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READING JANE AUSTEN THROUGH THE LENS OF THE LAW:
LEGAL ISSUES IN AUSTEN’S LIFE AND NOVELS

Maureen B. Collins

I. INTRODUCTION

Jane Austen is most closely associated with loves lost and found and vivid depictions of life in Regency England. Austen’s heroines have served as role models for centuries to young women seeking to balance manners and moxie. Today, Austen’s characters have achieved a popularity she could have never foreseen. There is an “Austen industry” of fan fiction, graphic novels, movies, BBC specials, and Austen ephemera. Surprisingly, though, her life and novels are also intertwined with the legal issues of her day. Marriage, property, inheritance, adoption, contracts, and crime all make an appearance in her work and in her short life. How is it that, with only a minimally formal education, the daughter of a clergyman managed to integrate complicated legal issues in her work? The laws of entailment and inheritance were enough to stymy a sophisticated solicitor, yet she managed to skillfully address the legal implications of her characters and their circumstances. Although this year will be the 200th anniversary of her death, Austen’s life, and her novels of manners among the English upper class during the Regency era continue to fascinate and to generate controversy.

1 Maureen B. Collins is a professor at The John Marshall Law School in Chicago. She is also a longstanding Janeite and a card-carrying member of the Jane Austen Society of North America. Professor Collins wishes to thank Adam Piccus and Katherine Silikowski for their research assistance and Susan Forgue, Andrea Kayne and Maureen Straub Kordesh for their comments and guidance.

2 “But it is the knowledge of the laws linking the Englishman to his property, of the intricacies of will and settlements, the tolerance of man’s failings that give
II. OVERVIEW

This article will examine the law as it existed in Jane Austen’s time, identify the legal issues raised in Austen’s life and novels, and address the occasional intersection of the two. It looks at the Austen phenomenon stemming from the few novels she penned during her short lifetime, how lawyers and legal issues are portrayed in those novels, and how her own relatively quiet life may have impacted those portrayals. The article also examines how Austen’s life and work continue to relate to legal issues several hundred years after her death.

III. THE LIFE AND TIMES OF JANE AUSTEN

A. Her life

Austen wrote of love and landowners, of marriage and manners, of dances and dowries. She wrote what many consider among the finest novels in the English language. She was a spinster of moderate means who died without knowing personal acclaim or any conception of the impact that she would have on literature and popular culture.

Jane Austen was born in rural Steventon, in Hampshire, England on December 16, 1775. She was the seventh of eight children. Jane’s mother, Cassandra Leigh Austen, was the daughter of a clergyman and a mother who was distantly related to a minor branch of a ducal family. Jane’s father, George Austen,
was the rector of Steventon and, by all accounts, well regarded in
his community. Educated at Oxford, he took in students to
supplement the family income. His love of learning was passed
to his children, including his two daughters, Jane and Cassandra.
Jane and her siblings were encouraged to think independently and
to read widely and often. The children frequently amused
themselves by writing and performing plays. The seeds of Jane
Austen’s literary success were sown in her early writings, known
as her Juvenilia, published and thoroughly studied by Austen
scholars.

Jane Austen’s limited formal education was typical for
women of her class and time. Early on, she was educated by a
relative in Oxford. As a pre-adolescent, she and her sister,
Cassandra, were sent to board at Mrs. Latournelle’s Ladies
Boarding School in Reading. While at the school, the sisters
cought typhus, and Jane nearly died. In light of her ill health and
their family’s financial constraints, Jane and her sister returned
home. From that time on, Austen’s education was informal. She
is reputed to have participated unofficially in many of her father’s
tutoring sessions, but she never again received any further formal
education.

B. Her Family

Austen’s work, and even her ability to produce that work,
was greatly influenced by her family. She was particularly close
to her father, her sister Cassandra and her brother Henry. It was

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6 Biography, supra note 3.
7 JANE AUSTEN, NORTHANGER ABBEY: AN ANNOTATED EDITION 12 (Susan J.
Wolfson ed., 2014) [hereinafter "NORTHANGER ABBEY"].
8 DIERDRE LE FAYE, JANE AUSTEN’S COUNTRY LIFE 60 (2014).
9 Meredith Hindley, The Mysterious Miss Austen, 34 HUMANITIES (Jan./Feb.
2013), http://www.neh.gov/humanities/2013/januaryfebruary/feature/the-
mysterious-miss-austen.
10 LE FAYE, supra note 8, at 52.
11 Hindley, supra note 9.
her brother Edward who provided the Austen women with a stable home after the death of Reverend George Austen. Her novels abound with themes of sisterly bonds, dashing naval officers and dedicated clergyman. To fully appreciate Jane Austen’s literary product, it is essential to have some understanding of her family’s dynamic.\(^\text{12}\)

\[\text{C. James}\]

James, Jane’s eldest brother, followed in their father’s footsteps. He was educated at Oxford and assumed the rectorship of Steventon upon his father’s retirement. Although he was not particularly close to his sister, Jane was very close with his children, all of whom had a literary interest.\(^\text{13}\) James’ daughter Caroline later wrote of her memories of her aunt, and James’ son, James Edward, penned what became the definitive Jane Austen biography of the time.\(^\text{14}\)

\[\text{D. George}\]

Very little is known about Jane’s second eldest brother, George.\(^\text{15}\) He was raised apart from his family, living with a

\(^{12}\) "Her own family were so much, and the rest of the world so little, to Jane Austen, that some brief mention of her brothers and sister is necessary in order to give any idea of the objects which principally occupied her thoughts and filled her heart, especially as some of them, from their characters of professions in life, may be supposed to have had more or less influence on her writing....” JAMES EDWARD AUSTEN-LEIGH, A MEMOIR OF JANE AUSTEN 16 (1871).


\(^{14}\) Id.

farming family nearby. While some scholars have attributed his distance from the otherwise close family to a cognitive disability, others have suggested that he was deaf. The latter theory has gained more support because of Jane’s mention in a letter that she was fluent in “finger speaking”—presumably a form of sign language. Jane never makes explicit mention of George in her letters or work and he was not named as a family member in the memoir of Jane’s life written by her nephew.

E. Edward Austen Knight

Edward Austen was adopted by a wealthy family member in the 1780s. He did not pursue higher education or a particular profession. Upon his inheritance from his adoptive uncle, Edward provided a place for the Austen women to live—Chawton Cottage. Edward had a large family of his own, which provided society for Jane, Cassandra and Mrs. Austen. His daughter Fanny, another favorite niece, is the mother of the editor of the first edition of Jane Austen’s letters.

