⁵ resulting in single par-

enthood and never-formed families.⁵⁶ While Jane Austen may not have foreseen this dramatic future decomposition of marriage, she comprehended the harsh and unequal consequences to women for sexual indiscretions.

SEX AND THE ECONOMICS OF INTERESTS

As illustrated in detail above, sexual liaisons held severe consequences in Regency England, and Jane Austen explained those consequences tactfully in her novels. Since that time, the advent of contraception and abortion has changed the landscape of sexual connections.⁵⁷ Money, however, still remains a key factor in sexual intimacy and similar connections between men and women.

Henry Crawford and his sister Mary in *Mansfield Park* are key examples of this to consider. Jane Austen describes Mr. Crawford as a product of the “school of luxury and epicurism.”⁵⁸ Epicurism, or Epicureanism, could be defined as separating reality from emotions to hold pleasure as the highest good.⁵⁹ Both he and his sister were raised to primarily seek the fulfillment of their own desires and only care for others to the extent that it would further their own interests. Moreover, Mr. Crawford undervalues the feelings of women more generally, which he learned under the close influence of a philandering uncle.⁶⁰ Valuing money and sex more than good moral character are the downfall of both siblings, and both lose the relationship with a more virtuous partner—Mr. Crawford with Fanny and Mary with Edmund.

Henry’s failure provides a good illustration of the effect that vice has on one’s moral judgment. The motives out of which he acts are good, namely humbling Maria so that she would learn to properly value the virtue of Fanny. However, Henry chooses an unsuitable means to achieve this end, as he had previously been habituated to believe that the proper way to put a young woman in her place was through breaking her heart.⁶¹

Fanny chose her love for Edmund over Henry Crawford and his large estate, and Edmund chose Fanny over Mary Crawford’s 30,000 pounds, leaving Edmund and Fanny with his clergyman income of 700 pounds a year and marital happiness.

Money alters the dynamics in Jane Austen’s novels, but so does sex. A proper perspective on how important each is as an asset or a liability can be critical to a thoroughly informed understanding of how closely money and sex are connected to decision-making for each character. For example, the more money a character has the less vulnerable that individual is generally in sexual relationship dynamics. Consider again Lydia Bennet. She had no bargaining power to make Mr. Wickham marry her as he had promised. She was too young and uninformed to understand why, and he took full advantage of

her naïveté. Contrast Lydia with Georgiana Darcy, who had financial leverage. Even though Mr. Wickham could have taken advantage of her desire for his romantic connection and emotions of love to gain her 30,000 pounds, she could also refuse him without financial or social consequence.

Lady Susan, in the novel of the same name, is the ultimate archetype of the collision between sex and money. When she falls in love with the husband of the rich and titled Lady Manwaring, she will go to extreme ends in order to claim both sex and money. Lady Susan artfully pretends to be caring for her daughter and mourning her late husband while flirting extravagantly, which increases the demand for her among men, essentially making herself a Veblen good, such as we described earlier. The more she flirted but the harder she was to get (i.e., the higher she raised her price), the more her demand increased. In the end she entraps the wealthy James Martin into marrying her rather than her daughter, Frederica, and persuades him to welcome into their home as a perpetual guest her lover Manwaring.

Money not only added purchasing power to an individual, but it added highly valued prestige in British society. Further giving weight and authority to the connections between money and sexual intimacy, Jane Austen placed in her novels some men who would have been very rich indeed during her era. Analyses of income conversions have estimated Mr. Rushworth and Mr. Darcy's income of 12,000 pounds and 10,000 pounds per year respectively to equate to approximately \$19.7 million and \$16.4 million, respectively, in today's dollars (or approximately £16.1 million and £13.4 million, respectively). This would leave them in the top one tenth of a percent of society.⁶² Other scholars have suggested more moderate ranges based on adjustments for inflation and purchasing power parity of approximately \$1.1 million (or £900,000) annual income for Mr. Darcy and \$455,000 (or £360,000) annual income for Mr. Bingley. These were still significant sums when compared to the estimated nominal annual income of a barrister (\$43,000 or £35,000) or clergy (\$27,000 or £22,000). On the other hand, a single unmarried Elizabeth would have only had approximately \$4,600 or £3,800 per year to live on.⁶³ Such financial estimates place the pride of Elizabeth by her refusal of Mr. Darcy's initial proposal in shocking context and also illustrates the perfect storm between Mr. Rushworth's silliness, Maria's stupidity, and Mr. Crawford's charms—both women gave up two of the wealthiest men in England for what they thought was love and romance with men who were later revealed to be scoundrels.

As discussed in chapter 2, adding a title or status to this type of wealth changed everything for a man or a woman, but was not necessary for the significance of the truly wealthy.

Of [the top] 5,000 households [in England], only approximately 500 might hold noble titles. In 1818, there were 28 dukedoms, 32 marquises, 210 earl-

doms, 66 viscounts, and 172 barons in Great Britain (Millar). Thus it was possible to be extremely wealthy and still not possess a noble title; in addition, the nobility were not necessarily the wealthiest people in Britain. Based on Mr. Darcy's annual income, other estimates have placed him in the top 400 families in England . . . or the top 0.1%, what news articles refer to as the "super-rich." Mrs. Bennet's near-hysteria upon news of her daughter's marriage becomes understandable: Elizabeth Darcy will be a very wealthy woman.⁶⁴

Money talks even when it is not extravagant wealth that is being considered. For example, Colonel Brandon's annual income in *Sense and Sensibility* is £2,000, and he is considered a fine catch, at least by Mrs. Jennings. Even £1,000 in Jane's time was enough for a family to afford approximately three female servants, a coachman, a footman, a four-wheeled carriage, and a pair of horses.⁶⁵ Such an income provided much sought-after security for any young lady.

OPPORTUNITY COSTS, DISCOUNT RATES, AND TRANSACTION COSTS

Money is lost by inappropriate sexual liaisons and their potential or actual exposure. For her adulterous rendezvous with Henry Crawford, Maria Bertram Rushworth gave up the wealthiest man in all of the Austen novels, as Mr. Rushworth was worth 12,000 pounds a year. Opportunity cost is a huge factor in this decision-making process, as certain decisions may have great costs. In this case, Maria either did not calculate her opportunity costs when she chose to engage with Henry Crawford, or she may have simply misunderstood the consequences, or miscalculated their chance of being caught. Her opportunity cost of one decision amounted to Mr. Rushworth's entire fortune, home, land, social circles, and high life in London. Her actions indicated that her feelings of marital unhappiness and momentary emotional desire for the seducing Mr. Crawford outweighed all of these financial benefits.

Furthermore, Maria provides an example of a high discount rate. A discount rate can be thought of as a rate of interest charged by a bank for lending money or a rate at which to present value future cash flows. A high discount rate mathematically results in a lower present value of money to be received in the future (cash flows), and a lower discount rate results in a higher present value of that money. Before discounting, Maria's future cash flows, or total future utility to be gained, which include the future costs of remaining with Mr. Rushworth, were probably very high despite Mr. Rushworth's buffoonery. Yet she gave all this up for a fling with Mr. Crawford—why? The answer is that the *present* value of all her future benefits summed up to the moment she decided to leave her husband were less than the benefit

and happiness she thought she would gain from Mr. Crawford. Her present emotions and desires outweighed her future financial and social benefits.

Transaction costs—or the costs incurred from bringing about the market transaction of a good or service such as transportation expenses, communication barriers, and so on—also had an impact on Jane’s characters. Today, the driving force of emotion can be all the more powerful due to the emergence of contraceptives and the lower transaction costs of meeting a sexual partner. There are avenues where finding a partner only for sex has minimal or nearly zero transaction costs (think of a frat party in college), while in Regency England finding this type of liaison usually held high transaction costs because of the time and effort required to seduce someone into making that momentary choice. It has been estimated that millennials in today’s society tend to place a greater emphasis on feelings than facts, in effect placing a greater weight on the emotional variable in their romantic utility function.⁶⁶ Feelings appear to drive millennial sexual and marital decisions greatly. Couple the unstoppable, irrefutable, and ultimately *changeable* emotions with extremely low transaction costs of finding a sexual partner, and the results are what we currently see in the marriage markets today: high divorce rates, more children born out of wedlock, and fewer couples getting married overall.⁶⁷ We will discuss these significances in greater depth later.

Romantic idealism ends with the allure of sex and money. The laws and economics surrounding sexual intimacy during Jane Austen’s time do not always focus on love, but on the raw ingredients of sex and money. Jane Austen, even being the demure novelist she was, understood these principles of how sex and money both connect and separate men and women. As set out in the next chapters, she also understood how marriage ties it all together.

NOTES

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25. See generally Part III of Lynne Marie Kohm, “Roe’s Effects on Family Law,” 71 *Washington & Lee Law Review* 1339 (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2441274.
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Chapter Four

Money and Marriage

Marriage Laws and Marriage Markets

While it may be “a truth universally acknowledged, that a single man in possession of a good fortune must be in want of a wife,”¹ he and she must nonetheless comply with laws regulating marriage. Marriage is entered into generally by complying with the legal requirements to do so. Those requirements are both formal and substantive, and they have been characteristic of both English and American law for at least 300 years.

THE FORMAL REQUIREMENTS FOR MARRIAGE ENTRY

The formal requirements of marriage include a ceremony and license. A ceremony is the religious or civil proceeding that solemnizes a marriage, and as a legal requirement it fulfills the need for a public statement of the marriage. This is why a wedding is such a big deal, even if in *Emma* Mr. Woodhouse did not want a cake at the wedding of Miss Taylor and Mr. Weston, as Mr. Woodhouse knew that his “own stomach could bear nothing rich, and he could never believe other people to be different from himself. What was unwholesome to him he regarded as unfit for anybody.”² A ceremony provides solemnization, the performance of a formal ceremony before witnesses, as distinguished from a clandestine ceremony,³ providing public evidence that the marriage has occurred. Though not very elaborated upon a great deal in her novels, weddings were important, though what was most important to Jane Austen was the union of the couple in marriage. Regarding the wedding of Emma Woodhouse and Mr. George Knightley she uses the ostentatious Mrs. Elton’s thoughts and writes,

The wedding was very much like other weddings, where the parties have no taste for finery or parade; and Mrs. Elton, from the particulars detained by her husband, thought it all extremely shabby, and very inferior to her own. . . . But, in spite of these deficiencies, the wishes, the hopes, the confidence, the predictions of the small band of true friends who witnessed the ceremony, were fully answered in the perfect happiness of the union.⁴

In addition to the ceremony, a state registration is necessary and provided for in the marriage license. While *Pride and Prejudice* concludes with a wedding of Elizabeth Bennet and Mr. Darcy, one can assume that the Rev. Mr. Collins would not conduct the ceremony without the proper license to do so, signed by him and two witnesses to the wedding. The license is necessary to track who is married and ensures the minimum requirements for marriage entry (outlined here in this chapter) are met, allowing the state to protect otherwise vulnerable partners from potential marriage fraud. A marriage license is a document issued by a public authority that grants a couple permission to marry.⁵ It is signed at the wedding by the authority officiating the wedding and by the two key witnesses to the wedding—the maid of honor and the best man. Every state in the United States has its own rules about marriage licenses, and most involve some sort of minimum waiting period or determined license duration.⁶

An English registry of marriage applications and licenses was known as a marriage-notice book.⁷ Under Lord Hardwicke's Marriage Act of 1753, marriage laws were newly created for civil authority to regulate marriage rather than left completely to ecclesiastical authority to do so alone. The Act allowed for three types of marriage licenses. A basic license or a banns license required the Banns of Marriage to be read three weeks consecutively in the church parish of each of the betrothed parties, and once married the license had to be recorded in the marriage register. The banns ensured that objections to the marriage would be voiced before the wedding, and are still used by some English and American churches today.⁸ The second type of marriage license was known in Regency England as a Common or Ordinary License, where a clergyman of the Church of England could issue a marriage license for a sum of money without reading the banns, and was valid for fifteen days, requiring the couple to vouch for the lack of objections without having to wait three weeks for the banns. Finally, a Special License for marriage, which Mrs. Bennet referred to in *Pride and Prejudice*, costs a great deal, and could be obtained only from the Archbishop of Canterbury, but allowed the couple to be married anytime and anywhere. This type of license would only be applied for by very wealthy individuals who had good reasons for traveling to London, gaining an audience with the Archbishop of Canterbury, and paying a large sum to do so.⁹ When Mrs. Bennet learns from her daughter Elizabeth that she is to marry Mr. Darcy she exclaims, "Oh, my sweetest

Lizzy! How rich and how great you will be! What pin-money, what jewels, what carriages you will have! . . . And a special license! You must and shall be married by a special license!”¹⁰ We never discover which license they did use, but these formal requirements give evidence for a marriage, and make it distinguishable from a common law marriage. A common law marriage is one that can take legal effect without a ceremony or a license when two people otherwise capable of marrying agree to live together, exclusive of all others, holding themselves out as husband and wife. Ecclesiastical courts recognized these marriages prior to Lord Hardwick’s Marriage Act as an informal marriage, or *sposalia per verba de praesenti* (spouses presenting verbal or testimonial proof themselves of their marriage).¹¹ In America today, only a handful of states recognize common law marriage due to the evidentiary problems that arise when the testimony of its participants differs.¹²

Indeed, in *Pride and Prejudice*, Austen writes only one line on the wedding itself and it is not from either of the marriage partners’ perspective—but it does reflect the now blissful mind of Mrs. Bennet. “Happy for all her maternal feelings was the day on which Mrs. Bennet got rid of her two most deserving daughters.”¹³ These were the formal requirements for marriage entry back in 1816, and they remain much the same today—the formal requirements of a ceremony and a license are needed for a valid marriage.

THE SUBSTANTIVE REQUIREMENTS FOR MARRIAGE ENTRY

The substantive requirements for marriage entry have included basic categories, such as the parties being 1) of suitable age, 2) monogamous, 3) unrelated by affinity or consanguinity, and up until recent history 4) of differing gender.¹⁴ Suitable age is set by national code in the United Kingdom, and by state code in the fifty states of the United States (generally age 18 unless parental consent is allowed to be given for those 16 and older, or other unique circumstances are met such as emancipation or pregnancy). Monogamy requires there to be only one marriage partner at a time, and protects an innocent party against bigamy, polygamy, or polyamory. The unrelated requirement is also designed to protect vulnerable parties from incest, who must be unrelated by consanguinity or affinity. Consanguinity considers blood relationships, as in laws which prohibit marriage between cousins, siblings, aunts and uncles, nieces and nephews, and affinity considers affiliations that bring relations by marriage, prohibiting a marriage to a step-brother or step-sister. Differing in gender has been a normative element of marriage entry the world over until the twenty-first century when just fewer than thirty nations removed the requirement.¹⁵

Lydia Bennet and George Wickham illustrate the first requirement in *Pride and Prejudice*, the necessity to be of minimum age to marry. Lydia, who was just 15 years old, was not of suitable age to marry according to English law at that time since an individual needed to be 21 to marry without his or her parents' consent. Lydia knew that Wickham had to take her to Scotland if he wished to marry her, where parental permission was not required to marry one too young to marry in England. This strategy was referred to as a Gretna Green marriage—a marriage “entered into in a jurisdiction other than where the parties reside to avoid some legal impediment that exists where they live; a runaway marriage. Gretna Green is a Scottish village close to the English border that served as a convenient place for eloping English couples to wed.”¹⁶ Eloping to Scotland was not uncommon. We learn of this in Jane Bennet's letters to Elizabeth when she is visiting Derbyshire in Lambton. Jane writes, “dearest Lizzy, something has occurred of a most unexpected and serious nature . . . it relates to poor Lydia. An express came at twelve last night, just as we were all gone to bed, from Colonel Forster, to inform us that she was gone off to Scotland with one of his officers; to own the truth, with Wickham!”¹⁷ and then she writes in a subsequent letter:

Imprudent as a marriage between Mr. Wickham and our poor Lydia would be, we are now anxious to be assured it has taken place, for there is but too much reason to fear they are not gone to Scotland. . . . Though Lydia's short letter to Mrs. F. gave them to understand that they were going to Gretna Green, something was dropped by Denny expressing his belief that W. never intended to go there, or to marry Lydia at all . . .¹⁸

The sisters knew that couples too young to marry in England who were unlikely to get parental consent could do so legally in Gretna Green, Scotland.

This illustration leads us into a discussion of the conflict of laws problem—whether England will recognize a Scottish marriage as valid. The general conflict of laws rule is that a marriage validly entered into is valid everywhere. In the United States, that means that all 50 states must generally recognize marriages validly performed in other states because of the full faith and credit clause in the Constitution at Art. IV, Sec. 1, which requires that each state recognize the acts and records of every other state unless strong public policy is offended. More appropriate to apply here with Lydia and Wickham and the possibility of fleeing from England to Scotland is the notion of comity. Comity in marriage refers to state deference to a foreign marriage that does not offend the home state's public policy on marriage and can be recognized without much harm to the rule of law of the home state. A marriage in Scotland to a fifteen-year-old girl would be given comity in England, as in substantial compliance with English law, even if Lydia's parents may be unhappy with it as they could withhold their consent and

forbid the marriage if they sought to be married in England. Eventually when they were discovered, however, Lydia's parents were happy to consent to her marriage to Wickham in England to conceal the family disgrace of their daughter running away with a man before they were married. So in all other ways, their marriage would have met the substantive requirements of monogamy, differing in gender and unrelated, but they did not meet the minimum age requirement. Yet comity would be extended to a Scottish marriage to protect the vulnerable party, Lydia, which was not necessarily offensive to the public policy of England because the parties had been intimate with one another prior to their return to England. Austen affords her readers another example in *Mansfield Park*. Julia Bertram elopes with her lover, John Yates, whom she takes in retaliation of Henry Crawford running off with her married sister Maria Rushworth rather than with her. Knowing her parents will not approve of this elopement, her being underage, and wanting desperately to have her own way and a share of the attention, they rush off to Scotland. Somehow though, the economics of the affair can work to soothe the legal calamity:

Julia's match became a less desperate business than [her father] had considered it at first. She was humble, and wishing to be forgiven; and Mr. Yates, desirous of being really received into the family, was disposed to look up to him and be guided. He was not very sold; but there was a hope of his becoming less trifling, of his being at least tolerably domestic and quiet; and at any rate, there was comfort in finding his estate rather more, and his debts much less, than he had feared, and in being consulted and treated as the friend best worth attending to.¹⁹

Pride and Prejudice holds another example of marriage entry regulation, evident in the requirement to be unrelated to one's marriage partner. A marriage between one of the Bennet girls and Mr. Collins would not have met the substantive requirement of being unrelated in some venues as they were cousins. Under American law nearly 46 states in the United States prohibit marriage between first cousins; but England in the early 1800s did not prohibit cousin marriages. Mr. Collins could have married a Bennet girl if one would have had him. Austen speculated that it should have been Mary Bennet—a bit of a legalistic moralist who showed an interest in Mr. Collins. After his promise to return to Longbourn at another time despite Elizabeth's refusal of his proposal, Mrs. Bennet had hopes he might be interested in one of her other daughters, but that was not to be.