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16 Id. To have children with disabilities placed outside the family was common practice in Austen’s time. It is likely that the family would have paid a fee to support him.
17 Id.
18 Id.
19 Id.
21 Id.
22 Id.
24 Id.
Most scholars suggest that Henry was Jane's favorite brother. He attended Oxford with his brother James. Both men fell in love with their rather exotic cousin Eliza, who was widowed by the French revolution. Eliza chose Henry, ten years her junior. Despite his family's expectation that he too would join the clergy, Henry instead joined the military. He later sought to become a businessman in London. He achieved some degree of success until, along with many others, his bank failed in 1816. Subsequently, he entered the ministry and occasionally served at Steventon and Chawton. Henry in particular encouraged Jane's writing. He worked with publishers on her behalf, and it is he who arranged for the publication of her two posthumous novels.

Cassandra Austen was Jane's only sister. The two were remarkably close and remained devoted to each other throughout their lives. The relationship between the two sisters is thought to have inspired the close bond between Elizabeth Bennet and her sister, Jane, in Pride and Prejudice. Like Jane, Cassandra never

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26 Id.
27 Id.
28 Id. at 69.
29 Id. at 68.
30 POPLAWSKI, supra note 25, at 69.
31 Id.
32 Id.
33 Id. at 70.
34 1773-1845. NORTHANGER ABBEY, supra note 7, at 13.
36 Id.
marriage. She was engaged to one of her father’s former pupils who died of yellow fever while serving as a chaplain on a military mission. His legacy to her of a thousand pounds provided a small sense of financial security to Cassandra throughout her life.

Jane’s surviving letters to Cassandra have helped historians to reconstruct Jane’s life. Cassandra’s sketch of her sister is the only known portrait of her. Even though the artist’s skill has been called into question, Cassandra’s portrait is the basis for all later depictions of her sister.

38 Id.
40 Pemberley, supra note 37. Cassandra destroyed two thirds of the letters upon Jane’s death in 1817. Id. The remaining letters survived because they were given to friends and family as mementoes. Id.
42 Claudia L. Johnson, Jane Austen’s Cults and Cultures 32 (2012).
44 JASNA Website, supra note 41.
H. Francis

Jane’s brother Francis, known as Frank, joined the Royal Navy at the age of twelve. He eventually served as Admiral of the Fleet and was knighted. His career is considered to be the basis for Jane Austen’s heroic naval characters, including William Price in *Mansfield Park* and Captain Wentworth of *Persuasion*. After Mr. Austen’s death, the Austen women lived with Frank, his wife Mary, and their ten children until lodgings at Chawton could be arranged. After Mary’s death, Frank married Jane Austen’s best friend, Martha Lloyd.

I. Charles

Jane’s youngest brother Charles joined the Naval Academy at age twelve. Although not as distinguished as their brother Frank, Charles rose to the rank of Rear-Admiral. He died of typhus while in Burma, still on active duty at age seventy-five. Charles is best remembered by Austen enthusiasts as the brother who gave his sister the topaz cross, one of only three pieces of Jane Austen’s jewelry known to survive.

J. Home

With the exception of the brief time at boarding school, Jane Austen lived at Steventon for the first twenty-five years of her life. Her letters reflect a great love for her life there and for her pleasant rural surroundings. It was, for the most part, a quiet life.

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46 Id.
49 Id.
As the daughter of clergy, Jane Austen was neither poor, nor of the servant class. Her father’s income would have been sufficient for a genteel life, but it bore no room for excess. His education and his wife’s relations permitted the family to travel in “polite circles” but not among the gentry. Reverend Austen retired in 1800 at the age of seventy, leaving his rectorship to his son James.

After Reverend Austen’s retirement, the family moved to Bath, England in 1801. Bath, about 100 miles west of London, is located on the Bristol Avon River. In the middle of the 18th century, Bath was second only to London in its importance to the fashionable set. Jane Austen’s letters and novels show no love for the town of Bath: She is reported to have fainted at the news of the planned move. Upon their arrival, the Austen family took up residence at 4 Sydney Street. Mrs. Austen’s sister-in-law, Mrs. Leigh-Perrot, also resided in Bath and was a frequent visitor.

After Reverend Austen’s death in 1805, the Austens were forced to move to less refined quarters more suited to their limited finances. Perhaps it was the unattractive living quarters and continuous financial worries that colored Jane Austen’s perception of Bath. The letters she wrote there reflect a desire to return to the countryside in order to continue her writing in a peaceful environment. Her novels reflect her antipathy toward Bath, frequently portraying the town as a dirty and noisy place full of characters with dubious morals and nefarious plans.

Financial need caused the three remaining members of the Austen household, Mrs. Austen, Jane, and her sister Cassandra, to move among less desirable rented flats and the homes of various family members. Things changed considerably for the family in

51 Id.
52 JEAN FREEMAN, JANE AUSTEN IN BATH 7 (The Jane Austen Society rev. ed. 2002) (quoting CONSTANCE HILL, JANE AUSTEN: HER HOMES AND HER FRIENDS 91 (John Lane 1902)); see also LE FAYE, supra note 8, at 219.
53 LE FAYE, supra note 8, at 205.
54 Boyle, supra note 13.
55 Hindley, supra note 9.
1809 when they were invited by Jane’s brother Edward to live in a small cottage on the estate he inherited from his adoptive family.\(^{56}\)

The cottage at Chawton returned Jane Austen to the pastoral life she preferred. The cottage, located at the juncture of two busy roads, was near the country town of Alton.\(^ {57}\) The cottage was her home for the remainder of her life until, immediately preceding her death, she moved to Winchester to be closer to medical care.

The move to Chawton permitted the family a stable home life, a relief from constant worry (although finances continued to be tight), and the society of family members. Presumably this change in circumstances is partly responsible for Austen’s remarkable increase in productivity during this final period of her life.\(^ {58}\) At Chawton, Austen revised Sense and Sensibility (1811) and Pride and Prejudice (1813). She also wrote Mansfield Park (1814); Emma (1815); Persuasion (1817) and Northanger Abbey (1817). Jane Austen died after a protracted illness at the age of forty-one.\(^ {59}\)

Despite writing some of the most romantic narratives of all time, Jane Austen never married. It is believed that, in 1802, she was proposed to by a wealthy neighbor, Harris Biggs-Wither. She accepted at the time, but regretting it immediately as something other than a love match, she reneged on her acceptance the following morning.\(^ {60}\) Her distaste at the proposal may have served as the basis for the two marriage proposals in Pride and Prejudice; the first from the odious Mr. Collins and the second from the dashing Mr. Darcy, whose good character of which Elizabeth Bennet had yet to be convinced. The circumstances of the fictional proposals appear to mirror those of Jane’s own life. She

\(^{56}\) MITTON, supra note 50, at 253.

\(^{57}\) Id. The cottage is now part of the museum campus at Chawton House where much of Austen’s memorabilia and artifacts are displayed.

\(^{58}\) LE FAYE, supra note 8, at 249-50.

\(^{59}\) MITTON, supra note 50, at 304.