Mrs. Bennet wished to understand by it that he thought of paying his addresses to one of her younger girls, and Mary might have been prevailed on to accept him. She rated his abilities much higher than any of the others; there was solidity in his reflections which often struck her, and though by no means so

clever as herself, she thought that if encouraged to read and improve himself by such an example as hers, he might become a very agreeable companion. But on the following morning, every hope of this kind was done away. Miss Lucas called soon after breakfast, and in a private conference with Elizabeth related the event of the day before.²⁰

As for the other requirements of different genders (a former requirement) and monogamy, we find that these requirements have changed toward the end of the last 300 years, as the gender requirement has been altered in both the United Kingdom and the United States.²¹ The substantive requirement of monogamy is also being challenged. For example, Cody Brown and his four wives—known as the *Sister Wives*—comprise a polygamous marriage. When denied public benefits for all his wives in a federal court in Utah he appealed to the Supreme Court of the United States which upheld that decision.²² The popularity of the *Sister Wives* reality program, and an American TV show called *Big Love* starring Bill Paxton, provides an illustration of the cultural breakdown of the requirement for marriage entry of no more than one spouse at a time. Having two spouses is called bigamy, having more is called polygamy, and many spouses of husbands and wives is called polyamory. Furthermore, the incest prohibition is also under attack here in the United States, in that because New Jersey law does not explicitly prohibit adult incest, an estranged father who is dating his eighteen-year-old daughter plans to move to that state to marry her.²³

MARITAL CONSENT

The development of consent-based marriage in Western law can be at least somewhat attributed to the work of Jane Austen. Pushing the boundaries of love and money in a lifetime commitment, Jane illustrated examples of how each could go awry, and it seems she firmly held to holding out for a lifetime partner she could truly love and respect in that she refused to marry for money. Jane had her disappointments in love, but could not bring herself to marry for money, as Harris Bigg-Wither proposed to her, was initially accepted, then told the next day that she could not marry him, as previously discussed. Jane's thoughts on this concept are uncovered in her novels. In *Mansfield Park* she writes, "A good man must feel, how wretched, and how unpardonable, how hopeless, and how wicked it was to marry without affection."²⁴ Catherine Morland in *Northanger Abbey* protests, "And to marry for money I think the wickedest thing in existence."²⁵

Today, most consider marriage to be a consent-based institution, founded on amorous feelings of connection, or a mutual desire for legal commitment. It is rare that marriages are arranged by parents, birth, or class. Prior to conceptions of consent-based marriage, marriage was primarily driven by

desires for social and economic connections. Procreation and prolonging a family's lineage were considered primary goals for marriage. Economic needs could be arranged by the parents, as might have been Mrs. Bennet's life goal, or the partners themselves, such as when Mr. Willoughby chose Ms. Grey for her 50,000 pounds, even though Ms. Grey was well aware of that fact.

Generally, arranged marriages are organized and decided by third parties.²⁶ Though marriages today are largely consent based, there are several marriages that parties cannot enter into, even if both parties consent. This recalls the regulation of marriage entry by statutes, laws, and regulations. Although they may enjoy mutual consent to marry, the parties must nonetheless meet the minimum age to marry, they must not be married to someone else, and must not be incestuous, though what determines the degree of incest varies by jurisdiction.

The law of consent in marriage developed and evolved by statute and case law over time. For example, there have been cases reaching back to the beginning of the twentieth century in which defendants were charged with abduction for not obtaining the consent of parents when marrying a minor.²⁷ Based on the consent trend in the United States, more and more parties have been able to marry based on privacy and consent. The question is, how far will consent go? An excellent example is the freedom for interracial marriage. Once banned in some parts of the United States, in 1967 *Loving v. Virginia* affirmed the ability to marry a person of a different race, and the inability under the Constitution for any state to prohibit that choice. The equal protection clause of the Fifth Amendment to the US Constitution demands that racial classification, especially suspect in criminal statutes, be subjected to the most rigid scrutiny, or what is known as strict scrutiny. The Supreme Court stated that under the US Constitution, freedom to marry or not marry a person of another race was a privacy right residing with the individual that could not be infringed upon by the State.²⁸

A concern with consent basis for marriage is that individuals can have a change of heart. When a relationship is based only on intense emotional bonding as the foundation for marriage, that marriage can legally end even unilaterally when the emotional bond is over. This is problematic from a reliance perspective, as a unilateral desertion of a marriage (a decision to abandon the marriage by only one of the parties) can leave dependent parties without resources. This may indeed be a result of consent-based marriage. When marriage is no longer based on protecting the family members, or securing the family legacy or estate, or procreation, or love, then the parties in the marriage and the institution of marriage itself are now differently advantaged or disadvantaged, and that can additionally affect the culture or society in unexpected ways.

Consent-based marriage indicates that the parties to the marriage wish to be mutual companions. Companionate marriage was a part of nonfiction literature in Hannah More, a predecessor of Jane Austen, who wrote the treatise on *Strictures on the Modern System of Female Education* (1779). She noted that rather than majoring in education over the arts and fashion, things that More called “frivolities,” she argued that women should be educated with what she termed “the roles to which they will be called,” meaning marriage, because, as she says:

[W]hen a man of sense comes to marry, it is a companion whom he wants, and not an artist. It is not merely a creature who can paint, and play, and sing, and draw, and dress, and dance; it is a being who can comfort and counsel him; one who can reason and reflect, and feel, and judge, and discourse, and discriminate; one who can assist him in his affairs, lighten his cares, soothe his sorrows, strengthen his principles, and educate his children.²⁹

More, also one of the first female playwrights, had previously written the play *Percy* in 1777, a tragedy about coerced marriage. The theme of forced marriages received a great deal of attention toward the latter half of the eighteenth century as individuals began to question the age-old marital approach of being arranged by families, rather than determined by compatibility and feelings between the couple.³⁰

Development of consent-based marriage is based on the free will to choose who to marry, and Jane Austen was a bit at the forefront of this new thinking. In her novel *Mansfield Park*, the notion of consent-based marriage is developed with Fanny and Edmund’s slowly-but-surely developing romance. Fanny Price was a woman of virtue, who refused to marry a man with an inconsistent moral character, despite her sure elevation in society if she chose to do so. Born into a poor family with eight other siblings and taken in as a charitable project by her aunts and uncle, it seemed that Fanny’s only opportunity to a “better” life would be through marriage to the worldly Henry Crawford. To reject such an opportunity was initially absurd to Fanny’s family due to the highly advantageous match; marriage wasn’t about love, but about one’s place in society. Mr. Crawford was a man who (at least momentarily) realized the priceless value of virtues and good principles in a wife—a blissful state of marriage. However, his unscrupulous nature was not hidden to Fanny, and was eventually revealed to all. Her requited love for the thoughtful, moral Edmund Bertram results in marriage.

Marriage between middle and upper classes was also an aspect Austen dealt with to develop and expand notions of consent in marriage. In Jane Austen’s *Persuasion*, a young Anne Elliot, second daughter of the wealthy Baronet, Sir Walter Elliot, fell in love with a handsome, clever, young naval officer with no family connections or wealth, by the name of Frederick Wentworth. “He was, at that time, a remarkably fine young man, with a great

deal of intelligence, spirit, and brilliancy; and Anne an extremely pretty girl, with gentleness, modesty, taste, and feeling.”³¹ He proposed, she accepted, both ready to live happily ever after—but for his station in life. He was not a gentleman. Sir Walter remembered the name, and he recounted speaking about Frederick Wentworth’s brother, the Reverend “Mr. Wentworth the curate of Monkford. You misled me by the term *gentleman*. I thought you were speaking of some man of property; Mr. Wentworth was nobody, I remember; quite unconnected.”³² Add to that social contempt that Frederick “had nothing but himself to recommend him.”³³ Such a marriage between social and economic classes was abhorrent to the young Miss Elliot’s family, and the connection was rejected. Eight years later, however, after the now Captain Wentworth made his fortune due to merit and luck in the British Navy, Anne and Captain Wentworth reconnect, their love having persevered regardless of status or wealth. Anne, within earshot of Captain Wentworth, stated, “All the privilege I claim for my own sex . . . is that of loving longest, when existence or hope is gone.”³⁴ Frederick requites this sentiment when he writes, “Tell me not that I am too late, that such precious feelings are gone for ever. I offer myself to you again with a heart even more your own than when you almost broke it, eight years and a half ago. . . . I have loved none but you.”³⁵

While Jane Austen was an important force in developing the consent basis for marriage, many parts of the world nonetheless adhere to arranged marriage, often forced upon young women even today. Arranged marriages are distinct from forced marriage, which negate the free will to enter into the marriage (e.g., by forcing someone to marry under threat or coercion).³⁶ Parties may not consent to marriage by reason of force, duress, or fraud. Around the world, forced marriage can result in women fleeing their homelands to pursue refugee protection, running from either the threat of a forced marriage, or trying to escape from a marriage already forced into. Women in these situations can face many dangers as they seek to escape from such circumstances.³⁷ Manipulation of marriage rules can also come in another form—outright fraud.

MARRIAGE FRAUD

Back to Lydia and Mr. Wickham—as then again, Mr. Wickham had no intention of marrying Lydia, as his friend and fellow militia man, Denny, already knew. What Mr. Wickham was doing in luring Lydia to run away with him is called fraud in the inducement, or fraudulent inducement. This occurs when an agreement between two parties, here Lydia’s agreement to run away with him, is based on one person’s persuasion of the other with misleading information. Mr. Wickham used his allure to induce Lydia into

thinking that they were eloping, as evidenced by her letter left for Mrs. Forster:

My Dear Harriet,

You will laugh when you know where I am gone, and I cannot help laughing myself at your surprise tomorrow morning, as soon as I am missed. I am going to Gretna Green, and if you cannot guess with who, I shall think you a simpleton, for there is but one man in the world I love, and he is an angel. I should never be happy without him, so think it no harm to be off. You need not send them word at Longbourn of my going, if you do not like it, for it will make the surprise the greater, when I write to them and sign my name “Lydia Wickham.” What a good joke it will be! I can hardly write for laughing.

Your affectionate friend, Lydia Bennet³⁸

But Mr. Wickham had no intention of marrying Lydia. His friend Denny and Colonel Forster were of the “persuasion of their not marrying” even though Lydia clearly expected it. This deception allowed Mr. Wickham to take advantage of Lydia, persuading her to think that premarital intimacy would be no important matter because they would soon be married. Jane pronounces, “Whatever he might afterwards persuade her to, it was not on her side a scheme of infamy.”³⁹ This is fraud in the inducement of marriage, which is distinct from, though nonetheless parallel to marriage fraud. A fraudulent marriage is “[a] marriage based on a misrepresentation regarding some issue of fundamental importance to the innocent party, who relies on the misrepresentation in the decision to marry. The misrepresentation must concern something of fundamental importance to a marriage, such as religious beliefs, the ability to have sexual relations, or the ability or desire to have children.”⁴⁰ Here, however, Mr. Wickham did eventually marry Lydia to receive the funds which Mr. Darcy’s persuasion must have offered. So the scoundrel who was committing fraud benefitted from his own misrepresentation, even though he was resultingly trapped in what he may have deemed a loveless marriage nevertheless.

CUSTOM AND HONOR

Quite conversely, however, in other stories Jane Austen illustrates men with honor. Edward Ferras in *Sense and Sensibility* and Frederick Wentworth in *Persuasion* are twin illustrations of the custom of honoring engagements—one entered into foolishly but knowingly, the other without realizing it but constructed on custom. Custom and honor were parts of the cultural aspect of unwritten laws that governed the actions of persons within a community. The

term “custom and usage” is commonly used in commercial law but could be applied to social mores of Regency England when it comes to community marital expectations. “Usage” refers to a repetition of acts, and “custom” is the law or general rule that arises from such repetition.⁴¹ Applied to social settings, when a man and woman act like they are or expect engagement, the community gains that expectation, and a man of honor in Jane’s time would adhere to the community expectation as custom to uphold his honor and that of the lady as well.

In *Sense and Sensibility* when he was just nineteen Edward Ferrars foolishly promises himself to Lucy Steele, the niece of Edward’s tutor in Portsmouth, simply because he was idle, as Edward later claims. Five years later his family learned of the engagement, causing his mother to disinherit him from the family estate, upsetting his expected primogeniture share unless he break the engagement. However, because Edward realized his honor was at stake in terms of his character to keep a promise, even a foolish promise that will cost him happiness and fortune, he refused to break the engagement. In holding to his honor, his brother-in-law John Dashwood does not recognize a man of integrity, but rather a disinherited fool. “Poor Edward! He is ruined for ever. I am extremely sorry for it, for I know him to be a very good-hearted creature; as well meaning a fellow, perhaps, as any in the world.”⁴² While Edward Ferrars loves Elinor Dashwood, and she him, both righteously agreed that his honor is more important than love or money. As readers know, however, Edward did not have to marry Lucy in the end because once she realized that she would no longer be marrying an heir to the Ferrars estate, she married Robert Ferrars, Edward’s brother who irrevocably assumed the entire family estate in his stead. Lucy writes, “I can safely say I owe you no ill-will, and am sure you will be too generous to do us any ill offices. Your brother has gained my affections entirely, and as we could not live without one another, we are just returned from the altar.”⁴³ So Lucy still got the man with the money, due to some extent in part to the honor of her first betrothed.

Somewhat similarly, Frederick Wentworth in *Persuasion* realized that everyone around him thought he had an understanding of an engagement for marriage with Louisa Musgrove. Though he never loved her, he felt he was not at liberty to do anything except to honor what she and their community thought was established—a marriage between them.

“I found,” he said, “that I was considered by Harville an engaged man! . . . I was startled and shocked . . . but when I began to reflect that others might have felt the same—her own family, nay perhaps herself, I was no longer at my own disposal. I was hers in honour if she wished it. . . . I had been grossly wrong, and must abide the consequences.”

He found too late, in short, that he had entangled himself; and that . . . [he must] act as circumstances might require.⁴⁴

Honor was effectively part of the customary law, which revealed character or the lack thereof, in a person in Regency England. If honor was valued and attaining honor provided the utmost utility, the legal and economic costs and benefits were sometimes secondary to laws of honor. These notions demonstrate that even intangibles like honor have value in marriage. The markets that regulate marriage are often more significant than immediately understood by its participants.

MARRIAGE MARKETS

An economic market is generally a set of institutions where goods or services are exchanged between buyers and sellers either directly or through an intermediary. The buyers are those who place the demand pressure on the market, and the sellers are those who supply the market. A marriage market, therefore, is when those who are interested in marriage connect with those who are also interested in marriage, thus both providing supply and demand simultaneously. The choices available in that market are dictated by certain legal provisions that attempt to increase overall utility for greater social welfare. Marriage markets can sometimes direct the flow of money as well. As we discussed briefly in chapter 2, every individual has preferences for certain qualities that he or she is seeking in a potential spouse but is also subject to his or her own budget constraint determined by one's own personal qualities. Key factors generally preferred by those in the marriage market include educational levels, employment, family wealth, and income. In his treatise on family and economics Dr. Gary Becker explains that "participants in marriage markets maximize their utility subject to the competition from other participants."⁴⁵ This means that efficient marriage markets match persons with similar characteristics, which seems to be borne out in the statistics on education and marriage, as those with a high degree of education tend to marry each other; and those with less education marry less. The result is increasing the notion of marriage inequality on both an individual level and a larger societal level, as the trend fortifies or entrenches the phenomenon of income inequality.⁴⁶ Thought of another way, if every Ivy League graduate married a high school dropout, the income inequality gap in the United States would be much less severe.

Preferences and constraints determine economic outcomes in markets, including social markets.⁴⁷ As previously noted, millennial women prefer a spouse with a secure income, and millennial men prefer freedom, financial success, and eventually a stable wife. Based on these preferences, generally marriageable individuals with certain desired qualities will command a higher "price" in the marriage market, as increased demand apart from increased supply results in greater scarcity and higher prices. Transactions between an

individual with few preferred qualities is constrained by what he or she could offer to a spouse, making it difficult for such an individual to marry another with many such preferred qualities. The result is, as Becker stated, that highly preferred individuals end up marrying other highly preferred individuals and vice versa.

Jane Austen apparently understood this concept of marriage markets well, but loved to cut across them, and even break the norms of typical preferences and constraints. She writes in *Mansfield Park*'s opening, "But there certainly are not so many men of large fortune in the world as there are pretty women to deserve them."⁴⁸ In *Pride and Prejudice*, she offers several easy examples (discussed below) for us to examine the marriage market for economic and social costs and benefits. At the time, men were thought of as suppliers of security and happiness to young ladies. Charles Bingley represented the typical market supplier of the time with "a chaise and four . . . [a] single man of large fortune; four or five thousand a year . . . quite young, wonderfully handsome, extremely agreeable" and so on.⁴⁹ Everyone valued Mr. Bingley—a suitor with money and agreeableness; he was sought after because of the protection, security, and happiness he could offer a young lady. However, while the analysis can be performed either way, we posit that women were more often the marriage market suppliers in Jane's novels and men the demanders, as discussed below. Austen provides a good view of the marriage market from a woman's perspective as the party supplying the market, and the men as the parties creating market demand.

WOMEN AND MARKET SUPPLY

In *Pride and Prejudice* Austen uses four women to explain market supply: Elizabeth Bennet, Charlotte Lucas, Caroline Bingley, and Georgiana Darcy. Each introduces a different angle of supply in the marriage market. If the supply of marriage-age women is plentiful, consumers (men) can afford to be picky. With a greater quantity of supply, suppliers can extract less benefit from the transaction, and vice versa when supply is scarce.⁵⁰ If supply decreases or demand increases, then holding all else constant, the market price increases. Women with a great deal of wealth were in scarce supply in Regency England providing them many options in the marriage market. In contrast, those women without wealth could not afford to be picky and set a high price. Rather, they provided the supply for men of means generally.

The first and perhaps the most complex example, Elizabeth Bennet, is a young woman possessing charm, beauty, and is her father's favorite of his five daughters. Unfortunately, his procrastination has resulted in Mr. Bennet failing to set aside any type of marriage dowry for his daughters, so Elizabeth has no money with which to entice a young man. She nonetheless "had a

lively, playful disposition, which delighted in anything ridiculous.”⁵¹ Idealistic and romantic, she was known as a beauty of the county along with her sister, Jane, but “with more quickness of observation and less pliancy of temper than her sister, and with a judgment too unassailed by any inattention to herself.”⁵² Yet Elizabeth is able to obtain perhaps the most beloved and one of the wealthiest heroes in all of Jane’s novels. This is a reflection of Mr. Darcy’s preferences. He has no need for more money, and clearly places a great deal of weight on his preference for wit, charm, and beauty. Elizabeth supplies more of these qualities that fit his preferences, and while she has no financial means of making herself highly demanded by other men, she shockingly refuses him. Jane Austen turns much of the supply and demand principles that traditionally applied to individuals of wealth at the time upside down with Elizabeth Bennet and Mr. Darcy.

Charlotte Lucas fits into a more traditional role in her match with Mr. Collins. She is plain, poor, aging, and on the look-out for a husband because she is very aware of her need for security. Hence, the price at which she will choose to enter the marriage market as a supplier is quite low. We described her fitting Mr. Collins’ budget constraint in chapter 2. She supplied the highest level of personal qualities preferred by Mr. Collins that he could attain. Austen gives her readers a picture of Charlotte’s romantic strategy when she offers Elizabeth her philosophy on dating and marriage:

[I]t is sometimes a disadvantage to be so very guarded. If a woman conceals her affection with the same skill from the object of it, she may lose the opportunity of fixing him; and it will then be but poor consolation to believe the world equally in the dark. There is so much of gratitude or vanity in almost every attachment that it is not safe to leave any to itself. We can all *begin* freely—a slight preference is natural enough; but there are very few of us who have heart enough to be really in love without encouragement. In nine cases out of ten a woman had better show *more* affection than she feels. Bingley likes your sister, undoubtedly; but he may never do more than like her, if she does not help him on. . . . Jane should therefore make the most of every half-hour in which she can command his attention; when she is secure of him, there will be leisure for falling in love as much as she chooses.⁵³

When Elizabeth disagrees with her philosophy, Charlotte doubles down on whether marriage and happiness are linked:

Happiness in marriage is entirely a matter of chance. If the dispositions of the parties are ever so well known to each other or ever so similar beforehand it does not advance their felicity in the least. They always continue to grow sufficiently unlike afterwards to have their share of vexation; and it is better to know as little as possible of the defects of the person with whom you are to pass your life.⁵⁴

In a different example of which we do not know the conclusion, Caroline Bingley had some charm and family money from trade, but she was primarily a picture of elite snobbery. The price at which she would enter the marriage market was high indeed as she set her sights on Mr. Darcy, who had many qualities that were desirable at the time besides just his money. Wealth afforded her the luxury to be somewhat picky about marriage partners, but the negatives in her character made her unable to attain Mr. Darcy by not possessing the personal qualities he preferred (i.e., she was restricted by her budget constraint). She and her sister:

were in fact very fine ladies; not deficient in good humour when they were pleased, nor in the power of being agreeable when they chose it, but proud and conceited. They were rather handsome, had been educated in one of the first private seminaries in town, had a fortune of twenty thousand pounds, were in the habit of spending more than they ought, and of associating with people of rank, and were therefore in every respect entitled to think well of themselves, and meanly of others. They were of a respectable family of the north of England; a circumstance more deeply impressed on their memories than that their brother's fortune and their own had been acquired by trade.⁵⁵

Finally, Georgiana Darcy, one of the wealthiest of all women in Jane's novels with \$30,000 pounds of her own to inherit, was young and seemingly lacking both charm and confidence, particularly after her poor decision to accept George Wickham's offer for elopement despite his concealed and devious plan to gain her wealth. Georgiana remains in a position to be the choosiest with respect to a spouse because of the level of quality with which she supplies the market, yet, she has not the understanding to be protected from the villains of the world or the self-confidence to demand more from a marriage partner. In economics terms a match between her and Mr. Wickham would have been extremely inefficient.

All four characters are examples of supply-side economics in a different way, and all four sense a minimal understanding of the marriage market in which they exist.

MEN AND MARKET DEMAND

In *Pride and Prejudice* Austen similarly uses four men to explain marriage market desirability. Women needed husbands in Regency England just as men were in want of wives, and we discuss this universal truth of demand below. We will consider these choices from the least desirable to the most desirable, viewing these men on the demand side (consumers)—Mr. Wickham, Mr. Collins, and Mr. Darcy.

George Wickham was a very basic man—he wanted money and sex. The dashing and charming officer had gambled himself penniless and preyed on vulnerable young girls. Austen illustrates the income inequality problem for potential marriage market suppliers with Mr. Wickham as it appears that he can charm any woman in his path, and even make her feel sympathy for his lack of wealth. “His appearance was greatly in his favour; he had all the best part of beauty, a fine countenance, a good figure, and very pleasing address. The introduction was followed up on his side by a happy readiness of conversation—a readiness at the same time perfectly correct and unassuming.”⁵⁶ Elizabeth saw him “as far beyond [the other officers] in person, countenance, air, and walk, as they were superior to the broad-faced, stuffy uncle Phillips, breathing port wine, who followed them into the room.”⁵⁷ But Austen uses Mr. Darcy’s statements to Elizabeth to begin to explain the conundrum more fully: “Mr. Wickham is blessed with such happy manners as may ensure his making friends—whether he may be equally capable of retaining them is less certain.”⁵⁸ As the interaction between Elizabeth and Mr. Wickham seems to increase, her aunt Mrs. Gardiner is the sage advisor warning Elizabeth of the lack of fortune that would result in her succumbing to Mr. Wickham:

You are too sensible a girl, Lizzy, to fall in love merely because you are warned against it. . . . Seriously, I would have you be on your guard. Do not involve yourself or endeavor to involve him in an affection which the want of fortune would make so very imprudent. I have nothing to say against him; he is a most interesting young man; and if he had the fortune he ought to have, I should think you could not do better. But as it is, you must not let your fancy run away with you.⁵⁹

Austen reveals in Elizabeth how a woman who understands the costs of a relationship would likely react to any serious consideration of a man in Mr. Wickham’s economic circumstances with no money and having to be regimented for income. He targets nearly every level of prey for financial gain or pleasure from Georgiana Darcy, to Ms. King, to Elizabeth, and finally Lydia, where he is stopped in his tracks. It is not until much later in the novel that Elizabeth really understands her misreading of Mr. Wickham as a choice for marriage. Mr. Wickham is ultimately exposed for his true desires and unamiable qualities:

She saw the indelicacy of putting himself forward as he had done, and the inconsistency of his professions with his conduct. She remembered that he had boasted of having no fear of seeing Mr. Darcy—that Mr. Darcy might leave the country, but that he should stand his ground; yet he had avoided the Netherfield ball the very next week. She remembered also that, till the Netherfield family had quitted the country, he had told his story to no one but herself; but that after their removal it had been everywhere discussed; that he had then

no reserves, no scruples in sinking Mr. Darcy's character, though he had assured her that respect for the father would always prevent his exposing the son.⁶⁰

Mr. Wickham's demands were basic, and he did not have many constraints in the ability to attain his desires. But for Mr. Darcy's timely interference, Mr. Wickham could have won a much wealthier wife in Georgiana Darcy. Instead he ended up with a wife better suited to the less amiable qualities Mr. Wickham had to offer.

Next, Mr. Collins is a haughty, obsequious, newly minted clergyman with a retiring income, and heir to Longbourn estate, the home of the Bennet family. Mr. Collins demands an amiable match that will please everyone around him, as well as most importantly, a small amount of encouragement. To attain such a match, he had a decent income and the expectation of wealth, but also many qualities that would make him less than desirable to most women:

He was a tall, heavy-looking young man of five-and-twenty. His air was grave and stately, and his manners were very formal. . . . Mr. Collins was not a sensible man, and the deficiency of nature had been but little assisted by education or society. . . . A fortunate chance had recommended him to Lady Catherine De Bourgh when the living of Hunsford was vacant; and the respect which he felt for her high rank, and his veneration for her as his patroness, mingling with a very good opinion of himself, of his authority as a clergyman, and his right as a rector, made him altogether a mixture of pride and obsequiousness, self-importance and humility.

Having now a good house and very sufficient income, he intended to marry.⁶¹

Elizabeth recognized him as "pompous in his style," and her father characterized him as "a mixture of servility and self-importance," which he sarcastically thought promised well.⁶² To raise his sights to Elizabeth was beyond the set of personal qualities that he offered and above his simple demands in a wife. Despite his financial stability, Elizabeth rejects him outright without regard for her mother's hostility, but he is ultimately snatched up for the stability he does have to offer by Charlotte Lucas, Elizabeth's best friend. Mr. Collins's demands are met in what Ms. Lucas has to offer and "[s]uch was Miss Lucas's scheme . . . [she], who accepted him solely from the pure and disinterested desire of an establishment, cared not how soon that establishment were gained."⁶³

Finally, Fitzwilliam Darcy is Austen's illustration of the ideal match with complicated and countercultural demands. Possessing a large estate, enjoying a large income, and rising from a respected family, being more handsome than Mr. Bingley, Mr. Darcy is thought to be the ideal suitor, until his apparent pride sours him to nearly everyone around. As Mrs. Bennet pro-

claims, “he is a most disagreeable, horrid man, not at all worth pleasing. So high and so conceited that there was no enduring him! He walked here, and he walked there, fancying himself so very great! . . . I quite detest the man.”⁶⁴ The expectation for a man with these qualities would certainly be to marry Anne de Bourgh (or at least a woman with financial and social qualities at the level of Caroline Bingley). However, as incomprehensible as it was to Lady Catherine, Mr. Darcy demanded qualities in a marriage partner beyond simply money and social status. His preference was for the charm, beauty, and wit of Elizabeth (perhaps unintentionally playing “hard to get” might have helped). Mr. Darcy, the objectively most viable in the marriage market, was not welcomed by anyone as agreeable until the story finale, when Elizabeth’s more accurate understanding of him reveals that she has secured the man with perhaps the highest budget constraint. “In understanding, Darcy was the superior. Bingley was by no means deficient, but Darcy was clever,”⁶⁵ though his goodness was hidden under a shy and haughty manner.

LEGAL AND ECONOMIC COSTS AND BENEFITS OF MARRIAGE

There were and are many economic and legal benefits to marriage, but for women it was traditionally almost always an economic necessity, unless that woman was like Emma Woodhouse who was set to inherit very well and had her father’s home of which to be mistress. Jane Austen wrote in a day when women could not own property, get an education, or work a job outside the home, and marriages were arranged for economic necessity, for social status, and for the societal good. In a letter to her niece Fanny Knight, Jane Austen observed that “[s]ingle women have a dreadful propensity for being poor—which is one very strong argument in favour of Matrimony.”⁶⁶ In fact, marriage was generally considered a means of securing or advancing family fortunes.⁶⁷ Austen showcases this reasoning in *Pride and Prejudice* when Lady Catherine de Bourgh explains why Elizabeth Bennet would not be a suitable match for Mr. Darcy. According to Lady Catherine, her own daughter and nephew were perfect for each other. “My daughter and my nephew are formed for each other. They are descended, on the maternal side, from the same noble line; and, on the father’s, from respectable, honourable, and ancient—though untitled—families.”⁶⁸ To her credit, Lady Catherine candidly admitted that raw economics was the incentive for her and her sister to plan a marriage while their children were infants: “Their fortune on both sides is splendid.”⁶⁹ Lady Catherine’s economic motivation is a strong contrast to Elizabeth Bennet’s disdain of marrying for money. But most of Elizabeth’s peers simply did not have that luxury. Fearing to be a burden to her family, Charlotte Lucas accepts Mr. Collins’s offer “solely from the pure

and disinterested desire of an establishment.”⁷⁰ Even for Austen, who believed the normative condition that marrying for money alone was wrong, she also knew that marriage with no financial assets provided from either side was imprudent.⁷¹ After Elizabeth refuses Mr. Collins, Mrs. Bennet tries the economic necessity argument on her daughter, but without success. “If you take it into your head to go on refusing every offer of marriage in this way, you will never get a husband at all—and I am sure I do not know who is to maintain you when your father is dead.”⁷²

Marriage costs then and now chiefly deal with removing oneself from the market after marriage. The cost is a loss of freedom and choice upon the promise to marry. Elizabeth Bennet is not willing to lose her freedom and happiness to rescue Longbourn by marrying Mr. Collins. What might a marriage be worth, if not Longbourn? Some UK economists at the University of Warwick “have found that lasting marriage is worth \$100,000 a year, since married people report being as happy, on average, as divorced (and not remarried) individuals who have incomes that are \$100,000 or higher.”⁷³ For women in Regency England, marriage was worth financial security for a lifetime, which is why Charlotte Lucas was a willing bride to the ridiculous Mr. Collins. The security he offered in his curate income, his comfortable home at Hunsford parsonage at Rosings, and his inheritance of Longbourn was worth it to her.

SOCIAL BENEFITS OF MARRIAGE

While marriage for love was gaining popularity in the Regency period, it was still limited to potential spouses within the same social sphere.⁷⁴ A primary purpose of marriage was to entrench alliances between extended family networks, and might also provide a way to combine adjacent estates.⁷⁵ Therefore, many marriages among upper class families often involved individuals with allied or related families since these marriages could fortify family ties in order to increase power, wealth, and position.⁷⁶ Even in matches made for love, a select pool of candidates was determined by the upper class as “[a]ristocrats wed other aristocrats.”⁷⁷ And those making their own way in the world could not breach a higher social status.

Sir Walter Elliot and those around him in *Persuasion* held his baronetcy and resulting position of freehold in society in such high esteem that he and others could not entertain his daughter marrying a mere sailor in the British Navy. But when Frederick Wentworth returned eight years later, a man of independent fortune that elevated him to a new social status in the estimation of Sir Walter, Sir Walter would now consent to the marriage of Captain Wentworth to his daughter, Anne Elliot.

In *Pride and Prejudice* Elizabeth Bennet attempts to explain to Lady Catherine how a difference in social status did not exist between her and Mr. Darcy, despite their disparity in income: “He is a gentleman; I am a gentleman’s daughter: so far we are equal.”⁷⁸ Unsatisfied, Lady Catherine attacks the reputation of Elizabeth’s family as unsatisfactory, making it disadvantageous to Mr. Darcy to align his name with the Bennet family. Such thinking was typical of the time, as parents arranged alliances through marriage, they considered offspring as pawns, and engaged and wed couples often while they were still children.⁷⁹

Furthermore, marriage was a consideration toward the common good. “Marriage . . . is the matrix of society; it is where offspring are conceived, cared for and grown. It is the cradle of life and civilization.”⁸⁰ Because of the procreative function of marriage, an important historic motivation for marriage was as a social institution used to benefit the broader human race.⁸¹ Marriage was a duty to family, tribe, and society to be fulfilled. Family was considered as the ultimate value in life to many traditional societies, and thus marriage was considered a transaction that furthered family interests.⁸² Because society had a very serious interest in the institution of marriage, the survival of the marriage itself was considered more important than the spouses’ emotional and intellectual needs.⁸³ This societal expectation of marriage is reflected in Lady Catherine’s statement to Mr. Collins: “Collins, you must marry. A clergyman like you must marry. Choose properly, choose a gentlewoman, for my sake and for your own.”⁸⁴ More about marriage and social status is discussed in chapter 5.

Nearly a century ago, scholar Emile Durkheim postulated that “the family would continuously decline in importance over time until it would finally disappear as a vital means of social organization.”⁸⁵ Based on objective statistics, there are fewer marriages as a percentage of the population than ever before. The millennial generation is perhaps the most affected, with only 20 percent of adults aged 18 to 29 married, and a projected 25 percent never likely to get married.⁸⁶ Yet, millennials *want* marriage as much as any previous generation, with 90 percent of college students reporting that they desire marriage.⁸⁷ Despite the marriage statistics, it is clear that “Durkheim’s prediction about the disappearance of families . . . is currently far from being fulfilled.”⁸⁸

Even though marriage in the twenty-first century is no longer pragmatically necessary for economic reasons or procreative purposes, studies find that there is a reemerging reverence for marriage. “It’s optional and revered. It’s a choice and something [to] aspire to.”⁸⁹ Described by the judiciary over time as “a sacred obligation,”⁹⁰ “a holy estate,”⁹¹ and “the foundation of the family and society,”⁹² scholars consider marriage to preexist the state, transcending both temporal and cultural boundaries.⁹³ “Marriage is a virtually universal human institution. In all the wildly rich and various cultures

flung throughout the ecosphere, in society after society, whether tribal or complex, and however bizarre, human beings have created [marriage] systems.”⁹⁴ And while not all marriage systems look similar, “everywhere, in isolated mountain valleys, parched deserts, jungle thickets, and broad plains, people have come up with some version of this thing called marriage.”⁹⁵

Historically, economics, family status, and societal preservation were driving factors in arranging a spousal match. By contrast, today, through property ownership, education, and employment, single women may attain similar economic stability and social status as their male colleagues.⁹⁶ Women’s growing independence has inevitably resulted in reduced societal pressure to be married by a certain age, as evidenced by the average marriage age marching steadily higher for each generation.⁹⁷ While empirical evidence undoubtedly demonstrates that being married is financially advantageous for both sexes,⁹⁸ marriage is simply no longer an economic or social necessity for women. Yet, with 90 percent indicating that they want to be married and spending millions of dollars pursuing potential spouses online,⁹⁹ it is apparent that millennial women desire marriage with much the same fervency as their predecessors.

NOTES

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18. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 46.

19. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 48.

20. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 22.

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22. *Brown v. Buhman*, No. 14-4117 (10th Cir. 2016).