\(^{60}\) LE FAYE, supra note 8, at 7-8.
refused to marry simply for the purpose of financial security and social norms.

A much more romantic description of Jane’s love life has been recently suggested. Some scholars purport that Jane Austen was in love with Tom LeFroy, an Irish attorney.\(^6\) LeFroy, a relative of Austen’s neighbors, does appear in Jane’s letters to her sister.\(^7\) LeFroy, however, was not a man of independent means and had a large extended family in Ireland to support. His marriage needed to provide him and his family with financial security. Marriage to the daughter of a clergyman would not have served that purpose. LeFroy went on to become a Supreme Court justice in Ireland.\(^8\) Despite fictional accounts, there is no suggestion that Jane Austen ever communicated with Tom LeFroy after he returned to Ireland. Romantics do like to point out, however, that he named his eldest daughter Jane.\(^9\) It is some solace to Austen’s devotees that she may have known love in her lifetime.

**K. Her Times**

Born in 1775, Jane Austen lived her short life during the close of the Georgian Era. The Georgian Era was notable for drastic and sweeping change. It was the time of the French Revolution, and the British elite feared that their own class system

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\(^6\) In fact this “romance” serves as the basis for the film **BECOMING JANE** (Miramax 2003). See also, Joan Klingel Ray, *The One-Sided Romance of Jane Austen and Tom LeFroy*, 28 PERSUASIONS ON-LINE (2007), http://www.jasna.org/persuasions/on-line/vol28no1/ray.htm.

\(^7\) In a letter written to Cassandra in January, 1796, she refers to flirting with LeFroy: “Imagine to yourself everything profligate and shocking in the way of dancing and sitting down together.” *Le Faye*, supra note 8, at 30. She announces her plans to flirt again with LeFroy at the next dance. *Id.* She also refers to LeFroy as her “Irish friend” when she tells Cassandra that she would be shocked to see how Jane behaved with him. *Id.* at 78.

\(^8\) *Id.*

\(^9\) *Id.*
was threatened, and there was rampant unrest among the lower classes as a result of high food prices and the enclosure of what had historically been common land. There was also the industrial revolution which affected both industry and agriculture and undermined the landowning system that had been in place for centuries.

Throughout much of her life, Jane Austen was surrounded by war. When Jane Austen was a child, England was fighting the American Revolution. The 1789 revolution in France set the stage for the Napoleonic War, which ended a few years before Austen’s death. While none of her novels address the war directly, Austen does include a number of military and naval characters in her novels.

Women of that time could not vote, independently own property, or hold respectable employment outside the traditional positions of nurse, governess, companion or servant. The chief function of women was to better their family’s position, and relieve their parents of financial burden by marrying well.

Change continued throughout the Regency Period. This period is named after Prince George, later King George the IV, who took over his father’s throne when King George III was found to be insane. The Prince Regent was perceived as something of a buffoon. He lived a “lazy, self-indulgent and profligate life” and

66 Id. at xxvii-xxvi.
67 Id. at 3.
68 Mitton, supra note 50, at 47-48.
69 Id.
71 Id. at 190.
72 Adkins, supra note 65, at 17. Technically, the Regency Period runs from 1811-20. The term “Regency Period” is often used, though, to refer to a broader time period ranging anywhere from 1780-1820.
73 Id. at xix.
was held in low esteem by Jane Austen and her family. To the Prince Regent’s credit, he admired art, writing, architecture and music. His patronage helped to promote the growth of the novel, a relatively new literary form developed in the early 18th century, when the government eased its control over publishing houses. Originally, novels were considered a form of cheap pulp fiction, to be read only by frivolous ladies with little else to do. Authors like Charles Dickens, Sir Walter Scott, Fanny Burney and Austen helped to elevate the stature of the novel to something resembling its current place in literature.

Oddly, Austen dedicated her novel *Emma* to the Prince Regent. Legend has it that the dedication was not an entirely voluntary act. Austen was approached by the Prince’s librarian, James Stanier Clarke. Clarke advised Austen that the Prince Regent enjoyed her novels and had them in his residences. Clarke offered Austen “permission” to dedicate *Emma* to the Prince Regent, an offer that, as a later novelist would put it, she couldn’t refuse. Thus, the book opens with the dedication: “To His Royal Highness The Prince Regent, This Work is, by His Royal Highness’s Permission, Most Respectfully Dedicated, By His Royal Highness’s Dutiful and Obedient Humble Servant, The Author”.

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75 ADKINS, *supra* note 65, at 17.
76 *Id.*
77 See MITTON, *supra* note 50, at Ch. IX, *Contemporary Writers*.
78 *Id.* at 292.
79 *Id.*
IV. AUSTEN’S WORK

A. Publications

Austen is known for introducing the “naturalistic” style of novel writing and for writing comedies of courtship and manners. Her work was well received upon original publication and drew acclaim from her contemporaries. Sir Walter Scott was an admirer; Charlotte Brontë, on the other hand, was not. Although occasionally criticized for the perceived narrowness of her subject matter, most readers of the day were enchanted by Austen’s facility with language and her depictions of life among the gentry. Novelist E.M. Forester and, later, Rudyard Kipling, were also great Austen enthusiasts. Austen’s work centered around love, romance and marriage. Yet, it also addressed the relationship between individuals and the class system in society. It examined the morals of the day, but did not directly take on pressing issues such as income inequality or social justice.

81 Reviewing Emma for the Quarterly Review in 1816, Scott wrote: “The author’s knowledge of the world, and the peculiar tact with which she presents characters that the reader cannot fail to recognize, reminds us something of the merits of the Flemish school of painting. The subjects are not often elegant, and certainly never grand; but they are finished to nature, and with a precision which delights the reader . . .”. Lilia Melani, Jane Austen, COURSE WEBSITE (Jan. 26, 2009), http://academic.brooklyn.cuny.edu/english/melani/novel_19c/austen/index.html.

82 “Anything like warmth or enthusiasm, anything energetic, poignant, heartfelt, is utterly out of place in commending these works; Jane Austen was a complete and most sensible lady, but a very incomplete and rather insensible (not senseless woman), if this is heresy I cannot help it.” Id.