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54. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 6.

55. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 4.
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Chapter Five

More on Marriage

Incentives Matter

Marriage incentives are pervasive in a relationship where matrimony is a possibility. From the benefits of property ownership, possession, and use, to spousal support, the legal and economic incentives govern decision-making. This chapter reveals Jane Austen's genius in teaching her readers about the incentives to marry from both legal and economic foundations in marital support, marital property, and how these incentives work before, during, and after marriage both then and now.

MARITAL CONTRACTING

In Jane's time, financial incentives for marriage were secured legally with a written contract for an express agreement and bargained for exchange. Today, a marital contract can be made at any time between the parties to a marriage—before as a prenuptial agreement, during as an ante-nuptial agreement, or after as a separation agreement or a property settlement agreement. These agreements are governed by the statute of frauds, a legal doctrine that requires an agreement must be in writing and signed by the parties against whom the obligations are to be charged. It protects parties from oral or verbal agreements unless they are reduced to writing and signed by all parties, or the duty sought is somehow partly performed according to the agreement.¹ A marital agreement must also be voluntarily entered into without fraud or duress and with full disclosure by each party of assets and relevant facts. Such a marital agreement between spouses can concern the ownership and division of marital property during the marriage or upon the end of the

marriage by death or divorce.² It can also make promises for payments of various methods of support to the marriage partners.

Drafted by lawyers in America, these agreements are drafted by solicitors in England. In the Regency era similar marital contracting documents were sometimes referred to as a wedding settlement or a dowry. The purpose of the settlement or dowry was to compensate the future husband for his future wife's maintenance for her lifetime, and ideally provide interest off that endowment for a woman's spending money—or what was often referred to then as “pin money.” Generally, parents provided for daughters' dowries and younger sons' portions, and that sum was also used to establish support in widowhood. Mr. Gardiner, Lydia's uncle, writes to her father, Mr. Bennet, in *Pride and Prejudice* that he has made the arrangements and asked his lawyer to prepare the written agreement:

if you are willing to perform the engagement which I have ventured to make on your side I hope it will not be long before they are [married]. All that is required of you is, to assure your daughter, by settlement, her equal share of the five thousand pounds secured among your children after the decease of yourself and my sister; and, moreover, to enter into an engagement of allowing her, during your life, one hundred pounds per annum. . . . I am happy to say there will be some little money, even when all his [Wickham's] debts are discharged, to settle on my niece, in addition to her own fortune. If, as I conclude will be the case, you send me full powers to act in your name throughout the whole of this business, I will immediately give directions to Haggerston for preparing a proper settlement.³

Mr. Bennet, as Lydia's father, is responsible for his daughter's support, but he will pass that on to Mr. Wickham with his financial assistance. These arrangements included not just Lydia's support, but Mr. Wickham's debts, and seem to be compensation for him in marrying Lydia, as Mr. Bennet proclaims, “Wickham's a fool if he takes her with a farthing less than ten thousand pounds”⁴ because Mr. Bennet knows that Mr. Wickham could walk away from the marriage without consequence otherwise. The parties have respectively used their financial and social leverage to obtain what each wanted in the marriage settlement.

The reader knows, of course, that Mr. Darcy has actually been the one to perform and fund all these negotiations. Knowing this, Mr. Wickham “was not wholly without hope that Darcy might yet be prevailed on to make his fortune”⁵ after their becoming brothers-in-law by marriage to sisters. Nonetheless, each wife remains the charge of her husband for financial support during her lifetime.

MUTUAL SUPPORT IN MARRIAGE

Austen uses Mary Crawford in *Mansfield Park* to state quite succinctly the importance of financial support gained by a spouse as an incentive for marriage. Miss Crawford states unequivocally, “A large income is the best recipe for happiness I ever heard of.”⁶ The hysterical Mrs. Bennet also understands this principle as she provokes her husband to visit the young, single, eligible newcomer, Mr. Bingley, who has income enough to rent Netherfield Park. “But consider your daughters. Only think what an establishment it would be for one of them.”⁷

Throughout her work, Jane Austen develops our understanding of this critical incentive toward matrimony. For example, Elizabeth Bennet’s friend Charlotte Lucas understands that her future depends entirely on a financially respectable marriage as she feels she has already become a burden to her family at twenty-seven. Charlotte also understands that a woman can catch a man if she has a hint of a plan. As we discussed in detail earlier, Charlotte proposes the notion that women are ultimately pursuing men, and not vice versa, suggesting that Jane Bennet should show even more fondness than she may feel in order to secure the affections of wealthy and available Charles Bingley, and proclaiming that there is plenty of time to get to know each other after marriage: “When she is secure of him, there will be more leisure for falling in love as much as she chooses.”⁸ Charlotte’s language illustrates a sort of marital pragmatism in general, which is demonstrated in her own actions after Elizabeth refuses Mr. Collins’s offer for marriage. Almost immediately, Charlotte swoops in on the forlorn and rejected lover, seeing an opportunity to encourage Mr. Collins’s proposal to her—which of course he does. This shocks Elizabeth, as she cannot believe it—her best friend to marry the ridiculous Mr. Collins? Idealism and pragmatism clash on the altar of economic reality.

Similar realities still exist today. Scholars have estimated that being married has the same effect in reducing poverty as adding five to six years to a parent’s level of education.⁹ *Pride and Prejudice* is universally loved because it is so entertaining in its grasp of human reality, but it also serves as a commentary on the fact that three hundred years ago women who could not support themselves needed financial security and found it almost always in marriage. The men they married were legally responsible to them for a lifetime of financial support. Today, women still desire a measure of that security in placing more value on a man with a job. However, in Jane’s time, all but a first-born son relied on someone else’s income. Discussed earlier in the context of marriage proposals, primogeniture played a tremendously significant role in marriage incentives. For example, Elizabeth Bennet, though in some measure of playful incredulity, discusses with Colonel Fitzwilliam his position on money and marriage. Noting the challenges facing the younger

son of an Earl, he laments his own position as compared to that of Mr. Darcy, who “enjoy[s] the power of doing what he likes”¹⁰ because he is rich. Colonel Fitzwilliam states:

I speak feelingly. A younger son, you know, must be inured to self-denial and dependence . . . perhaps I cannot say that I have experienced many hardships of that nature. But in matters of greater weight, I may suffer from the want of money. Younger sons cannot marry where they like. . . . Our habits of expense make us too dependent, and there are not many in my rank of life who can afford to marry without some attention to money.¹¹

Elizabeth’s witty reply sums up these incentives sarcastically: “And pray, what is the usual price of an earl’s younger son? Unless the elder brother is very sickly, I suppose you would not ask above fifty thousand pounds.”¹² Such unfortunate realities often affected the results of the marriage market, usually leaving a mostly efficient outcome, although not always the most romantically desirable.

There is no gender disparity in this context with Austen, as both men and women seem to work hard to marry rich in her stories. Consider *Lady Susan*. Manwaring—a particularly handsome, well-bred, but penniless gentleman—has married a young heiress for her money. He is, however, desperately in love with the indigent widow, Lady Susan. When Manwaring’s wealthy wife discovers this, eventually compelling their divorce, Lady Susan marries the ridiculous and incredibly rich Sir James Martin, allowing her and Manwaring to carry on, with Sir James unwittingly supporting this obsequious ménage à trois in his own home of Martindale. The two clandestine lovers not only rely on the support of James Martin, but they particularly enjoy sharing his home, Martindale—an estate of no small size—which leads us to another reason people might marry.

MARITAL PROPERTY

Marital property is defined as all property, both real and personal, that is acquired during marriage that has not been owned by one party prior to the marriage, or been comingled into marital funds.¹³ An inheritance or a personal injury claim are also not marital property but remain under separate ownership even during the marriage, again unless comingled with marital funds. Real property is land and estates in land, and personal property is everything else, as discussed earlier. Ownership, use, and possession of an item of property by one spouse during marriage is generally shared at the moment of gaining that asset, unless reserved or excepted from that joint ownership by an agreement between the parties to the marriage.

While items that are separately owned prior to marriage can remain separate property today, that was not the case in Regency England. Remember, under the doctrine of coverture, if a woman owned property prior to her marriage, that property became the property of her husband from the moment of marriage, again, unless reserved or excepted out by a separate agreement.

An especially key player in this landscape of marriage incentives was primogeniture, which we considered at length in chapter 2. Primogeniture and family wealth transfer in marriage law and economics can be traced throughout the works of Jane Austen. As discussed earlier, reviewing England's primogeniture laws 300 years ago, women were incentivized to target marriage to a family's eldest son. Primogeniture resulted in the monopolization of wealth, while free market competition tends to preclude the creation of monopolies. Nineteenth-century primogeniture concentrated wealth in a small number of people and thereby stifled the creation of wealth by precluding productivity and the development of new markets. In fact, Adam Smith was critical of these laws and proposed the abolition of primogeniture.¹⁴ Moreover, for women specifically, beauty and accomplishment became tools to gain access to property and economic stability.¹⁵

This is quite pronounced in *Pride and Prejudice* as the source of all Mrs. Bennet's woes. Because the Bennets had no son at all, therefore, there was no elder son to inherit Mr. Bennet's Longbourn estate. "Mr. Bennet's property consisted almost entirely in an estate of two thousand a year, which, unfortunately for his daughters, was entailed, in default of heirs male, on a distant relation."¹⁶ Thus, it passed to the next closest male heir, his cousin Mr. Collins. The Bennet girls were completely disinherited by entail to a male heir by law, requiring Mrs. Bennet to find them husbands. Though she details Mrs. Bennet's woes with wonderful humor, this entire notion must have bothered Jane Austen just as incessantly. She understood that many successful individuals in society often owed their success to inheritance and connections rather than personal merit and ability. Through her characters, Jane provides a striking commentary on many upper-class ladies and gentlemen who did not deserve their wealth and privilege, and many kind, deserving people of lower social classes who did not deserve their difficult situations.¹⁷

In *Sense and Sensibility*, the Dashwood girls are disinherited by male entail through testacy, as all the estate of Norland, their family home, will pass directly to John Dashwood, their father's eldest son by a previous marriage. Passing property by will rather than by primogeniture was just as disappointing for surviving girls who would not inherit, which was clearly audible in Austen's written voice:

The old gentleman [who previously owned Norland] died; his will was read, and like almost every other will, gave as much disappointment as pleasure. He was neither so unjust, nor so ungrateful, as to leave his estate from his nephew;

but he left it to him on such terms as destroyed half the value of the bequest. Mr. Dashwood had wished for it more for the sake of his wife and daughters than for himself or his son; but to his son and his son's son, a child of four years old, it was secured, in such a way, as to leave to himself no power of providing for those who were most dear to him, and who most needed provision.¹⁸

Elinor and Marianne, along with their mother and younger sister, are left virtually impoverished despite the plentiful property Mr. Dashwood was able to bestow upon his son and grandson. And having been disinherited from the estate of Norland, they must move out of their home.

Throughout *Sense and Sensibility*, Jane Austen considers and develops the forays into love of these two impoverished but genteel sisters, particularly when they both become entangled in undecided romances with men whose financial legacies are eventually withdrawn—Elinor with Edward Ferrars, and Marianne with John Willoughby. Neither woman felt that her beloved's money was a reason for her attachment, but each relationship demonstrated how strongly incentives mattered to the men nonetheless, presenting a clear contrast between Mr. Willoughby and Edward Ferrars. Edward chooses to honor his word to a woman he doesn't love, Lucy Steele, and lose his entire fortune. Lucy deserts Edward when he experiences this lost legacy, but that fortunately leaves him free to marry Elinor, who cares a bit less about his inheritance. Mr. Willoughby, on the other hand, abandons Marianne when he is disinherited from Allenham in Devonshire (due to the discovery of his own scandalous conduct as discussed earlier), as he believes he then must marry for money. While he nonetheless retains his estate Combe Magna in Somersetshire, he requires marriage to Miss Grey for her fifty thousand pounds to continue his lifestyle. A financial legacy withdrawn matters to one man, but not to the other; it blessed one with the woman he truly loved and removed from the other a woman he likely loved very much. "Willoughby could not hear of her marriage without a pang; and his punishment was soon afterwards complete in the voluntary forgiveness of Mrs. Smith,"¹⁹ who would have left him Allenham nonetheless.

The entire estate of Mansfield Park in the novel of the same name will not pass to the male protagonist of the story, Edward Bertram, as he is a second son and therefore must find his own way and work. Rather, the eldest son, Tom Bertram, will inherit all of Mansfield Park despite his lifestyle as a drunken partier known for his love of horse racing and gambling. As we have previously discussed, this matters little to the innocent and pure Fanny Price, but elicits malicious thoughts from Miss Crawford, and happiness is bestowed upon the former.

IDLENESS INCENTIVIZED

Austen seemed to develop a theme of England's incentivization of idleness in young people in many of her works, particularly as it relates to marital incentives. In her culture, gentlemen did not work to earn their keep and a profession in trade or business was looked down upon. However, Adam Smith and Jane Austen both supported successful employment as virtuous.²⁰ She holds out Mr. Wickham in *Pride and Prejudice* as an example of what "Mr. Darcy described as the idleness and vice of many years' continuance."²¹ In *Northanger Abbey* she relays that her heroine "had not been brought up . . . to know to how many idle assertions and impudent falsehoods the excess of vanity will lead."²² Readers hear through the voice of Marianne Dashwood in *Sense and Sensibility*, "A man who has nothing to do with his own time has no conscience in his intrusion on that of others,"²³ clearly revealing that she did not condone idleness. For example, Edward Ferrars, the eldest Ferrars son originally set to inherit his fortune in the same novel, recognizes the folly of idleness in himself, almost blaming that idleness on his fortunate birth circumstances which required nothing of him whatsoever. Men like him were free to spend their time on pleasures as they would choose. Elinor Dashwood opines that "the pleasantness of an employment does not always evince its propriety."²⁴

Elinor reflected on this in not only her own love, Edward, but in her sister's scorned love of Mr. Willoughby as a result of his decision to choose money over Marianne:

The world had made him extravagant and vain; extravagance and vanity had made him cold-hearted and selfish. Vanity, while seeking its own guilty triumph at the expense of another, had involved him in a real attachment, which extravagance, or at least its offspring necessity, had required to be sacrificed. Each faulty propensity, in leading him to evil, had led him likewise to punishment.²⁵

Mocking this idleness is also Mr. Knightley in *Emma*. "It is not to be conceived that a man of three or four-and-twenty should not have liberty of mind or limb to that amount. He cannot want money, he cannot want leisure. We know, on the contrary, that he has so much of both, that he is glad to get rid of them at the idlest haunts in the kingdom."²⁶ Speaking of Frank Churchill here, Austen used Mr. Knightley to comment on an idleness forlornly characteristic of Regency gentlemen who did not need to work for a living.

There is a serious and real interplay with basic economic effects of legal and social rules, which Austen perceives as leading into an alienation through pride and sloth. Her works illustrate how nineteenth-century Englishmen (and women sometimes too) gained wealth through marriage and inheritance, and how that wealth affected their social standing. Through Lady

Russell in *Persuasion*, one learns that such standing affects one's values. Lady Russell "had prejudices on the side of ancestry; she had a value for rank and consequence, which blinded her a little to the faults of those who possessed them."²⁷ The wealthy circumstances surrounding Emma Woodhouse led her to selfish indolence in *Emma*. "The real evils, indeed, of Emma's situation were the power of having rather too much her own way, and a disposition to think a little too well of herself."²⁸ Again, Mr. Darcy is distressed by his own incentivized selfishness and says of himself later in the novel, "Painful recollections will intrude, which cannot, which ought not, to be repelled. I have been a selfish being all my life, in practice, though not in principle . . . to think meanly of all the rest of the world, to wish at least to think meanly of their sense and worth compared with my own."²⁹

Austen's works also include characters that were not fortunate enough to gain wealth and social standing but were required to work for their support and ended up quite happy anyway. Edmund Bertram, the clergyman heart throb of Fanny Price in *Mansfield Park*, Robert Martin the farmer who loves Harriet Smith in *Emma*, Henry Tilney, the young clergyman who Catherine Morland aspires to love in *Northanger Abbey*, present positive examples. These were eligible men who were hardworking, which Austen held up as noble, and who were even more desirable for their integrity and most sincere hearts, despite their lesser economic standing. Nonetheless, she seemed to understand how free market principles worked to change this social framework. Austen developed her characters in a manner that related market concepts as social affairs. Economist Charles Wheelan notes that "a market economy inspires hard work and progress not just because it rewards winners, but because it crushes losers."³⁰ Austen tended to apply a market economy to romanticism in a way that generally rewarded those who worked hard and married for love with happiness (such as Edmund Bertram, Robert Martin, and Henry Tilney) and crushed those who married for money with unhappiness.

DUTY AS A MARRIAGE INCENTIVE

Out of the all too common need to marry, women sometimes felt at least somewhat incentivized to marry by duty. Duty (along with other social factors) could comprise part of a person's preferences in Austen's novels, and yet Austen seemed to despise the idea of duty obliging young women to marry a particular suitor.³¹ Already having discussed Charlotte Lucas' pragmatism, a peek at Maria Bertram of *Mansfield Park* is illustrative of this dutiful sentiment even in daughters of wealth. "Being now in her twenty-first year, Maria Bertram was beginning to think matrimony a duty, and as a marriage with Mr. Rushworth would give her the enjoyment of a larger

income than her father's, as well as ensure her the house in town which was now a prime object, it became, by the same rule of moral obligation, her evident duty to marry Mr. Rushworth if she could."³² Later in the same novel, Fanny Price is scolded by her Aunt Bertram that it is her duty to marry whenever offered a marriage proposal. "And you must be aware, Fanny, that it is every young woman's duty to accept such a very unexceptionable offer as this.' This was almost the only rule of conduct, the only piece of advice, which Fanny had ever received from her aunt in the course of eight years and a half."³³ Duty was a well-accepted and well-established marriage incentive for women even among the wealthiest families.

Showing us the less common inverse, however, is Emma Woodhouse. Singleness is in no way disdained in *Emma*; it simply had its consequences for women—namely poverty—unless you were wealthy and had an independent mind like Emma Woodhouse. Emma uniquely notices that because she is rich, she need not marry. While she has no emotional interest in marriage, she dreads, however, thinking of herself as Miss Bates, the village spinster, though "she enjoyed a most uncommon degree of popularity for a woman neither young, handsome, rich, nor married. Miss Bates stood in the very worst predicament in the world for having much public favour."³⁴ Unlike the Dashwood girls in *Sense and Sensibility*, who were victims of property following the male family line, Emma had no need of marital support because she was set to inherit her 30,000 pounds as dictated by her father's estate.