84 Melani, supra note 81.
B. Juvenilia

Jane Austen began scribbling in notebooks while still a young girl. She wrote an epistolary parody of romantic fiction called *Love and Freindship* (sic). Later, she wrote *The History of England*, a parody of historical writing featuring illustrations by her sister. These two works, along with short stories, poems and plays are frequently published together and referred to as Austen’s *Juvenilia*.85

C. Lady Susan

Austen wrote this short epistolary novel between 1793 and 1795. Its main character is something of a Regency cougar. Widowed, she uses her charm to manipulate and seduce both single and married men in an effort to find marriage partners for both her daughter and herself. Austen never submitted the novel for publication but it was published posthumously under her name in 1871.86

D. Sense and Sensibility

Originally entitled *Elinor and Marianne*, this book was begun at Steventon and also utilized an epistolary form. The book tells the story of the two Dashwood sisters, Elinor (who represents sense) and Marianne (who represents sensibility) and their difficult financial position after their father’s death. Elinor falls in love with Edward Ferrars, and Marianne’s attentions are captured by the dashing but morally challenged Mr. Willoughby. An older family friend, Colonel Brandon, who is in love with Marianne from afar, finally wins her hand when she gradually sees what a good and kind man he is. The novel was revised while the family

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85 For a more detailed description of the works, see LE FAYE, supra note 8, at 60.
86 MITTON, supra note 50, at 93.
lived at Chawton and was the first of Jane Austen’s novels to be published, although anonymously. Jane’s brother, Henry, arranged its publication.

E. Pride and Prejudice

Certainly Austen’s best known work, *Pride and Prejudice* was drafted at Steventon under the title *First Impressions*. The novel, begun in 1796 but published in 1813, and tells the tale of the many daughters of the Bennet family and their search to find financial security through marriage. The romance between the second daughter, Elizabeth Bennet, and the wealthy and entitled Fitzwilliam Darcy, provides not only the title (because the heroine and hero are guilty of both), but also the inspiration for many subsequent romantic novels.

F. Mansfield Park

Fanny Price, the main character of *Mansfield Park*, is sent to live with her aunt and uncle’s family when her own parents of much lesser means can no longer afford to keep all of their children at home. Fanny observes her new surroundings and contends with issues of the day such as divorce and slavery. After an ill-conceived effort to put on a play, the family begins to unravel. Fanny finds love with the second son, her cousin Edward, destined to be a rector at the local parish.

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88 *Id.* at vi.
The title character of *Emma*, Emma Woodhouse, is often referred to as the least likable of Austen’s heroines. The rather spoiled daughter of a loving but hypochondriac gentleman, Emma engages in matchmaking efforts that lead to varying forms of disaster. Despite her own protest against marriage, Emma eventually falls in love with a family friend who has played the role of her conscience throughout the novel.

**H. Persuasion**

*Persuasion* is the last of the Austen’s novels to be completed before her death. Anne and Elizabeth Elliot join their family in exile when their father is forced to rent the family estate. Anne fell in love with Captain Wentworth when she was young but the match was considered unsuitable. The two are reunited many years later when Anne is on her way to spinsterhood and the Elliot home is rented to Wentworth’s brother. Anne and Wentworth marry when the two finally acknowledge their renewed feelings for one another. The novel features much discussion of the Napoleonic Wars and lauds the heroism of the Royal Navy.

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90 *Id.* at vi.

91 Austen herself acknowledges that this is her intent: “I am going to take a heroine who no one but myself will much like.” JAMES EDWARD AUSTEN-LEIGH, A MEMOIR OF JANE AUSTEN 157 (R.W. Chapman ed., Oxford University Press 1926) (1869).


93 Published posthumously in 1817. *Id.*
I. Northanger Abbey

This parody of the popular gothic novel was the first of Austen’s novels to be completed for publication. In 1803, she sold the novel to Crosby & Co. Publishing (under the title Susan) for ten pounds. When the company refused to publish the novel, Jane’s brother Henry bought it back from the publisher in 1816 for the same amount. Austen revised the novel between 1816 and 1817. It was published after her death in a two-book set along with Persuasion.

The plot centers around Catherine Morland, the seventeen-year old daughter of a clergyman. She is exposed to life on a grander scale when the neighboring family takes her to Bath for the season. There, she meets the Tilney brothers. When invited to their family home, Catherine imagines events straight from the plot of one of the gothic novels she enjoys, suspecting the father of killing the mother. After a series of misunderstandings, Catherine marries Henry, the younger and more deserving Tilney brother.

i. The Unfinished Novels: The Watsons and Sanditon

Jane Austen began writing The Watsons during her unhappy time in Bath. Never finished, the story features a dispossessed heroine named Emma Watson. Emma expected an inheritance from the aunt and uncle who raised her. When her aunt remarries after her death, no provisions are made for Emma, and she is forced to return to the large assortment of siblings she has not seen in years. She attracts the attention of a nobleman, but has her heart set on a clergyman. Sanditon was begun immediately before Austen’s death. Originally titled The Brothers, the novel examines the life of Charlotte Heywood, a country girl, and her interaction with the Parker Brothers, who come to stay with the family after a carriage accident. The Parkers speak of turning a small fishing village, Sanditon, into a resort town. The novel explores the differences between town and country, and the
miscommunications that result from efforts to revive the town. Originally, only eleven chapters were published. A number of subsequent authors, including Austen’s niece, Anna Austen LeFroy,94 published their own “continuations” of the piece.

J. Who Owns Jane Austen’s Work?

Who benefits from the late-blooming appreciation for Jane Austen’s work? Are her descendants all living the life portrayed on Downton Abbey? Hardly. To the extent that Austen owned any of the copyrights in her books, they have long since expired. Under the law applicable at the time, the copyright owner was entitled to exclusive publication rights for a period of fourteen years.95 Any copyrights would have expired in 1827 at the latest.96 So if you are thinking about creating your own knock-off piece of fan fiction, go right ahead. There is no copyright to stand in your way.97

Perhaps the more interesting question is who did own the copyrights in her works and how much money did she make from them. Initially, Austen’s father sent her manuscript for Pride and Prejudice to a well-regarded publishing firm. Reverend Austen even offered to pay the expense of publication. The package was returned, marked “Declined by Return of Post.”98 In 1803, Jane’s brother Henry arranged for her novel Northanger Abbey to be published by Crosby & Co. The firm paid ten pounds for the manuscript. An advertisement for its publication appeared, but the

95 Copyright Act 1710, 8 Ann. c.19. Had Austen been living at the time the fourteen-year period expired, she would have been entitled to an additional fourteen years of copyright protection. Id.
96 Id.
97 Unless, of course, you copy one of the pieces of fan fiction already written. 17 U.S.C. § 101.
98 Hindley, supra note 9.
company never published the novel. Later, Henry Austen bought back the rights to the unpublished book for the same amount.99

In 1810, Thomas Egerton of the Military Library agreed to publish Sense and Sensibility, a three-volume novel, on commission. Under the commission agreement, Austen was responsible for paying, printing, distribution and advertising.100 The Sense and Sensibility copyright remained with Austen.101 Austen was no doubt thrilled to realize a profit of 140 pounds from the book.