SPOUSAL SUPPORT IN DIVORCE

Only men had the legal capacity to sue in Regency England, which meant only men could sue for divorce. Men possessed all legal rights in marriage under patriarchal England. Divorce was rare in Regency England, but a few divorces are alluded to in Jane's novels, that of the Manwarings in *Lady Susan*, and that of Colonel Brandon's older brother and Eliza in *Sense and Sensibility*. One incidence of divorce in the works of Jane Austen that highlights the importance of spousal support is between Mr. and Mrs. Rushworth in *Mansfield Park*. When Maria Bertram Rushworth is discovered to have left her home with Mr. Rushworth to run away with Henry Crawford, her folly leaves her penniless and again dependent upon her father for support.

Not long after the rendezvous, Mr. Crawford moved on leaving Maria penniless, and Mr. Rushworth had absolutely no duty to provide for Maria after their divorce because of her adulterous conduct. But fortunately for her, Sir Thomas's sense of honor for his family required him to provide for her care, though in isolation, for the duration of her remaining life. As we described previously, the consequences of adultery for Maria were a broken marriage, loss of income, loss of property, loss of social position, and a

lifetime of isolation; the consequences of adultery to Henry were literally nothing.

While divorced women are better off than unwed mothers, they are still more likely to be impoverished in divorce. In more recent history, social researchers Linda Waite and Maggie Gallagher have researched the myriad benefits of marriage in their book *The Case for Marriage*. Even though “during marriage, women may specialize in ways that leave them worse off if the marriage ends, especially given the inadequate legal protections available under no-fault divorce,” the support she will receive from her husband “will be much higher than the average unwed mom receives, at least in part because a husband’s income is typically far higher than that of an unwed father, and because the dad who was married to his child’s mother is more likely to pay for the child care than an unmarried father is.”³⁵ Today, according to marriage researchers, over 40 percent of first marriages and 60 percent of second marriages end in divorce, and couples with lower incomes and less education are at a higher risk for divorce.³⁶ These are strong incentives for a healthy marriage decision initially and moving forward.

Moreover, research reveals that divorce clearly reduces a couple’s wealth. Studies have shown that divorce reduces an individual’s wealth by approximately 77 percent, compared to a single person, while being married increases comparative wealth by about 93 percent.³⁷ Furthermore, the wealth of individuals who do get divorced begins to drop well before the divorce is final.³⁸ *Marriage and Divorce’s Impact on Wealth* by Jay L. Zagorsky is frequently cited³⁹ and was summarized in a report by *TODAY*, which mirrored Becker’s analysis of specialization and wealth accumulation in marriages:

[W]hile some people are in long-term, unmarried relationships, many cohabiting couples may not yet have committed to the idea that they will be together forever. That means they aren’t combining resources as significantly as married couples. . . . The wealth differences can be significant. Zagorsky’s research has shown that people who got and stayed married each had about double the wealth of single people who never married. Together, the couple’s wealth was four times that of a single person’s. Other data also shows that married people see stronger financial advantages than just a doubling of wealth. According to the Census Bureau, in 2010 the median net worth for a married couple between the ages of 55 and 64 was \$261,405. That compares to \$71,428 for a man heading a household, and \$39,043 for a woman heading a household.⁴⁰

While correlation does not directly imply causation, divorce does appear to be an anti-incentive in the marriage choice. The potential for divorce should cause one to think twice before entering into a hasty marriage relationship, but the financial negatives to merely cohabitating should make marriage outweigh the choice to cohabit.

MARRIAGE INCENTIVES IN DEATH

Morbid as it may seem, there are incentives for marriage that are generally only realized at the death of a spouse. Whether received through a will (which remember is called testacy or testate succession), or where no will is available but default laws create duties at death (which remember is called intestacy or intestate succession), or by unique inheritance through a will substitute such as a trust, or a deed, or some private account, death provides new and unique marital incentives.⁴¹ These three methods allow for wealth to transfer at death. Characters throughout Austen's works assumedly took advantage of differing methods to create the dilemmas in her novels. Today, laws of wealth transfer are quite substantive and are established in state code, federal code, and case law, and taking advantage of them is what is known as estate planning.

Intestate succession as the set of default rules whereby a state sets out who inherits the wealth of a person who dies (a decedent) works chiefly to protect a surviving spouse from poverty. Even when the decedent did have a valid will, the state nonetheless provides for a required spousal share to the surviving spouse if the decedent did not adequately provide for his or her surviving spouse by will or will substitute. In illustration of this principle, a state code closely connected to English common law is the Virginia Code. The Code dictates and details when and how a spousal share may be claimed by a surviving spouse.⁴² A surviving spouse may claim this spousal share regardless of whether (i) any provision for the surviving spouse is made in the decedent's will or will substitutes or (ii) if the decedent dies intestate, as a minimum share must be left to a surviving spouse. There are very specific rules for making and determining this claim.⁴³

These laws today are being continually refined, but in Jane Austen's day they did not even exist. She seemed to see the injustice in this, understanding possibly the need for principles of spousal provision at death. Austen illustrated how the legal framework of Regency England dictated a powerful wealth transfer hierarchy that left women needy, as has already been described for the Dashwoods in *Sense and Sensibility* and for the Bennets in *Pride and Prejudice*. Conversely, it could leave women with a nice estate or sum of money, as it might have for Mary Crawford in *Mansfield Park*, and as it did for Lady Catherine de Bourgh, in *Pride and Prejudice*. When eldest son and heir to Mansfield Park, Tom Bertram's illness turns for the worse, Mary Crawford works hard to seduce second son Edmund Bertram and hopes for Tom's demise so that the estate can fall to Edmund; she has the "idea of being the child of good luck, and to her selfishness and vanity it would be good luck to have Edmund the only son."⁴⁴ On the other hand, one might say that Lady Catherine is a surviving spouse who particularly benefited from the marriage premium and was not hindered by her gender: "I see no occasion

for entailing estates from the female line. It was not thought necessary in Sir Lewis de Bourgh's family."⁴⁵ To use the condescending Lady Catherine to protect women's property rights was irony in itself, but Austen's commentary in this regard was not useless in setting the stage for the new world to work to amend the tragedy of female poverty as a surviving spouse.

MARRIAGE AS POLITICAL AND SOCIAL POWER

Marital pragmatism has been a factor in marriage for centuries, as political power can be an added marriage incentive. One need look no further than Henry VIII, the House of Windsor v. the House of Tudor in the monarchy. Reviewing Austen's *History of England* is a quite humorous reminder that Jane was a bit of a political junkie. More on point to her novels, though, she demonstrated here and there how marriage as social power could be tremendously important. Austen illustrates with daring mockery in *Pride and Prejudice* how important wealthy birth is as a sign of beauty, and therefore an asset in marriage, through the DeBourgh family. "Lady Catherine herself says that, in point of true beauty, Miss DeBourgh is far superior to the handsomest of her sex; because there is that in her features which marks the young woman of distinguished birth."⁴⁶

Moreover, being connected to a family by the affinity of marriage had great social advantages. One of the greatest benefits of a daughter marrying Mr. Bingley, a man of large fortune in *Pride and Prejudice*, in Mrs. Bennet's mind is that it will throw her other girls into the path of other rich men. Austen scholars have called this thinking "opportunity for stealthy seduction."⁴⁷

The greatest, or perhaps harshest, pragmatism is evident in Austen's *Persuasion*. Anne Elliot follows the strong advice to avert marriage to the man she loves because he has no rank or fortune. Anne Elliot, second daughter of the Baronet Sir Walter Elliot, did not need to be entirely economically pragmatic, but unfortunately, she was required to be socially pragmatic.

Modern-day trends suggest that couples are no longer as willing to get married as they generally were a few decades ago. Research estimates that in 2012, one-in-five adults age 25 and older (approximately 42 million individuals) had never been married. In contrast, only about one in ten adults in that age range in 1960 had never been married. Further, in 2012 men were more likely than women (23 percent versus 17 percent) to have never been married, which was a wider gender gap than in 1960 when 10 percent of men and 8 percent of women (25 or older) had never been married. Pew Social Trends suggests certain factors may account for this change, including cohabitation, delaying marriage and marrying at an older age, and raising children outside of marriage. Yet, when surveyed, only 13 percent of never-married adults

claimed that they do not want to marry, indicating that a vast majority of single individuals (87 percent) desire to marry at some point in their lives.⁴⁸

The average age for a woman to get married in the United Kingdom recently hit 30.⁴⁹ Princess Diana was married at 20; however, Princess Kate Middleton was married at 29. The average age at which an American woman gets married is 27.⁵⁰ In *Persuasion* Anne Elliot finally married at age 27, after eight and a half years apart from the love of her life, Captain Frederick Wentworth. Mrs. Croft's advice on this, however, is in direct contrast to current trends: "I would rather have young people settle on a small income at once, and have to struggle with a few difficulties together, than be involved in a long engagement."⁵¹

SOCIAL GROUPS, STATUS, AND RANK

In the early nineteenth century, social status meant almost everything, and marriage was seriously incentivized by status, social groups, and wealth. In fact, sometimes these qualities were more important than physical appearance or character traits. Lady Catherine in *Pride and Prejudice* provides one example: "Her air was not conciliating, nor was her manner of receiving them such as to make her visitors forget their inferior rank."⁵² Birth circumstances in Regency England made all the difference in English society. An 1814 Map of English Society illustrates these various status levels:⁵³

- *Highest Orders*: Royal family, lords spiritual and temporal, great officers of state, peers above the degree of a baronet. Total family members of this class: 2,880 with only 576 heads of families.
- *Second Class*: Baronets, knights, country gentlemen, others with large incomes. Total family members of this class: 234,305 with 46,861 heads of families.
- *Third Class*: Clergy, doctors, merchants and manufacturers on a large scale, bankers. Total family members of this class: 112,200 with 61,000 heads of families.
- *Fourth Class*: Lesser clergy, doctors, lawyers, teachers, ship owners, merchants and manufacturers of the second class, shopkeepers, artists, builders, mechanics, persons of moderate income. Total family members of this class: 1,168,250 with 233,650 heads of families.
- *Fifth Class*: Lesser freeholders, shopkeepers, innkeepers, publicans, persons in miscellaneous occupations. Total family members of this class: 2,798,465 with 564,799 heads of families.
- *Sixth Class*: Working merchants, artists, craftsmen, agricultural laborers. Total family members of this class: 8,792,800 with 2,126,095 heads of families.

- *Seventh Class*: Paupers, vagrants, gypsies, idle persons supported by criminal activity. Total family members of this class: 16,165,803 with 3,371,281 heads of families.
- *Army and Navy*: Officers, including half-pay noncommissioned officers. Total family members of this class: 69,000 with 10,500 heads of families. Soldiers, seamen, marines, pensioners. Total family members of this class: 862,000 with 120,000 heads of families.

These levels reveal the dramatic power or impotence in the economics of social status in Austen's time. Well understood by Austen, her work reflected these facts, but was also perfectly suited to be a participant, even an accomplice, for an era of dramatic social transformation.

When the French monarchy fell, many other aspects of European society began to crumble with it and social classes began to evolve. Austen would have been thirteen years old when the French Revolution began. This event seriously affected English-French trade and social norms as the "traditions, rules and hierarchy of the Georgian period began to fade and give way to a new generation's values and beliefs and it would be this generation to which Austen's heroes and heroines would belong."⁵⁴ Later on at the turn of the century, Napoleon Bonaparte crowned himself emperor in 1804, and shortly after this time, many of England's social changes would have been evident. Wars and colonization of the New World offered young men of no consequence the chance to become respected gentlemen of title. This in turn led to a novel social hierarchy and a society that held a different set of morals and values to its previous social norms.⁵⁵ Austen's was a world of great change that highlighted many of the problems with social status in her novels, as she so eloquently and often comically revealed the societal changes of her time.

SOCIAL GROUPS, LAWS, AND GENDER BIAS

Gender disparity was prevalent in this time, and Jane Austen reflected those facts pervasively throughout her novels, as we have seen. The expectation for women was to marry and have children, and the laws at the time were based on the idea that women would marry and be provided for by their husbands. Interestingly, however, in 1861 there were fewer men than women in England (approximately 10.4 million women compared to 9.8 million men) due to the fact that the mortality rate for boys was higher than for girls, many men served in the military and were stationed abroad, and men were more likely to emigrate compared to women. Despite this situation, upper- and middle-class women were still dependent on men for provision from their fathers and later husbands.⁵⁶

The societal foundation of status and rank in Austen's era keenly affected women, who were generally at a disadvantage in that society. English historian Charlotte Despard wrote about her feelings as a young woman in the 1850s in a brief, unpublished memoir:

It was a strange time, unsatisfactory, full of ungratified aspirations. I longed ardently to be of some use in the world, but as we were girls with a little money and born into a particular social position, it was not thought necessary that we should do anything but amuse ourselves until the time and the opportunity of marriage came along. "Better any marriage at all than none," a foolish old aunt used to say.

The woman of the well-to-do classes was made to understand early that the only door open to a life at once easy and respectable was that of marriage. Therefore she had to depend upon her good looks, according to the ideals of the men of her day, her charm, her little drawing-room arts.⁵⁷

In *Northanger Abbey* Catherine Morland's mother warned her instructively of these facts. "Wherever you are you should always be contented, but especially at home, because there you must spend the most of your time."⁵⁸ It is possible Mrs. Morland was also disappointed in her daughter's lack of patriotism, as well as understanding of her station, as she adds, "I did not quite like, at breakfast, to hear you talk so much about the French bread at Northanger."⁵⁹ Jane Austen exposed in *Mansfield Park* how her characters sometimes particularly enjoyed bucking the social expectations of their families, reflecting a general upper class prejudice against military officers. "Miss Frances married, in the common phrase, to disoblige her family, and by fixing on a lieutenant of marines, without education, fortune, or connexions, did it very thoroughly."⁶⁰

Louisa Garrett Anderson, the daughter of Elizabeth Garrett Anderson, wrote about attitudes toward marriage when her mother was a young woman in the 1860s:

To remain single was thought a disgrace and at thirty an unmarried woman was called an old maid. . . . After their parents died, what could they do, where could they go? If they had a brother, as unwanted and permanent guests, they might live in his house. Some had to maintain themselves and then, indeed, difficulty arose. A hundred years ago the only paid occupation open to a gentlewoman was to become a governess under despised conditions and at a miserable salary. None of the professions were open to women; there were no women in Government offices; secretarial work was not done by them. Even nursing was disorganized and disreputable until Florence Nightingale recreated it as a profession by founding the Nightingale School of Nursing in 1860.⁶¹

The eighteenth century saw the rise of a like-minded group of serious women writers and intellectuals that were called the Bluestocking Circle. In 1775

women who had some measure of intellect or held some measure of property or wealth came to be commonly referred to as Bluestockings.⁶² The wealthy Elizabeth Montague hosted these gatherings and became known as “The Queen of the Blues” for her leading role within the Bluestocking circle. It began as a gathering of both men and women but became known for its female members, a new class of intellectual women.⁶³ The men included Edmund Burke and Samuel Johnson, and the women included Elizabeth Vesey, Hester Chapone, Elizabeth Carter, and Hannah More. The Bluestockings marked the beginning of women of education, wealth, and social status. Shifting gender norms and shifting of marriage customs that emerged at the turn of the nineteenth century ushered in the emerging notion of choice and happiness as components of ideal marriages. That occurrence has come to influence views of marriage today, whether the law should enlarge so as to suit the growing ideal, and whether marriage is in fact a product of custom that can be influenced as an institution made up of many individuals.

MEN AND MARRIAGE INCENTIVES

Men often seem to resist marriage, but research tends to show, and Jane Austen would affirm, that they benefit most from it. Marriage historically was seen as a springboard to family life, but now couples often see it as a signal of success that they have landed someone of significance.⁶⁴ One of the benefits of marriage for men includes that it attaches men to their children. The ceremony, ritual, and practice of marriage have historically attached men emotionally, practically, and financially to their children.