Encouraged by the sale of her first book, Austen sold Pride and Prejudice to Egerton for 110 pounds. It was an outright sale of the book. She assigned the copyright to the publisher and received no further remuneration for writing one of the world’s greatest novels. Less is known about the price she received for her other novels.102 Her final two novels were published posthumously. Her unfinished novel, Sanditon, has been “finished” by a number of other authors well after any original copyright would have expired.103

Austen’s novels are widely available for free because there is no copyright protection. It is also why the plots of her novels have served as the basis for such “tribute films” as “Clueless”

99 Id.
100 Id.
101 Id.
102 Id. In JANE AUSTEN: HER LIFE AND LETTERS, A FAMILY RECORD, WILLIAM AUSTEN-LEIGH and RICHARD AUSTEN-LEIGH note that, toward the end of her life, Jane wrote the following on a slip of paper;

Profit of my novels, over and above the £600 in the Navy Fives
Residue from the 1st edit. of Mansfield Park, remaining in Henrietta Street, March 1816 £ 13 7
Received from Egerton, on 2nd edit. of Sense and S., March 1816 12 15
February 21, first profits from Emma 38 18
March 7, 1717. From Egerton-2nd edit. of S. and S. 19 13

103 See supra note 94 and accompanying text.
(Sense & Sensibility),\textsuperscript{104} “Bridget Jones’s Diary” (even the characters names were borrowed from Pride and Prejudice),\textsuperscript{105} and “Pride and Prejudice and Zombies.” “Fan fiction” based on Austen’s work is extensive, with novels ranging from the mundane to the racy.\textsuperscript{106} Austen herself received only a small income from her novels. She was, however, able to provide some financial security to her sister Cassandra and a small bequest to her brother Henry.

K. Lawyers as Characters

As the 18th century drew to a close, the power of the clergy began to wane and the power of the attorney was on the rise.\textsuperscript{107} Austen had access to her father’s considerable library and would have read publications “like Addison’s newspaper, ‘The Spectator,’ and his essays in ‘The Tatler’ and read Fielding and Goldsmith, all of whom wrote about the law and the court system.”\textsuperscript{108} Few lawyers appear in Austen’s novels, and those that do play minor roles.\textsuperscript{109} This seems natural in that most of the plots revolve around those who do not work for a living. At the time, lawyers held a social status above that of a tradesman, but far below the ranks of most of Austen’s wealthy characters.\textsuperscript{110} Even within the law, there was a hierarchy; barristers were considered gentlemen but solicitors, stewards and attorneys were not.\textsuperscript{111}

\begin{itemize}
\item \textsuperscript{104} CLUELESS (Paramount Pictures 1995).
\item \textsuperscript{105} BRIDGET JONES’S DIARY (Miramax Films 2001).
\item \textsuperscript{106} For a list of fan fiction, see Jane Austen Information Page, REPUBLIC OF PEMBERLEY (2012), http://pemberley.com/janeinfo/janeinfo.html.
\item \textsuperscript{107} Hildebrand, supra note 2.
\item \textsuperscript{108} Id.
\item \textsuperscript{109} For an excellent article on this subject, see G.H. Treitel, Jane Austen and the Law, 100 THE LAW QUARTERLY REVIEW 549 (October 1984).
\item \textsuperscript{110} SUSANNAH FULLERTON, JANE AUSTEN AND CRIME 208 (3d ed. 1960).
\item \textsuperscript{111} “An attorney belonged to the lesser branch of the legal profession which was generally regarded as lower in esteem and income to that of the barrister or court advocate.” JANE AUSTEN, PRIDE AND PREJUDICE (1813), \textit{reprinted in} THE
\end{itemize}
In *Pride and Prejudice*, one of the Bennet uncles is an attorney, a fact held against him in assessing his character. That Mrs. Bennet’s father was also an attorney suggest that the family is far beneath the Darcys’ in stature and wealth. The most despicable villain in all the Austen novels, George Wickham, is identified as the son of a steward. At some point, Wickham tells Darcy that he has “some intention . . . of studying the law.” Darcy responds by saying that he can be defended by the possibility of encouraging a scoundrel to take up the legal profession because he believes that Wickham’s intent to pursue the law is a “mere pretense.” Darcy is right, of course. Wickham abandons the law after three years when he finds it unprofitable.

In *Emma*, Emma Woodhouse considers alternate suitors after her matchmaking plans, for her friend Fanny, go awry. Despite Fanny’s low standing, even a lawyer is beneath her, as Emma indicates when she says “Oh! No, I could not endure William Coxe—a pert young lawyer.” To another character, Mrs. Elton, Emma remarks of the uncle who raised her, “an uncle remained - in the law line - nothing more distinctly honourable was hazarded of him than that he was in the law line.” Emma guessed him to be the drudge of some attorney, and too stupid to rise.

Yet it is in *Emma* that we see the only appearance of a lawyer as a true if somewhat minor character in the plot. John

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112 The Bingley sisters make sport of Uncle Phillips, referring to him as one of the Bennet’s “low connections.” *Austen, supra* note 111, at 36. The possibility of a Darcy connection is demeaned when Miss Bingley says “Do let the portraits of your uncle and Aunt Phillips be placed in the gallery at Pemberley. Put them next to your great uncle the judge. They are in the same profession you know, only in different lines.” *Id.* at 52-53.

113 *Id.* at 200.

114 *Id.* at 201.

115 *Id.*


117 *Id.* at 183.
Knightley, a lawyer, is married to Emma’s older sister. There is no indication of whether Knightley is a barrister or a solicitor, but he is described quite favorably by Emma as “a tall, gentleman-like, and very clever man; rising in his profession, domestic and respectable in his private character.”

Austen’s usual distaste for those in professions other than the clergy and military are absent here. She even speaks of his advancement in positive terms, rather than depicting him as a social climber seeking recognition outside of his class, a trait she remarks harshly on in other instances.

Sir Walter Elliot of Persuasion employs the “civil cautious lawyer,” Mr. Shepard, to help him resolve his financial troubles. Sir Walter’s heir, William Elliot, is trained as a lawyer, but is wealthy enough to avoid having to practice in his field. In Persuasion, the seductress Mrs. Clay, the daughter of a lawyer, speaks of the trials of the profession when she says that “the lawyer plods, quite care-worn.”

In Northanger Abbey, the late father of John and Isabella Thorpe is identified as a lawyer. In the unfinished work The Watsons, one of the heroine’s estranged siblings is a lawyer and unpleasant fellow. Despite the presence of these characters, there is little to no mention of any legal work done by them.

Jane Austen’s brother Edward was a magistrate. Although not a lawyer, a magistrate served many legal functions,

118 AUSTEN, supra note 116, at 92.
120 Id. at 7-9.
121 Id. at 20.
123 Robert Watson has travelled along the difficult roads to reach the home of his father. He suggests legal action to repair the roads when he says “Your road through the village is infamous, worse than it ever was. By heaven! I would end it (file a legal action) if I lived near you.” JANE AUSTEN, THE WATSONS (1871), reprinted in 6 THE WORKS OF JANE AUSTEN 349-350 (R.W. Chapman ed., 3d ed. 1969).
124 LE FAYE, supra note 8, at 236.
akin to what we might understand as a Justice of the Peace.\textsuperscript{125} He would have administered justice on a local level—authorizing warrants, resolving minor legal disputes between neighbors and committing offenders to prison for minor offenses.\textsuperscript{126} The position was an important and honored one which was bestowed by the Crown.\textsuperscript{127} The upstanding Mr. George Knightley of \textit{Emma} was a magistrate,\textsuperscript{128} as was Mr. Musgrove of \textit{Persuasion}.\textsuperscript{129}

\section*{V. LAW AND ORDER AND AUSTEN}

Jane Austen’s \textit{Juvenilia} is filled with stories of crime, mystery and intrigue.\textsuperscript{130} Her novels, though, do not center around crime and those who commit it. There is rarely any explicit mention of crime and it does not serve as a significant plot device in any of the novels. Her novels, however, do include gamblers, duelists, adulterers, and elopers. These characters do not suffer the flogging, imprisonment, or hanging that were the popular punishment in England at that time. Instead, they receive what Austen no doubt perceived to be a harsher punishment: social rejection and approbation.

The crime rate in England rose drastically during Jane Austen’s life.\textsuperscript{131} This rise is attributed to a significant increase in population and a drastic decrease in the means of providing for that population.\textsuperscript{132} Laws reducing pasturing rights and the availability of common land made life more difficult for the small landowner. A decrease in wages only acted to enhance migration.

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\footnotesize
\textsuperscript{125} FULLERTON, \textit{supra} note 110, at 28. For a detailed discussion of the role of magistrate, \textit{see} Austin Only \textit{Emma} Season: Mr. Knightley, AUSTENONLY (Jan. 25, 2010), https://austenonly.com/2010/01/25/austen-only-emma-season-mr-knightley-magistrate/.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} \textit{AUSTEN}, \textit{supra} note 116, at 109.
\textsuperscript{129} \textit{AUSTEN}, \textit{supra} note 119, at 3.
\textsuperscript{130} \textit{LE FAYE}, \textit{supra} note 8.
\textsuperscript{131} Id. at 3.
\textsuperscript{132} Id. at 3-5; \textit{see also} \textit{LE FAYE}, \textit{supra} note 8, at 137-148.
\end{flushright}
from country to city. High food prices caused many to turn to crime for survival. The policing system was still nascent, and punishments for property crimes were severe. In fact, crimes against property were considered more serious than those that caused physical harm.133

Crimes against morality reflected the government’s complicated relationship with the church, creating “a large twilight area between crime and sin.”134 Adultery was not, technically, a crime. It was often practiced but heavily derided by society. Adultery often resulted in a legal action called “criminal conversation.”135 In a criminal conversation action, a husband brought an action against the man who engaged in a “criminal conversation” with his wife. It was in essence, a crime against the husband’s property.

Dueling was outlawed, yet many gentlemen of the day still pursued this do-it-yourself remedy for slights to one’s honor.136 Poaching was considered a serious crime against a landowner’s right to the fruits of his land.137 Yet many were forced to commit poaching in order to obtain food for themselves and their families.138 Gaming was legal in many instances, but the non-payment of debt was not only illegal, but also a moral crime in Regency England. Prostitution was not illegal per se, but it was illegal to solicit, run a brothel, or to live off the money earned through sex.139

133 Treitel, supra note 109.
134 Id. at 5.
135 See FULLERTON, supra note 110, at 66-68.
136 See FULLERTON, supra note 110, at 133.
137 "The legal authorities of the Georgian Age had little doubt that poaching was a heinous crime and the second half of the 18th century saw a tightening of the laws against poachers. Protecting property was considered more important than protecting human life (especially lower class life), with the result that punishment of poachers became more and more draconian. The killing of any poacher who resisted arrest was regarded by the law as justifiable homicide.” FULLERTON, supra note 110, at 125; see also LE FAYE, supra note 8, at 141-43.
138 FULLERTON, supra note 110, at 125-137).
139 BAKER, supra note 5.
In *Emma*, one of the characters is mildly injured as she runs from a group of gypsies she has been warned to avoid for her safety. The only assault is on the character’s senses. Mr. Rushworth speaks boldly of his efforts to capture and punish poachers on his vast estate. Colonel Brandon engages in a duel to defend a young woman’s honor. Aunt Norris seems to have something up her sleeve, literally, every time she leaves the home of her wealthy sister. Although more than one character wishes for the untimely demise of another in order to speed up an inheritance, there is no murder or mayhem to speak of in the orderly lives of Jane Austen’s characters.

### A. Austen and Old Lace

Although she lived a quiet life, Jane Austen had significant familial interaction with the criminal justice system by virtue of her aunt’s trial for the theft of a card of lace. The trial was notable because of Mrs. Leigh-Perrot’s social standing, and because she chose to stand trial rather than admit guilt and negotiate a settlement with the somewhat dubious merchant.

Mrs. Leigh-Perrot was a favorite relative of the Austen family. James Leigh was the elder brother of Jane’s mother. Mr. Leigh inherited an estate and a fortune from a childless uncle. When in Bath, the Leigh-Perrots resided at a fashionable address, Number One, the Paragon, and often welcomed young Jane and

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140 *Austen, supra* note 116, at 333-34.
142 "We met by appointment, he to defend, I to punish his conduct. We returned unwounded..." JANE AUSTEN, SENSE AND SENSIBILITY (1811), reprinted in *1 THE NOVELS OF JANE AUSTEN* 211 (R.W. Chapman ed., 3d ed. 1969).
her sister Cassandra into their apartments. In August 1799, several months after the last visit from Jane, Mrs. Leigh-Perrot visited The William Smith millinery shop intending to purchase a piece of black lace. She paid for her purchase of one pound and nineteen shillings worth of the black lace with a five pound note. The shop assistant wrapped her purchase for her. Shortly after leaving the store, she was approached by the shop owner, Miss Gregory, who demanded to inspect her package. Upon doing so, Miss Gregory produced a card of white lace worth twenty shillings (approximately $1.50 in today’s currency). Mrs. Leigh-Perrot avowed that the card had been included in her package by mistake. The shop owner persisted in accusing her of theft.

Several days later, Mrs. Leigh-Perrot was arrested at her home and charged with theft. The crime with which she was charged was not insignificant as any theft of an item valued at over five shillings was punishable by hanging, although the more likely punishment was deportation to Australia for fourteen years. Given her social standing, Mrs. Leigh-Perrot was not taken to the public jail. As a gentlewoman, she was able to live at the home of the jailer and his family. It has been suggested that the charges faced by Mrs. Leigh-Perrot were the result of a blackmail attempt. Some have speculated that she was a vulnerable target for what was a commonplace scheme because her husband was known to be both wealthy and well-placed, increasing the likelihood that he would pay a fee to have the charges dropped.