The marriage model of finding one’s “soul-mate” may be intended to make marriages more blissful, even less obligatory, but it may be having an opposite effect. Divorce rates and cohabitation rates have increased in tandem over the past several decades, which has caused a fundamental change in the institution of marriage.⁶⁵ Moreover, as individuals tend to choose marriage and cohabitating partners with similar education levels and income opportunities (as we touched on with assortative mating in chapter 2), the income inequality gap grows by a non-negligible amount.⁶⁶ Such decisions widen the economic gap between upper and lower classes and can tend to magnify the social obligations and privileges associated with marriage. In her time, Austen understood that the primary bridge between the lower class and the upper class was the military. For example, consider *Persuasion*, where now an independently wealthy naval captain, Captain Wentworth, was not an unsuitable choice for Sir Walter’s daughter, Anne Elliot, as he had been eight years earlier. Not being of family rank or birth, Captain Wentworth had now nonetheless, at least in Sir Walter’s estimation, been raised to an exclusive status by his acquisition of an independent fortune through naval privateer-

ing, and he was not bad looking for a navy man. For Sir Walter now, rather, “it was a struggle between propriety and vanity; but vanity got the better.”⁶⁷ And he judged the Captain to be a suitable match for a baronet’s daughter:

On the contrary, when he saw more of Captain Wentworth, saw him repeatedly by daylight, and eyed him well, he was very much struck by his personal claims, and felt that his superiority of appearance might not be unfairly balanced against her superiority of rank; and all of this, assisted by his well-sounding name, enabled Sir Walter, at last to prepare his pen, with a very good grace, for the insertion of the marriage in the volume of honour.⁶⁸

Men benefit from marriage, possibly even more than women today, as married men earn more money and even live longer than unmarried men. While it would seem, therefore, that men should be the ones pursuing marriage, many men say they feel no social pressure to marry. Rather, they associate marriage with more responsibility and financial loss, as well as the loss of a certain measure of freedom. However, when married, men typically can specialize in earning money because even a wife working full-time with a demanding career typically does a vast majority of the child care, housework, and social work of scheduling holidays, family events, and keeping in touch with friends, which allows husbands (to an extent) to specialize in their careers—“they do more of the earning and less of everything else than do wives.”⁶⁹ Economic theory suggests this as one reason for the wage gap between men and women.⁷⁰ These norms may continue to change in the future as women have gone from almost never working in Jane Austen’s time to being CEOs and politicians in our time, to unknown heights in the future. An economist would argue, additionally, that “[p]roductivity is what makes us rich. Specialization is what makes us productive. Trade allows us to specialize.”⁷¹ Both married partners benefit from trading off duties and economies of scale. Married couples can share many of life’s comforts (television, couch, bed, home, etc.) and live nearly as cheaply as an unmarried peer with the same lifestyle.⁷²

Men also benefit from marriage through increased health and happiness. Harvard research has estimated that married men have better mental health, lower risk of depression, and a higher likelihood of satisfaction in retirement than their unmarried peers. Moreover, this research has also linked marriage to reduced risk of Alzheimer’s disease, better cognitive function, improved blood sugar levels, and better results for hospitalized patients.⁷³

A MIXTURE OF VIRTUES

The key for a healthy society is to harness the right incentives to improve life for all, including through marriage. Economics tells us that rational individu-

als seek to make themselves better off according to their own preferences and constraints. Therefore, economists posit that while not all individuals act rationally one hundred percent of the time, the best hope for improving human conditions is to plan programs, organizations, and systems to work with individuals' incentives in such a way as to lift everyone up.⁷⁴ Marriage provides one institution by which most individuals are typically made better off, as we discussed above. And Chicago family economist and Nobel Laureate, Gary Becker, adds to this idea, suggesting that comparative advantage between the sexes explains why a majority of households typically have both sexes and why women have traditionally spent more time bearing and rearing children while men have spent more time in market activities.⁷⁵ Becker's analysis has been reiterated recently as Pew Research has found that women desire men with a steady income and men desire women "who share their ideas about raising children . . . more . . . than someone who has a steady job."⁷⁶ Becker also claimed that men and women are complements, not substitutes, and that households overall are more efficient and productive with two spouses able to capitalize on the sexual division of labor when allocating time and investments.⁷⁷ While not a zero-sum game, more efficient households in general mean more efficient society in aggregate.

While holding a mirror up to us all, Jane Austen's work simultaneously levels the playing field of virtue and vice. Not only does she provide a mockery of ridiculous society, she presents a clear moral thread throughout her work. She tends to distinctly punish the arrogant, greedy, and wicked (with at least a silly spouse and/or a loss of fortune) while praising the kind, noble, selfless characters by providing them with happiness and joy. Famous for her ability to expose human nature, Austen also encourages and builds up her readers by showing that people can change for the better. In Austen's scenarios, her novels are most beloved for how her characters are enlightened and altered for good by seeing and acknowledging their own flaws. She does this not only in Mr. Darcy and Elizabeth in *Pride and Prejudice*, but also in Captain Wentworth. In *Persuasion* he returns to the Elliot family with his fortune, only to stand by for another woman he does not love, and then watch as the woman he does love, Anne, is nearly deceived into marrying the false young avaricious suitor, Mr. Elliot. But when Anne is undeceived of Mr. Elliot by her financially reduced and very ill friend, Mrs. Smith, her long-suffering love for Captain Wentworth is rediscovered by the man himself. The happy realization only occurs after he sees the need for a most sincere change of virtue in his own perception. He had begun to see that he could "distinguish between the steadiness of principle and the obstinacy of self-will . . . there begun to deplore the pride, the folly, the madness of resentment, which had kept him from" his beloved Anne.⁷⁸ And of course, the moral turn works out perfectly in the end:

Captain Wentworth, with five-and-twenty thousand pounds, and as high in his profession as merit and activity could place him, was no longer nobody. He was now esteemed quite worthy to address the daughter of a foolish, spend-thrift baronet.⁷⁹

Marriage incentives are indeed part of the landscape of relationship choices in Regency England and today. People are still pragmatic, and incentives matter to them. Women then and now place a great deal of importance on whether a man has wealth, a steady job, and character. Three hundred years of women seeking financial stability through marriage has not changed all that much, but the necessity of that stability coming from men has thankfully changed a great deal. Even so, the incentives are crucial to understanding marriage and the benefits to be gained by both parties therein. Marriage still generally creates wealth, health, and it quite likely always will.

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Chapter Six

Children

Parenting and Human Capital

The natural progression of love and sex generally leads to children. Jane Austen clearly loved being an aunt to her nieces and nephews, of whom she had many, though she particularly enjoyed her niece Fanny Knight, as evidenced by their voluminous correspondence.¹ In many ways she reflected that love for children in some of her favorite characters, like Jane and Elizabeth Bennet in *Pride and Prejudice*, where she expresses how they were particularly loved by their favorite aunt. “Mrs. Gardiner, who was several years younger than Mrs. Bennet and Mrs. Phillips, was an amiable, intelligent, elegant woman, and a great favourite with all her Longbourn nieces. Between the two eldest and herself especially, there subsisted a particular regard. They had frequently been staying with her in town.”² Austen’s wit regarding children was not missing in her fiction either—in *Northanger Abbey* she writes, “A family of ten children will be always called a fine family, where there are heads and arms and legs enough for the number.”³ She also understood how children respond to parental guidance and reward as well as exhibit strategic thinking.⁴ In *Sense and Sensibility* she wrote: “With such a reward [sugar plums] for her tears, the child was too wise to cease crying.”⁵ Her very high value for children was nonetheless apparent, even when she was mischievous about it, as she also wrote in *Sense and Sensibility*:

On every formal visit a child ought to be of the party, by way of provision for discourse. In the present case it took up ten minutes to determine whether the boy were most like his father or mother, and in what particular he resembled either, for of course every body differed, and every body was astonished at the opinion of the others.⁶

While Jane appreciated and esteemed children, she did so with a thorough understanding of their position legally, and their needs, value, and worth economically. This chapter explains the legal obligations of parenthood, as well as the economic duties and benefits. Human capital presents a significant concept and can be seriously fostered by parents. Parents grasp that legal obligation to support and care for their children, but also build on it by altruistically adding the social duty to pour their resources and assets—both time and money—into their children to build them into positive members of society. This chapter also analyzes what happens in the context of an abundance of that parental altruism, as well as in a dearth of the same, and illustrates how Jane Austen perceived the effects of both.

LEGAL RIGHTS AND DUTIES OF PARENTHOOD

Parental rights, while based in the US Constitution's liberty interests according to Supreme Court case law, are considered by many to be inalienable, meaning they are from a natural law or a Supreme authority above any earthly government.⁷ This means that parents determine the standard of living of their children, make choices for their care and education, and establish their social status. In illustration of this concept, Mr. and Mrs. Bennet determined the education and situation of their daughters in *Pride and Prejudice*, even if Lady Catherine, a wholly unrelated person, was displeased with their choices. Utterly shocked at their lack of education, Elizabeth nonetheless is entertained by the fact that Lady Catherine has no right to determine her and her sisters' education:

“Your mother should have taken you to town every spring for the benefit of masters.” “My mother would have had no objection, but my father hates London.” “Has your governess left you?” “We never had any governess.” “No governess! How was that possible? Five daughters brought up at home without a governess! I never heard of such a thing. Your mother must have been quite a slave to your education.” Elizabeth could hardly help smiling as she assured her that had not been the case. “Then, who taught you? Who attended to you? Without a governess, you must have been neglected.” “Compared with some families, I believe we were; but such of us as wished to learn never wanted the means. We were always encouraged to read, and had all the masters that were necessary.”⁸

These parental rights carry with them implications of parental duties. Lady Catherine argues above that Mr. and Mrs. Bennet had a duty to educate the Bennet girls much better than they did. In fact, the Bennets did have duties to their children—to feed them, to clothe them, to care for them and keep them safe. Mrs. Bennet would add that she had a duty to find them husbands, but that obligation was not required by law. Rather, to Mrs. Bennet this was

simply by necessity (at least in her mind) and is at the root of why she badgers her husband into visiting with Mr. Bingley to allow their introductions so that he can choose one of them to marry. Mr. Bennet, however, teases her that he prefers to “send a few lines by you [Mrs. Bennet] to assure him of my hearty consent to his marrying whichever he chooses of the girls.”⁹ But Mrs. Bennet would not be denied. “If I can but see one of my daughters happily settled at Netherfield . . . and all the others equally well married, I shall have nothing to wish for.”¹⁰

The parental duty to supervise the education of one’s children was highly respected in Regency England, as Austen explains through Lady Susan flaunting her desire to provide Federica with a good education. But we see this duty arise in *Emma* as well, in several unique circumstances. Austen introduces the reader to her idea of a good school:

Mrs. Goddard was the mistress of a school—not of a seminary, or an establishment or anything which professed, in long sentences of refined nonsense, to combine liberal acquirements with elegant morality, upon new principles and new systems—and where young ladies for enormous pay might be screwed out of health and into vanity—but a real, honest, old-fashioned boarding-school, where a reasonable quantity of accomplishments were sold at a reasonable price, and where girls might be sent to be out of the way, and scramble themselves into a little education, without any danger of coming back prodigies. Mrs. Goddard’s school was in high repute, and very deservedly; for Highbury was reckoned a particularly healthy spot: she had an ample house and garden gave the children plenty of wholesome food, let them run about a great deal in the summer, and in winter dressed their chilblains with her own hands. It was no wonder that a train of twenty young couples now walked after her to church.¹¹

In addition to education, parents are also required to provide for the financial support of their children and were in Austen’s time as well. The provision of child support is a legal obligation to contribute to maintaining the economic security of a child until he or she has reached the age of majority or is emancipated before that age. The child’s right to financial support from its parents cannot be waived, even by parents in a divorce.¹²

INHERITANCE AND DEATH OF PARENTS

In death, however, parents are not necessarily obligated to provide for their children, and sometimes cannot, as apparent with the Dashwoods, and the Bennets. Parents then and now are not required to provide for their children in their estate plans, as children have no right to inherit from their parents, unless their parent makes that choice express in some sort of estate planning tool. For example, a parent who leaves a child a legacy can do so by will, or

by a will substitute such as a deed, or a bank account, or a certificate of stock, or a life insurance policy, or other valuable. Only the state of Louisiana requires that minor children be protected in intestacy.¹³

When parents leave no will, a state's default rules of inheritance are triggered, termed *intestate succession*. Generally, children will take an equal share of their parent's estate in the absence of a surviving spouse. If a child is left a specific bequest, the surviving parent is generally the person favored to gain control over the child's inheritance in the event that a trustee is not appointed. When a married parent of a minor child dies, the surviving parent is presumed the custodian of the surviving child's property without court interference based on this presumption.¹⁴ These laws were similar in Jane Austen's time, and a good example of a child who inherits by will is little Henry Dashwood. In fact, the entire estate of Norland in *Sense and Sensibility* is left to Mr. Dashwood initially, as we discussed above, but it was left to him in such a way that he could only pass it on to his son (as his grandson had gained the favor of Mr. Dashwood's uncle) and not his daughters from a second marriage:

but to his son and his son's son, a child of four years old, it was secured, in such a way, as to leave to himself no power of providing for those who were most dear to him, and who most needed provision, by any charge on the estate, or by any sale of its valuable woods. The whole was tied up for the benefit of this child, who, in occasional visits with his father and mother at Norland, had so far gained on the affections of his uncle.¹⁵

Austen also uses *Emma* to teach us some of these principles, as Emma's mother dies early in the story when Emma is only two. "Her mother had died too long ago for her to have more than an indistinct remembrance of her caresses."¹⁶ Emma was left to the care of Mr. Woodhouse and a very capable governess, Anne Taylor. Jane Fairfax, however, was completely orphaned when both her parents died and was the only child of Mrs. Bates's youngest daughter. Austen uses this example to reveal a bit of how society felt at the time about children:

The marriage of Lieut. Fairfax, of the ___ regiment of infantry, and Miss Jane Bates, had had its day of fame and pleasure, hope and interest; but nothing now remained of it save the melancholy remembrance of him dying in action abroad, of his widow sinking under consumption and grief soon afterwards, and this girl.

By birth she belonged to Highbury; and when, at three years old, on losing her mother she became the property, the charge, the consolation, the fondling of her grandmother and aunt, there seemed every probability of her being permanently fixed there; of her being taught only what very limited means could command, and growing up with no advantages of connection or im-

provement, to be engrafted on what nature had given her in a pleasing person, good understanding, and warm-hearted, well-meaning relations.¹⁷

Typically, children without parents were then, and still are now, disadvantaged, even if they are able to accede to any sort of financial inheritance. Frank Churchill is another example presented to readers of *Emma*. His mother, from the great Churchill family of Enscombe, disobeyed the wishes of her brother and married Captain Weston of Highbury, and died after three years of marriage, leaving Captain Weston “rather a poorer man than at first, and with a child to maintain.”¹⁸ Little Frank’s fortunes turn when that same aunt and uncle who disapproved of his parents’ marriage took him in:

From the expense of the child, however, [Captain Weston] was soon relieved. The boy had, with the additional softening claim of a lingering illness of his mother’s, been the means of a sort of reconciliation; and Mr. and Mrs. Churchill having no children of their own, nor any other young creature of equal kindred to care for, offered to take the whole charge of the little Frank soon after her decease. Some scruples and some reluctance the widower-father may be supposed to have felt; but as they were overcome by other considerations the child was given up to the care and the wealth of the Churchills, and he had only his own comfort to seek, and his own situation to improve as he could.¹⁹

Mr. Weston did not lose his parental rights to his son Frank when his wife died. Rather, as the surviving parent he retained his parental rights in little Frank but chose to take advantage of an opportunity toward economic freedom for his two-year-old son. While Frank is not legally adopted, as the chosen heir to the Churchill family fortune in Enscombe, most likely by will, he chooses to take the Churchill name as his own.

ILLEGITIMACY

A child who is born outside a lawful marriage and who is not later legitimated by the marriage of his or her parents is legally termed “illegitimate,” though that standard is no longer stigmatizing in American law,²⁰ as it was in earlier times. This legal status of illegitimacy had the consequence of not allowing the child to inherit from his or her parents without proof of birth connection, today generally evidenced by DNA sampling techniques.²¹ In Regency England there was clearly no such option, but merely conjecture and reputation.

Emma discovers a new particular friend at Mrs. Goddard’s school, Miss Harriet Smith, whom she welcomes wholeheartedly in *Emma*. Austen gently breaks Harriet’s parentage and lineage, or lack thereof, to her readers. As having no family history in Highbury, it becomes clear that she is illegitimate, though someone is paying for her boarding school education at Mrs.

Goddard's school. "Harriet Smith was the natural daughter of somebody. Somebody had placed her, several years back, at Mrs. Goddard's school, and somebody had lately raised her from the condition of scholar to that of parlour boarder. This was all that was generally known of her history."²² The character of Harriet Smith introduced to the innocent and spoiled heroine, Emma, proves to be a vehicle which allowed Jane Austen to introduce and dismiss the very real matter of illegitimacy in a way that was wholly indistinguishable from any judgment, but fully aware that such things happen to children. Almost dismissible would be a more realistic view of a child's illegitimacy according to others in Highbury. Emma's matchmaking efforts to pair Harriet with the Reverend Mr. Elton fail miserably as he proposes to Emma herself instead. Emma discovers very keenly that not everyone is as welcoming as she is of a child who has no say in her own illegitimacy:

"Am I to believe that you have never sought to recommend yourself particularly to Miss Smith—that you have never thought seriously of her?"

"Never, madam," cried he, affronted in his turn; "never, I assure you. I think seriously of Miss Smith! Miss Smith is a very good sort of girl; and I should be happy to see her respectably settled. I wish her extremely well; and, no doubt, there are men who might not object to—Everybody has their level; but as for myself, I am not, I think, quite so much at a loss. I need not so totally despair of an equal alliance as to be addressing myself to Miss Smith!"²³

Today, illegitimate children are better referred to as non-marital children and cannot be discriminated against based on their birth status. But in Regency England this was not the case. Unmarried parents (especially fathers) had little or no legal obligations or rights in relation to their children, and these children were also subject to many social and legal sanctions.²⁴ Jane Austen appeared to see and comment on the injustice in this and may have worked her fiction to find some protection for those children in her heroines, as she did in *Emma*. Furthermore, without acknowledgement by the parent or other proof, a child born outside of marriage could not inherit from either parent. Under common law an illegitimate child was considered *nullius filius* (nobody's child), had no name except the name gained by reputation, and could not inherit from fathers or mothers. The burden of proof of parentage is uniquely imposed on an illegitimate child, and is constitutionally permissible, tending to prove that a child is better protected economically by marriage of his or her parents.²⁵

BEST INTERESTS OF THE CHILD

A legal doctrine known as the "best interests of the child" doctrine is a legal standard that arises anytime a child is involved in a matter of law. Derived

from natural law principles, this doctrine was not part of English law, but was largely developed in American jurisprudence. It requires that parents—and judges and decision makers in the absence of parents—make decisions that advance the best interests of the child or children involved.²⁶ While it is the general rule applied in custody disputes between two parents, it is also used to protect juveniles charged with or convicted of a crime. The doctrine generally leaves a great deal of discretion to a judge in any case regarding children. Judges consider several statutory factors to determine what is in the best interests of the child, including, for example, stability, finances, abuse, neglect, and educational opportunities. Overall, the doctrine requires a court to balance a parent's rights and a parent's ability to care for his or her child, or to find someone else capable to do so.²⁷ While the best interest of the child doctrine is much more developed in American jurisprudence, it had its beginnings in English law.²⁸ In *Emma*, Austen uses Jane Fairfax and Frank Churchill to teach us some of this principle founded in law and economics. Money often provides for a child's best interests. When Jane's parents die, she is sent away for a better life; when Frank's mother dies, he too is sent off with his wealthy aunt and uncle for a more prosperous life than his father could then offer him.

The framework of best interests of the child is balanced by parental rights and duties to protect those best interests. Fit parents are presumed by law to naturally care for the best interests of their children.²⁹ Today, state agencies are only permitted to interfere in the family when the child is endangered, neglected, or abandoned. Apart from the United States, the global community has, however, more recently adopted a children's rights framework, currently embodied in the United Nations Convention on the Rights of the Child, and adopted by all U.N. member nations except the United States. This Convention has altered the parent-child relationship to include the state as an equal actor and agent to insure the rights of children, sometimes to the detriment of the protection of their parents.³⁰

HUMAN CAPITAL

This notion of parental altruism to further a child's interests is closely connected to parental investments in the human capital of their children. Human capital is an important aspect of economics that may be neglected in a discussion on never-formed families. A definition of human capital can be outlined as the entire sum of an individual's set of skills, including education, entrepreneurial vigor, and athletic abilities—essentially everything an individual would be left with if separated from his or her assets. It is about far more than just making money. It significantly affects families, as economists have asserted that human capital is what makes individuals better parents, better

citizens, more appreciative of art and culture, and more able to enjoy life's fruits. As an extreme example, economists estimate that in the developing world, one year of additional schooling for a woman in a low-income country correlates to approximately 5 percent to 10 percent reduction of her child's death before age five.³¹

Economists have also posited that there exist weakly altruistic parents, who may inadvertently raise their own consumption at the expense of their children's. Families without assets or bequests to leave their children may also underinvest in their children's human capital, unintentionally imposing a significant debt burden on their children. This also imposes a larger burden on society in the big picture. Applying these principles to never-formed families, it becomes apparent that poorer parents, such as single mothers, are less able and therefore less likely to make efficient investments in their children, creating an even greater need for state intervention in areas of education and other provisions to raise human capital investments in children.³²

Human capital has a microeconomic effect on an individual family, and a macroeconomic effect on the common good. Society's total stock of human capital determines how well off that society is. Human capital matters so much because it is inextricably linked to the ever-important economic notion of productivity—higher levels of human capital indicate increased productivity which in turn results in higher economic output. Moreover, parents with higher education and more human capital tend to invest more in their children's human capital, while parents with lower levels of human capital behave just the opposite, creating a cycle in either direction. If society's children are more productive than the previous generation, society will be better off and have an improved standard of living.³³ Economists such as Dr. Gary Becker have posited that families create the most efficient environment for such human capital to grow and productivity to thrive:

Inheritability can be increased by supervising the upbringing, training, and occupational, marital, and other choices of children to ensure that their behavior is suited to the social standing of their parents, grandparents, uncles, aunts, and other relatives. . . . Relatives other than parents are willing to contribute to supervisory efforts because they and their kin benefit when a niece or nephew, for instance, enhances the reputation of the family.³⁴

Continuing with the *Emma* examples, Jane Austen comprehended this notion of human capital and developed it in one of her favorite—yet most spoiled—characters, Emma Woodhouse. Every ounce of effort and indulgence was poured into Emma by her father and her governess, Miss Taylor. Emma had no equals in her little town of Highbury, and the “Woodhouses were first in consequence there. All looked up to them.”³⁵ The excellent family treats its child just as excellently. Though this sentiment is somewhat undercut by the

fact that Emma is a bit of an unsympathetic snob, this is nonetheless how human capital develops.

Such ideas about human capital have profound implications for public policy and are directly impacted by single motherhood. For example, fighting population growth with birth control only works to the extent that families prefer fewer children; however, educating girls and providing better economic opportunities for women is a far more effective method of population control.³⁶ This is indeed a major economic discussion today, where higher education for women has shown that those women are having children later in life, having fewer children, and more likely are having those children with an educated and engaged father.³⁷ Furthermore, children benefit from an involved, responsible, and committed father, as without this, children are at a much higher risk for poor outcomes in life.³⁸ Children and families are better off having responsible, committed fathers who are educated, concerned about their importance to their children, and encouraged to be involved with their children—creating strong families as a result. Without both active and occupied mothers and fathers in a child's life, the void created by the circumstance of a never-formed family gets filled when the state attempts to reproduce the effects of an optimal degree of parental commitment on children's behavior, which provides a far less desirable result.³⁹

And children who have the benefit of education are clearly better off in every way, a notion Jane Austen absolutely understood.

CHILD POVERTY

When children live under impoverished parents, they are poor as well. In general, child poverty is defined as the phenomenon of children living in poverty whether they come from poor families, have been orphaned and are being raised with limited means, or in some cases absent means, despite state resources. Sadly, estimates have shown that one in five American children live in poverty, a shocking 40 percent of which are black children.⁴⁰ America has one of the worst child poverty indicators in the industrial world,⁴¹ and this is largely because the United States is a wealthy country that does not have the strongest safety net for its poor. The burden of higher taxes used to provide strong safety nets for the poor falls heaviest on individuals with higher levels of human capital and productive assets. For example, France is a better place to be born into poor circumstances than the United States because of its social policies, but a worse place to be a high-tech worker or entrepreneur—“[o]verall, policies that guarantee some pie for everybody will slow the growth of the pie itself. Per capita income in the United States is higher than the per capita income in France; the United States also has far

more children living in poverty.”⁴² Unfortunately, however, child poverty is even more pronounced beyond the borders of the developed United States.⁴³

Jane Austen understood the effects of poverty on children and helps teach her readers about its perils with the story of Fanny Price in *Mansfield Park*, and Frederica Vernon in *Lady Susan*. The Price family lived in Portsmouth, Mrs. Fanny Price having married against the will of her family, the Wards of Huntingdon, who had no wealth to speak of, but by consequence of the eldest Miss Maria Ward having captivated Sir Thomas Bertram of Mansfield Park and risen to new heights as a baronet’s lady. The Ward family daughters might have hoped to be elevated to equal advantage. “To save herself from useless remonstrance, Mrs. Price never wrote to her family on the subject till actually married.”⁴⁴ One of the Ward sisters, Mrs. Norris, would now and then inform the Bertrams “that Fanny got another child.”⁴⁵

A large and still increasing family, an husband disabled for active service, but not the less equal to company and good liquor, and a very small income to supply their wants, made her eager to regain the friend she had so carelessly sacrificed; and she addressed Lady Bertram in a letter which spoke so much contrition and despondence, such a superfluity of children, and such a want of almost everything else, as could not but dispose them all to a reconciliation. She was preparing for her ninth lying-in; and after bewailing the circumstance, and imploring their countenance as sponsors to the expected child, she could not conceal how important she felt they might be to the future maintenance of the eight already in being.⁴⁶

The eventual outcome was the introduction of eight-year-old Fanny Price to Mansfield Park. Austen also knew that a key to solving poverty was education. Mrs. Norris is the one who exclaims, “[g]ive a girl an education, and introduce her properly into the world, and ten to one she has the means of settling well, without further expense to anybody.”⁴⁷ Indeed, all works out well for Fanny in the end, as she and her cousin Edmund fall in love and marry, removing to his clerical parsonage.

Austen also uses Frederica Vernon in *Lady Susan* to explain the effects of the death of a supporting father on a child’s well-being when left to the care of her self-interested mother, who nonetheless understands that education is key for her daughter:

I shall soon have occasion for all my fortitude, as I am on the point of separation from my own daughter. The long illness of her dear father prevented my paying her that attention which duty and affection equally dictated, and I have but too much reason to fear that the governess to whose care I consigned her, was unequal to the charge. I have therefore resolved on placing her at one of the best private schools in town, where I shall have an opportunity of leaving her myself.⁴⁸

In her added effort to provide for her daughter, Lady Susan bespoke herself to be a loving parent because her object was to set up her daughter with comfort by marrying her off to perpetually silly (but very rich) Sir James Martin of Martindale:

I have distinguished no creature besides of all the numbers resorting hither, except Sir James Martin, on whom I bestowed a little notice in order to detach him from Miss Manwaring. But if the world could know my motive *there*, they would honour me. I have been called an unkind mother, but it was the sacred impulse of maternal affection, it was the advantage of my daughter that led me on; and if that daughter were not the greatest simpleton on earth, I might have been rewarded for my exertions as I ought—Sir James did make proposals to me for Frederica—but Frederica, who was born to be the torment of my life, chose to set herself so violently against the match, that I thought it better to lay aside the scheme for the present. I have more than once repented that I did not marry him myself, and were he but one degree less contemptibly weak I certainly should, but I must own myself rather romantic in that respect, and that riches only, will not satisfy me.⁴⁹

(Spoiler alert—Lady Susan *does* end up marrying Sir James herself, all for the money and the convenience of quite literally, her own affairs.) Nonetheless, Austen uses the shocking, flirtatious, and egotistical Lady Susan to show us the desperate ends to which child poverty can lead in parental decision-making, at least.

MARRIAGE AS AFFECTING CHILD POVERTY

Marriage makes a tangible difference in child poverty. Children of unmarried parents face an increased likelihood that they will endure some form of poverty as it has been estimated that a child not raised within a marriage is six times more likely to experience poverty than a child who grows up in an intact family; 71 percent of poor families with children are headed by single parents, and on the other hand, 73 percent of non-poor families with children are headed by married couples.⁵⁰ Marriage works to free children of economic hardship,⁵¹ but the percentage of children born to married parents has rapidly declined in recent years. Statistics show that only 59 percent of children born in the United States in 2010 were born to married couples. In contrast, well over 90 percent of children born in the United States in 1930 were born to married couples.⁵² CDC statistics show that in 2007 and 2008, the nonmarital birth rate peaked at 51.8 per 1000 unmarried women. As of 2013, that rate had decreased to 44.3 per 1000 unmarried women.⁵³

Well ahead of her time, Austen uses Mr. Willoughby as an example to illustrate the effects of unmarried parents on their children. As he describes to Elinor in *Sense and Sensibility*, that when his indiscretion of impregnating

the ward of Colonel Brandon, Eliza, he was deprived of the favor of Mrs. Smith who immediately revoked her will and testamentary devise to him of her estate, *Allenham*:

She taxed me with the offence, at once, and my confusion may be guessed. . . . The matter itself I could not deny, and vain was every endeavor to soften it. . . . By one measure I might have saved myself. In the height of her morality, good woman! She offered to forgive the past if I would marry Eliza. That could not be and I was formally dismissed from her favour and her house.⁵⁴

Mrs. Smith likely saw the value of Mr. Willoughby marrying Eliza as in the best interests of the child, the mother, and even for Mr. Willoughby himself, but she also may have wanted them to marry to diffuse any scandal. She would have still allowed him to inherit from her if he would do so. Refusing to marry the mother of his child, however, he was also refusing to admit legal responsibility for both mother and child and left them in far worse circumstances than many single mothers today. The weakness of his character struggled to comprehend his own circumstances, but then Mr. Willoughby was able to easily work the situation out in favor of selfish best interests rather than responsibility:

The struggle was great—but it ended too soon. My affection for Marianne, my thorough conviction of her attachment to me—it was all insufficient to outweigh the dread of poverty, or get the better of those false ideas of the necessity of riches, which I was naturally inclined to feel, and expensive society had increased. I had reason to believe myself secure of my present wife, if I chose to address her, and I persuaded myself to think that nothing else in common prudence remained for me to do.⁵⁵

Currently, more millennial mothers are single than married, and the less education a young woman has, the higher the probability that she will become a mother before she gets married. This leads to a growing marriage divide as more than half of all babies born to mothers who do not have college degrees are also born outside of marriage, in contrast to less than 10 percent of babies born to single mothers with college degrees.⁵⁶ When marriage declines, children lose the personal and economic benefits that marriage provides because marriage of the child's parents—or the lack thereof—impacts the quality and stability of that child's life. Research illustrates that children with the least educated parents are less likely to grow up with both parents.⁵⁷ Middle-class parents who are moderately educated with a high school diploma are increasingly less likely to get married and stay happily married. Children of these parents are necessarily underprivileged by the lack of both family stability and family wealth. They have fewer economic resources themselves and are also less likely to profit from the benefits of

an intact, married family, including shelter, security, and stability. This is not to say that all children raised in single-parent households or blended families will not turn out well—many in fact do and become very secure, successful, and wonderful individuals. However, it is clear that overall, children benefit from being raised in an intact family.⁵⁸ Studies have revealed that between 2001 and 2008 intended pregnancies decreased and unintended pregnancies increased, and that disparities in unintended pregnancy by relationship status, education, and income increased (i.e., married, higher education, and higher income women were far less likely to face unintended pregnancy). Because of these results, these studies have suggested that reducing unintended pregnancy and non-marital childbearing most likely necessitates addressing socioeconomic inequities.⁵⁹

AN ECONOMIC APPROACH TO FAMILIES

An economic approach to never-formed families reveals many dramatic changes in family dynamics that have occurred in the past several decades. Such analysis crystalizes many of the powerful aspects primarily responsible for the significant shifts observed in family dynamics over time. While never-formed families were not as common in Jane Austen's time, she did show the complex dynamic between parents and children through loving father-daughter relationships (such as Emma and Mr. Woodhouse or Elizabeth and Mr. Bennet) as well as strained familial relationships (such as Anne and Sir Walter/Elizabeth Elliot or Henry/Eleanor Tilney and General Tilney). Dr. Gary Becker, again in his *Treatise on the Family*, discusses connections between the family and the state from such an economic perspective. He asserts that "[t]he efficiency perspective implies that the state is concerned with justice for children" where their well-being is the prime factor in an economic analysis.⁶⁰ While the effect on parents is certainly considered, the state tends to intervene when both parent and child gain, or when the gain to children exceeds the loss to their parents. For example, unmarried mothers tend to rely more on public benefits than on other sources of support:

Payments to mothers with dependent children are reduced when the earnings of parents increase, and are raised when additional children are born or when fathers do not support their children. It is a program, then, that raises the fertility of eligible women, including single women, and also encourages divorce and discourages marriage (the financial well-being of recipients is increased by children and decreased by marriage). In effect, welfare is the poor woman's alimony, which substitutes for husband's earnings. The expansion of welfare, along with the general decline in the gain from marriage, explains the sizeable growth in the ratio of illegitimate to legitimate birth rates despite the introduction of the pill and other effective contraceptives.⁶¹

It seems that Becker's premise that growth in welfare benefits has been one of the most powerful forces in changing the family the past several decades is correct. The change is apparent in that the replacement of father support—which was critical in Jane's time—by state support has had unique and unexpected collateral effects, starting with incentives. Discussing how fathers matter, new research explains genetic and epigenetic links that are unique to fathers and their children, while other studies explore the impact of fathers' presence or absence.⁶² But, while the research in this area is growing, there is no clear divide in many studies between the biological and the psychological; in other words: "Being around dads affects children's biology, which in turn affects their mental states, like happiness, and their success in life."⁶³ Economists discuss this as a form of parental altruism, where support for the importance of altruism comes from the time and effort parents devote to lowering the probability of harm coming to their children. These effects arise from frequent contact between family members, which often raises the degree of parental altruism, leaving a fatherless child in an undesirable arrangement.⁶⁴ Greater child well-being means better welfare and better economic conditions for children, which can be better fostered with the active presence of a loving and engaged father.

Some may argue that cohabitation can offer the benefits of both parents to children. Statistics reveal, however that marriage between parents is nonetheless better for children, and that cohabitation can instead be devastating to them. Researchers found that "[c]ohabiting parents break up at a much higher rate than married parents and the effects of breakup can be devastating and often long-lasting. Moreover, children living in cohabiting unions with stepfathers or mother's boyfriends are at a higher risk of sexual abuse and physical violence, including lethal violence, than are children living with married biological parents."⁶⁵ As discussed above, children living with married parents are also significantly less likely to fall into poverty. In fact, children who are raised outside of an intact marriage are not only more likely to be impoverished, but their poverty tends to be deeper and last longer than children living in poverty with married parents.⁶⁶

The most active fathers are usually married to the mother of their child and the child benefits behaviorally and academically from father-involvement, suggesting that marriage is beneficial on a micro and macro level.⁶⁷ Moreover, the importance of marriage is underscored by the fact that fathers married to the mothers of their children tend to be the most involved in their children's life. Researchers surmise that married men are more likely to be involved with their children, because marriage is a more stable union than other relationships, such as cohabitation. Additionally, "fathers may be motivated to invest in children, in part, as a portion of their mating strategy with the mother," since the marital relationship comes with greater certainty. Fur-

thermore, married men are more likely to be certain about the paternity of the child, affording the child more stability as a result.⁶⁸

Austen highly valued the presence of a father in a child's life. Her novels include many examples of loving fathers providing care and protection for their children. One example of the special connection between a father and daughter in *Pride and Prejudice*, occurs when Mr. Bennet reveals his preference for Elizabeth while talking with his wife:

"You are over-scrupulous, surely, I dare say Mr. Bingley will be very glad to see you; and I will send a few lines by you to assure him of my hearty consent to his marrying whichever he chooses of the girls; though I must throw in a good word for my little Lizzy."

"I desire you will do no such thing. Lizzy is not a bit better than the others and I am sure she is not half so handsome as Jane, nor half so good-humoured as Lydia. But you are always giving *her* the preference."

"They have none of them much to recommend them," replied he; "they are all silly and ignorant, like other girls; but Lizzy has something more of quickness than her sisters."⁶⁹

Father involvement has been linked to many positive outcomes for children. It has been shown that a father's behavior affects his child's life outcomes including children's social integration, marital success, and ability to secure a supportive network of friends.⁷⁰ Research also associates increased father involvement (particularly a father's playfulness, patience, and understanding with his children) with less aggressive behavior among peers.⁷¹ Father involvement positively affects academic readiness in toddlers and academic achievement in adolescents, as "fathers who are involved, nurturing, and playful with their infants have children with higher IQs, as well as better linguistic and cognitive capacities."⁷² Furthermore, a significant number of studies have shown that living with one's father positively increases children's physical and emotional health, academic achievements, and helps children avoid drugs, violence, and delinquency.⁷³

While unmarried fathers' involvement with their children can have positive effects, research shows that the marriage of the child's biological parents results in the best behavioral outcomes.⁷⁴ Father-absence, however, is linked to many negative consequences for children. Father-absence is associated with increased likelihood of police involvement in adolescent boys and earlier beginning of sexual activity and childbirth in girls.⁷⁵ Additionally, as we discussed above, children living without their fathers are nearly four times more likely to be poor. For example, in 2011, 12 percent of children in families of a married couple were living in poverty, while approximately 44 percent of children in mother-only families were impoverished.⁷⁶ The effects of poverty on children can be devastating; it can hinder cognitive development and the ability to learn as well as contribute to poor health and behav-

ioral, social, and emotional problems.⁷⁷ In addition, when a child's father is absent, there is a greater likelihood that the child will be incarcerated, face teen pregnancy, marry without a high school degree, and marry a partner also without a high school degree.⁷⁸ Moreover, children living with their single mothers are also more likely to be living in the house with an unrelated male, which as stated above, "correlates robustly with a significantly increased risk for childhood violence and death."⁷⁹

Unfortunately, noncoresidential fathers are much less involved with their children than coresidential fathers. The US Department of Health and Human Services found that only ten percent of noncoresidential fathers of children under the age of five play with their children daily and 37 percent of noncoresidential fathers had not played with their children at all in the last four weeks. In contrast, 81 percent of coresidential fathers played with their children every day, and 82 percent of married coresidential fathers played with their children every day. Moreover, "[c]ohabiting fathers were twice as likely (30%) to have not read to their children at all in the last 4 weeks compared with married fathers (12%) and fathers who were neither married nor cohabiting (14%)."⁸⁰ Many noncoresidential fathers do not even talk to their school-aged children about their child's day; an astounding 37 percent of noncoresidential fathers had not "talk[e]d to their children at all about things that happened during the day in the last 4 weeks" while only 1.1 percent of coresidential fathers could say the same.⁸¹ These findings illustrate that father involvement is critical to a child's well-being, and marriage is one primary factor that keeps fathers engaged in their families and connected with their children.⁸²

As we discussed in the previous chapter, individuals who enter into matrimony gain many benefits to their health, wealth, and happiness. This is clearly also true for children who are the natural result of marriage and romance. Jane Austen's work reveals a deep value for children and familial relationships, their stations in life as created by their parents, and humorously and fastidiously offers solutions for their welfare, understanding that good parenting develops human capital, providing for children for generations to come.