145 *Id.* The sisters’ visit to Bath may well have inspired the story of Catherine Morland’s visit to Bath in *Northanger Abbey*.

146 *Id.*


148 “If I have, your young man must have put it in by mistake.” *Id.*

149 The white lace was put down in the indictment at twenty shillings. *Id.*

150 *Id.*

151 “There were also strong reasons for thinking that the accusation was the result of a deep-laid plot. Gye, the printer, who lived in the marketplace, was believed to be the chief instigator. His character was indifferent, and he had money invested in Gregory’s shop; and the business was in so bad a way that
The trial took place on March 29, 1800. It was held at Taunton’s Castle Hall, which was filled to its 2000-person capacity. Neither Jane nor her sister Cassandra were among the crowd, Mrs. Leigh-Perrot having expressly asked them to stay away. Among the witnesses was Miss Gregory, the shop owner. The court focused on the layout of the shop and how the products were displayed. Miss Gregory that she was not in the shop at the time of the alleged theft, but that it had been reported to her by the shop clerk. She stated that when she later confronted Mrs. Leigh-Perrot in the street, the paper parcel in question was “rumpled” and that the ends were open rather than folded. She demonstrated to the court how she turned back the edge of the package to find a card of white lace with a card of black lace over it. The card of white lace bore her shop’s identifying marks. There was no testimony about a possible conspiracy or blackmail scheme.

Under the rules of evidence at the time, the defense was not allowed to call either the defendant or her husband to testify on Mrs. Leigh-Perrot’s behalf. She was permitted to make an unsworn statement, but “after speaking a few sentences she became so much agitated that her voice failed her.” Her statement was read to the court by her attorney. The statement underscored her lack of motive, claiming:

Placed in a situation the most eligible that any woman could desire, with

\[\text{there was a temptation to seek a large haul by way of blackmail. Mrs. Leigh Perrot was selected as the victim, people thought, because her husband was so extremely devoted to her that he would be sure to do anything to save her from the least vexation.} \] AUSTEN-LEIGH, supra note 102.

\[\text{See Borowitz, supra note 147.} \]

\[\text{“to have two Young Creatures gazed at in a public Court would cut me to the very heart.” Id.at 726.} \]

\[\text{Id. at 731.} \]

\[\text{Id.} \]
supplies so ample that I was left rich after every wish was gratified-blessed in the affections of the most generous man as a husband, what could induce me to commit such a crime? Depraved indeed must that mind be that under such circumstances could be so culpable.\textsuperscript{157}

Mrs. Leigh-Perrot made other references to her noble character, but did not address the evidence against her other than to ask “whether to be found opposite to the [s]hop within the space of little more than half an hour, and with the [l]ace in my hand is like the conduct of a guilty person.”\textsuperscript{158}

The defense did present testimony from several other shoppers who had made purchases at the store only to later find additional items wrapped in the packaging. None, however, had been charged with theft. The judge summed up the evidence for the jury. After fifteen minutes of deliberation, the jury returned with a “not guilty” verdict, and Mrs. Leigh-Perrot was released.

The Austen family, and many Austen biographers, maintain Mrs. Leigh-Perrot’s innocence.\textsuperscript{159} Biographers point to two anonymous letters received by the Leigh-Perrot family claiming to have overheard one of the creditors conspiring with others and the tales of other shoppers who received unexpected items in their packaging.

Some doubts have been raised as to the legitimacy of the conspiracy argument and whether or not the not guilty verdict was more the result of her high social standing and extensive character testimony than on a logical interpretation of the facts. In his article, The Trial of Jane’s Aunt, Alexander Bolowitz examines the evidence and questions the existence of the conspiracy. He raises some interesting points, including: (1) why the shopkeeper would

\textsuperscript{157} Borowitz, \textit{supra} note 147, at 724.
\textsuperscript{158} \textit{Id.}
\textsuperscript{159} \textit{Id.} at 733.
not have stopped Mrs. Leigh-Perrot as she left the store to make the charge; (2) why the shopkeeper made the claim to the magistrate rather than directly to Mr. Leigh-Perrot; and (3) why more evidence was not presented in court as to the alleged conspiracy.¹⁶⁰

There is no record of Jane Austen ever addressing the issue of her aunt’s innocence, but it can be presumed that she was convinced of it. Perhaps it is best reflected in her apathy toward the legal profession in general and in her intense distaste for the city of Bath.

B. Marriage and Divorce

As personified by Mrs. Bennet in Pride and Prejudice, it was the duty of every mother to see that her daughters were well married. “Well” did not necessarily mean happily. Marriage was a way to provide for a legitimate heir and to ensure the survival of landed estates and family fortunes. It was also essential to the financial security of the would-be brides who had no way of providing for themselves through earned income or property ownership. Before Austen’s birth, forced marriages were not uncommon. By Jane’s lifetime, marriages were frequently arranged but infrequently forced.¹⁶¹

Lord Hardwicke’s Marriage Act governed marriage in late 18th century England. The Act required that marriages must be announced by a publication of the banns,¹⁶² take place in a church, and be officiated by an Anglican minister. Parental consent was required for women under the age of twenty-one.¹⁶³ In order to avoid such strict laws, couples were known to elope to Gretna Green,¹⁶⁴ just over the border in Scotland, where the marriage laws

¹⁶⁰ Id. at 733-34.
¹⁶¹ ADKINS, supra note 65, at 26.
¹⁶² Unless a special license was acquired at considerable cost and effort. Id.
¹⁶³ Id. at 30.
¹⁶⁴ Id.
were far more relaxed.\textsuperscript{165} In \textit{Pride and Prejudice}, Lydia Bennet, barely more than fifteen, hopes to be bound for Gretna Green when she runs off with George Wickham.\textsuperscript{166} The Bennets are aghast to learn that the couple did not, in fact, head there and were instead living together unmarried. Mr. Darcy saves the day by incentivizing a legal marriage.\textsuperscript{167} Surprisingly, the married Lydia is welcomed back warmly by most of her family despite what was certainly scandalous behavior.