NOTES

1. See generally Deirdre Le Faye, *Jane Austen's Letters*, 3rd edition (Oxford University Press, 1995). See also *The Cambridge Companion to Jane Austen*, edited by Edward Copeland and Juliet McMaster, 2nd edition (Cambridge University Press, 2011), 17, 99, 105, 108, 111, 206.
2. *A Lady, Pride and Prejudice* (Thomas Egerton, 1813), Chapter 25.
3. Jane Austen, *Northanger Abbey* (John Murray, 1817), Chapter 1.
4. Michael Suk-Young Chwe, *Jane Austen, Game Theorist* (Princeton University Press, 2013), 7.

5. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 21.
6. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 6.
7. See *Meyer v. Nebraska*, 262 US 390 (1923) and *Pierce v. Society of Sisters*, 268 US 510 (1925), both holding that parents have the constitutionally protected right to direct the upbringing of their children, then also see *Troxel v. Granville*, 530 US 57 (2000) affirming those rights, but finding them inalienable, according to the concurring dissent of Justice Antonin Scalia.
8. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 29.
9. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 1.
10. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 3.
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31. Charles Wheelan, *Naked Economics* (Norton, 2002), 99 and 105 (citing T. Paul Schultz, "Health and Schooling Investments in Africa," *Journal of Economic Perspectives*, Volume 13, (1999), 67).
32. Gary S. Becker, *A Treatise on the Family* (Harvard University Press, 1981, 1993), 366–367. In the context of comparing parental investment for old age with investment in human capital of children, Becker and Murphy clarify that parents may "substitute their own

consumption for that of their children by investing less in the children's human capital and instead saving more for old age."

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34. Gary S. Becker, *A Treatise on the Family* (Harvard University Press, 1981, 1993), 184.

35. Jane Austen, *Emma* (John Murray II, 1815), Chapter 1.

36. Charles Wheelan, *Naked Economics* (Norton, 2002), 111. For a more thorough discussion of how these factors affect sustainability, see Kathleen A. McKee and Lynne Marie Kohm, "Examining the Associations Between Sustainable Development Population Policies and Human Trafficking," *Michigan State International Law Review*, Volume 23 (2014).

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39. Gary S. Becker, *A Treatise on the Family* (Harvard University Press, 1981, 1993), 369.

40. Charles Wheelan, *Naked Economics* (Norton, 2002), 98–99.

41. Alexander Stille, "A Happiness Index with a Long Reach; Beyond GNP to Subtler Measures," *New York Times*, May 20, 2000, at B13.

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43. Charles Wheelan, *Naked Economics* (Norton, 2002), 6.

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45. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 1.

46. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 1.

47. Jane Austen, *Mansfield Park* (Thomas Egerton, 1814), Chapter 1.

48. Jane Austen, "Lady Susan," in James Edward Austen-Leigh, *A Memoir of Jane Austen* (Richard Bentley, 1870), Letter 1.

49. Jane Austen, "Lady Susan," in James Edward Austen-Leigh, *A Memoir of Jane Austen* (Richard Bentley, 1870), Letter 2.

50. Robert E. Rector et al., "Increasing Marriage Would Dramatically Reduce Child Poverty," *Handbook of Families & Poverty*, edited by D. Russell Crane and Tim B. Heaton (Sage Publications, Inc., 2008), 457, 457–460, 466. See also Lynne Marie Kohm, "Rethinking Mom & Dad," *Capital University Law Review*, Volume 42 (2014), 454.

51. Paul R. Amato, "The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation," *Princeton University: Future of Children*, Volume 15 (2005), 75, 82–83, http://futureofchildren.org/futureofchildren/publications/docs/15_02_05.pdf.

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53. "Births: Final Data for 2013," *National Vital Statistics Reports*, Volume 64, Number 1 (January 2015), http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_01.pdf.

54. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 44.

55. A Lady, *Sense and Sensibility* (Thomas Egerton, 1811), Chapter 44.

56. W. Bradford Wilcox, "How Churches Can Bridge the Marriage Divide," *First Things*, June 25, 2014, <http://www.firstthings.com/web-exclusives/2014/06/how-churches-can-bridge-the-marriage-divide>.

57. W. Bradford Wilcox, "How Churches Can Bridge the Marriage Divide," *First Things*, June 25, 2014, <http://www.firstthings.com/web-exclusives/2014/06/how-churches-can-bridge-the-marriage-divide>. These benefits would include two parents to provide love and care for the

child, most likely stable housing, and dual parental support in education, and personal decision-making.

58. W. Bradford Wilcox, "When Marriage Disappears: The Retreat from Marriage in Middle America," *State of Our Unions* (2010), 15, <http://stateofourunions.org/2010/when-marriage-disappears.php>. See also Paul R. Amato, "The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation," *CYC-Online* (July 2007), <http://www.cyc-net.org/cyc-online/cycol-0707-amato.html> (discussing family formation as just one factor in child well-being).

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60. Gary S. Becker, *A Treatise on the Family* (Harvard University Press, 1981, 1993), 361, 363. Child well-being is also the primary factor in any legal analysis that demands an outcome to advance the best interests of the child as a legal standard. For a thorough discussion on the legal definition and requirements for the best interest of the child doctrine, see generally Lynne Marie Kohm, "Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence," *J. L. & Fam. Stud.*, Volume 10 (2008), 337, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1957143.

61. Gary S. Becker, *A Treatise on the Family* (Harvard University Press, 1981, 1993), 356-357 and 363, where with Kevin M. Murphy, he argues that they "cannot prove that efficiency guides state involvement in the family," but that they seem to try to show that state interventions in the market for schooling, benefits, financial support, as well as benefits such as social security and access to divorce "are consistent on the whole with the efficiency perspective."

62. See generally Paul Raeburn, *Do Fathers Matter? What Science Is Telling Us about the Parent We've Overlooked* (Farrar, Straus, and Giroux, 2014).

63. Mark Oppenheimer, "Relevant? Nurturing? Well, So's Your Old Man," *New York Times*, June 2, 2014, at C6, <http://www.nytimes.com/2014/06/02/books/do-fathers-matter-shows-why-they-do.html>.

64. Gary S. Becker, *A Treatise on the Family* (Harvard University Press, 1981, 1993), 365. Becker and Murphy discuss altruism toward children in the context of gifts and bequests from parents to children, but it does not seem unreasonable to liken this behavior to a dearth of altruism when fathers are not present with their children.

65. David Popenoe and Barbara Dafoe Whitehead, "Should We Live Together?" *The National Marriage Project*, 2nd edition (2002), <http://nationalmarriageproject.org/wp-content/uploads/2013/01/ShouldWeLiveTogether.pdf>.

66. Linda J. Waite and Maggie Gallagher, *The Case for Marriage: Why Married People Are Happier, Healthier and Better off Financially* (Crown Publishing Group, 2002), Chapter 8, Kindle.

67. Helen M. Alvare, "Father-Absence, Social Equality, and Social Progress," *Quinnipiac Law Review*, Volume 29 (2011), 123, 140, ("Fathers married to the mothers of their children are the most involved.") (citing Marcia J. Carlson, "Family Structure, Father Involvement, and Adolescent Outcomes," *Journal of Marriage & Family*, Volume 68 (2006), 137, 138). See also, for example, Amy Snow Hilton, "The Texas Response to Federal Privacy Jurisprudence," April 16, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2595163.

68. Helen M. Alvaré, "The Turn toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors," *Stanford Law & Policy Review*, Volume 16 (2005), 138 and 140 (citing multiple pieces of research on this issue).

69. A Lady, *Pride and Prejudice* (Thomas Egerton, 1813), Chapter 1.

70. Helen M. Alvaré, "The Turn toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors," *Stanford Law & Policy Review*, Volume 16 (2005), 135-136 (explaining that "of the relatively few (eight) extant studies about the effects of father involvement, which controlled for the quality of the mother-child relationship, and used data from independent sources, five showed 'significant associations between positive father involvement and child outcomes'" (quoting William Marsiglio, Paul Amato, Randal D. Day, and Michael E.

Lamb, "Scholarship on Fatherhood in the 1990s and Beyond," *Journal of Marriage & Family*, Volume 62 (2000), 1173, 1183); Jo Jones, Ph.D., and William D. Mosher, Ph.D., "Fathers' Involvement With their Children: United States, 2006–2010," *National Health Statistics Report*, Number 71, December 20, 2013, 1 ("Increased involvement of fathers in their children's lives has been associated with a range of positive outcomes for the children.").

71. Helen M. Alvaré, "The Turn toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors," *Stanford Law & Policy Review*, Volume 16 (2005), 136 (citing William Marsiglio, Paul Amato, Randal D. Day, Michael E. Lamb, "Scholarship on Fatherhood in the 1990s and Beyond," *Journal of Marriage & Family*, Volume 62 (2000), 1173, 1183, and citing Ross D. Parke, *Gender Differences and Similarities in Parental Behavior*, in *Gender and Parenthood*, edited by Kathleen Kovner Kline & W. Bradford Wilcox (Columbia University Press, 2013), 9).

72. Jeffrey Rosenberg and W. Bradford Wilcox, "The Importance of Fathers in the Healthy Development of Children," *Office on Child Abuse & Neglect, U.S. Children's Bureau* (2006), 12, <https://www.childwelfare.gov/pubs/usermanuals/fatherhood/fatherhood.pdf>.

73. Jeffrey Rosenberg and W. Bradford Wilcox, "The Importance of Fathers in the Healthy Development of Children," *Office on Child Abuse & Neglect, U.S. Children's Bureau* (2006), 12, <https://www.childwelfare.gov/pubs/usermanuals/fatherhood/fatherhood.pdf>. For more information how father absence can affect an entire nation for generations see Lynne Marie Kohm and Ashley Michelle Williams, "The Tragic Tapestry of Father Absence and National Strength," 13 *Liberty U. L. Rev.* 1 (2018), <https://ssrn.com/abstract=3326881>.

74. Jeffrey Rosenberg and W. Bradford Wilcox, "The Importance of Fathers in the Healthy Development of Children," *Office on Child Abuse & Neglect, U.S. Children's Bureau* (2006), 13 (citing multiple pieces of research). See also "Father Facts," *National Fatherhood Initiative*, accessed April 28, 2019, <http://www.fatherhood.org/father-absence-statistics> (revealing that students are more likely to earn mostly A's if either a stepfather, a single-parent father, or a father in a biological parent family is involved in the school) (citing Christine Winqvist Nord & Jerry West, "Fathers' and Mothers' Involvement in Their Children's Schools by Family Type and Resident Status," *U.S. Department of Education, Office of Education Research and Improvement*, (May 2001)); see also Jeffrey Rosenberg and W. Bradford Wilcox, "The Importance of Fathers in the Healthy Development of Children," *Office on Child Abuse & Neglect, U.S. Children's Bureau* (2006), 12 ("Caring, involved fathers exist outside of marriage. They are more likely, however, to be found in the context of marriage. There are numerous reasons for this, not the least of which being the legal and social norms associated with marriage that connect a father to the family unit. That may also explain, in part, why research consistently shows that the married mother-and-father family is a better environment for raising children than the cohabitating (living together) mother-and-father family."). See also generally Jo Jones, Ph.D., and William D. Mosher, Ph.D., "Fathers' Involvement With their Children: United States, 2006–2010," *National Health Statistics Report*, Number 71, December 20, 2013.

75. Helen M. Alvaré, "The Turn toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors," *Stanford Law & Policy Review*, Volume 16 (2005), 136 (citing several studies in this area of research).

76. "Statistics and Data on the Consequences of Father Absence and the Benefits of Father Involvement," *National Fatherhood Initiative*, <https://www.fatherhood.org/free-resources-main?submissionGuid=5afca7ab-2554-48a2-b6d6-aab4f8ba385a> (citing US Census Bureau, Children's Living Arrangements and Characteristics: March 2011, table C8, (2011)).

77. "Kids Count Data Book: State Trends in Well Being," *The Annie E. Casey Foundation*, 25th edition (2014), 24.

78. "Father Facts," *National Fatherhood Initiative*, accessed April 28, 2019, <http://www.fatherhood.org/father-absence-statistics> (citing Cynthia C. Harper and Sara S. McLanahan, "Father Absence and Youth Incarceration," *Journal of Research on Adolescence*, (2004), 14, 369–397).

79. Helen M. Alvaré, "The Turn toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors," *Stanford Law & Policy Review*, Volume 16 (2005), 136–137 (citing Patricia G. Schnitzer and Bernard G. Ewigman, "Child Deaths Resulting From Inflicted Injuries: Household Risk Factors and Perpetrator Characteristics," *Pediatrics*, Volume 116

(2005), 686, 687, 690); see also David Popenoe and Barbara Dafoe Whitehead, "Should We Live Together?" *The National Marriage Project*, second edition (2002), <http://nationalmarriageproject.org/wp-content/uploads/2013/01/ShouldWeLiveTogether.pdf>. ("In general, the evidence suggests that the most unsafe of all family environments for children is that in which the mother is living with someone other than the child's biological father. This is the environment for the majority of children in cohabiting couple households.")

80. Jo Jones, Ph.D., and William D. Mosher, Ph.D., "Fathers' Involvement with their Children: United States, 2006–2010," *National Health Statistics Report*, Number 71, December 20, 2013, 6–8.

81. Jo Jones, Ph.D., and William D. Mosher, Ph.D., "Fathers' Involvement with their Children: United States, 2006–2010," *National Health Statistics Report*, Number 71, December 20, 2013, 6–8.

82. Lynne Marie Kohm, "Rethinking Mom & Dad," *Capital University Law Review*, Volume 42 (2014), 449; see also Helen M. Alvaré, "The Turn toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors," *Stanford Law & Policy Review*, Volume 16 (2005), 151 ("Laws directed toward stabilizing marriage should also be a part of any scheme to keep fathers involved, marriage being the place where fathers are 'present' to their children and in the best position to co-parent with mothers.")

Conclusion to *Law and Economics in Jane Austen*

No One Understands Like Jane

So was W. H. Auden right? Has an English spinster of the middle class described the amorous effects of “brass,” revealing so frankly the economic basis of society?¹ Jane Austen has used her talent for understanding and communicating the intricate connection between love and money to teach us all the basics of law and economics in relationships. This book has uncovered and illustrated her acute understanding of the necessary link between law and money in affairs of the heart. In fact, now the reader knows that much of what one could ever want to know about law and economics can be learned from Jane Austen.

Two seemingly complicated disciplines examined and learned in the context of Jane’s works have proven to be not only entertaining but enlightening, and dare we say fun? The reader has learned that while law governs human rights and human responsibilities, economics explains wealth and decision-making. This combination quite nearly governs the world, and all human relationships, transacting even (or especially) romantic relationships. The integration of these two learned subjects has drawn into focus how closely they are connected with the most important relationships in our lives.

Austen’s vibrant characters have helped us in uncovering and learning the basics of economics and law. The reader explored a family’s estate and income connection with the wealth of nations, and the legal rights and obligations connecting those principles in any society. From dating to marriage proposals to sex and marriage, the law and economics of the social rules of how men and women connect were covered thoroughly in these chapters.

Readers learned that a well-contemplated match carries a good deal of focus on legal ramifications, but also on economic utility maximization. Whether they are recognized or not, these principles are what really drives dating decisions. Legal and economic implications of sexual intimacy were exposed while exploring supply and demand, competitive sexual markets, opportunity costs, discount rates, and transaction costs. This worked to illustrate how sex and money from the beginning tend to be at the root of most relationships.

Never again will the reader think of Jane Austen as merely a romance novelist. Austen was a mold breaker and trend setter, particularly in terms of aiding the transformation of marriage into a consent-based institution in the context of the legal requirements for marriage entry and the economic considerations that go into it. She teaches that marriage is a legal and economic tool well utilized by both men and women, rich or poor, in the marriage market, and that these principles and incentives for marriage still subtly control the relationships between women and men today. The educated reader knows these adored romance novels are truly masterpieces of law and economics which are only disguised as love stories. Or from another point of view these are love stories, but they are love stories layered in searing truth from all aspects of life, including law and economics.

Jane Austen mastered story to subtly educate—intentionally or unintentionally—and her style and tactics are revolutionary. Hers are works where “the greatest powers of the mind are displayed, in which the most thorough knowledge of human nature, the happiest delineation of its varieties, the liveliest effusions of wit and humour, are conveyed to the world in the best chosen language.”²

Unlocking the principal connections between love, law, and economics, the possibility remains that one may or may not fully comprehend how connected happiness is with love and money, but Jane has revealed it. While being educated and entertained, she proves to her readers that you can learn much of what you could ever want to know about law and economics from Jane Austen.

NOTES

1. Margaret Drabble, “Introduction,” in *Sense and Sensibility* (Signet Classics, 1989), ix.
2. Jane Austen, *Northanger Abbey* (John Murray, 1817), Chapter 5.

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