Austen’s novels treat marriage as the end goal of any young woman’s life. Some marriages are depicted as felicitous love matches (The Churchills in \textit{Emma}, for example). However, most are not something to which a modern day reader would aspire. Spouses are portrayed as tolerated or even ignored. One of the least appealing marriages Austen depicts is between Mr. and Mrs. Bennet in \textit{Pride and Prejudice}. Mr. Bennet is criticized by his own daughter Elizabeth for his “continual breach of conjugal obligation and decorum.”\textsuperscript{168} His marriage, described as:

\begin{quote}
Captivated by youth and beauty, and that appearance of good humour, which youth and beauty generally give, [he] had married a woman whose weak understanding and illiberal mind, had very early in their marriage put an end to all real affection for her. Respect, esteem, and confidence, had vanished forever; and all his views of domestic
\end{quote}

\textsuperscript{165} \textit{Id.}
\textsuperscript{167} He pays Wickham’s debts and secures an army officer’s commission for him. \textit{Id.} at 321-25.
\textsuperscript{168} \textit{Id.} at 246; see also Scott FitzGibbon, \textit{The Seduction of Lydia Bennet: Toward a General Theory of Society, Marriage and the Family}, 4 AVE MARIA L. REV. 581 (2006).
happiness were overthrown.169

There can be no doubt that marriage was the happy ending for women in Austen’s novels. The Bennet sisters go on to live joyous lives once they are united with Bingley and Darcy. The independent, if somewhat naïve, Emma only finds true happiness when she marries her Mr. Knightley. The Dashwood sisters are rescued from lives of loneliness and poverty when they marry the deserving Colonel Brandon and the redeemed Edward Ferrars. Happiness long delayed arrives for Anne Elliot and Captain Wentworth when they are finally wed. Fanny Price ascends to her rightful place in the family while still preserving her moral high ground when she and Edmund Bertram marry. Catherine Morland survives what she imagines to be a gothic horror only to find her true love waiting for her.

Modern women may wonder why Austen’s female characters were in such a hurry to marry given that, in doing so, the few rights they had were lost.170 In the nineteenth century,171 English law dictated that if the bride owned property, it fell under her husband’s control as a freehold estate.172 She still owned the property but was not free to alienate or control it, nor was she entitled to any rent or profit from it.173 What she may have possessed at the time of her marriage now effectively belonged to her husband—from her china, to her jewelry, to her clothing.174 She could no longer enter into a contract without her husband’s

169 Supra note 166, at 246.
170 For an extensive discussion of marital property law in Austen’s time, see Turano, supra note 70.
171 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND Ch. 15, § III (5th ed. 1773).
173 Id.
174 In fact, the law allowed the husband to take literally everything but the clothes on his wife’s back. This exception was fashioned because the idea of leaving the wife naked apparently offended the judicial sense of decency. Turano, supra note 70, at 2.
consent, nor was she entitled to keep any of her earnings in the unlikely event that she worked outside of the home. A husband was permitted to physically abuse his wife and prevent her from leaving by any means necessary. The husband controlled the children—if she left him, the mother was not entitled to take them. In fact, the husband could name someone other than the children’s mother to be their guardian. The wife was presumed to benefit from this arrangement in that she could not be held liable for debts or minor crimes in that she was not a separate legal person.

This legal status was the result of the doctrine of coverture. The theory of coverture is paternalistic, based on the theory that a wife is not capable of managing her life and property. Alternatively, coverture merely recognizes that two people are united into a single person upon marriage.

Fifty years after Austen’s death, England passed the Married Women’s Property Act of 1870. Under this law, women were entitled to keep any wages and property they earned through their own work. A later amendment extended the law to include all property, regardless of how or when it was acquired. The extension included inherited property. These laws marked the end of coverture, allowing women for the first time to have the means to support themselves.

Unmarried women were often the subject of pity and scorn.

175 Id.
176 This “physical correction” was permitted so long as it did not actually kill or sufficiently maim her. BLACKSTONE, supra note 171, at 444. As late as the 19th century, “it was generally believed that a man could beat his wife, although not in a violent or cruel manner.” LEE HOLCOMBE, WIVES AND PROPERTY: REFORM OF THE MARRIED WOMEN’S PROPERTY LAWS IN NINETEENTH CENTURY ENGLAND 30 (1983).
177 Redmond, supra note 172.
178 BLACKSTONE, supra note 171.
179 Id.
180 Redmond, supra note 172.
181 Id.
182 Id.
183 Id.
Referred to as "old maids," most of these women would know difficult living conditions and financial insecurity for their remaining years. They might be supported by a brother, or have a small income from an inheritance, but they were just as likely to be perceived as a burden on society.

Jane Austen was herself an "old maid," reliant on her family for housing and other financial support. In a letter to her niece Fanny Knight, Austen acknowledged the plight of the unmarried woman: "Single women have a dreadful propensity for being poor, which is one very strong argument in favor of matrimony."\textsuperscript{184} This was certainly true for Austen until she, her sister, and mother were taken in by her brother Edward upon his inheritance from his adoptive family.

In \textit{Emma}, the title character discusses her intent not to marry with her friend Harriet, saying "But still, you will be an old maid! And that's so dreadful! Never mind, Harriet. I shall not be a poor old maid; and it is poverty only which makes celibacy contemptible to a generous public!"\textsuperscript{185} \textit{Emma}'s Miss Bates is a prime example of the narrow, diminished life that befell the spinster.

Divorce was uncommon during Austen's lifetime. In fact, there was no divorce law in Britain until 1857.\textsuperscript{186} Divorce required an Act of Parliament and was prohibitively expensive.\textsuperscript{187} It was exceptionally rare for a wife to seek divorce. Neither infidelity nor physical cruelty were particularly compelling

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\textsuperscript{184} WILLIAM AUSTEN-LEIGH, JANE AUSTEN: HER LIFE AND LETTERS 348 (2010).
\textsuperscript{185} AUSTEN, \textit{supra} note 116, at 85.
\textsuperscript{186} ADKINS, \textit{supra} note 65, at 39.
\textsuperscript{187} Id. at 16. There were only three hundred such divorces between 1700 and 1857. Technically, divorce was a three-stage process. First, the husband brought a criminal conversion suit against her wife's lover in the English courts. After obtaining a conviction, the husband sought a divorce in the ecclesiastical court. Finally, a divorce was sought by act of parliament, which considered the financial settlement, including any reversion of marriage settlements. This final step was required before either party could remarry.
\end{flushleft}
and a wife did not usually have the funds to pursue legal action. Divorced women typically lost custody of their children. Whether or not they were entitled to any money they brought into the marriage was a question for Parliament to decide.

In *Mansfield Park*, Maria Bertram Rushworth engages in an adulterous relationship with the dashing Henry Crawford. As a result, her dull witted, wealthy husband James Rushworth divorces her by an Act of Parliament. When her adulterous partner refuses to marry her, Maria becomes financially dependent on her family once again. Appalled by her behavior, the Bertrams banish Maria to a sad fate: life with Aunt Norris “in another country.”

**C. Pride and Prejudice and Property**

In Austen’s England the ownership of real property was the key to wealth and status. The divestment of real property still operated under the shadow of primogeniture. During Austen’s time, the original property laws were threatened by the decline in birth rate for males, and the many deaths attributed to war. This accelerated the erosion of the old system of property transfer. The concept would still have been popular enough, though, that Austen would have learned of examples of it in action.

The law of primogeniture, established shortly after the Norman Conquest, required that land descend to the eldest son. Because the purpose of the law was to keep land within the family

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188 It was permissible for a husband to beat his wife unless the injuries were life-threatening. *Id.* at 17.
189 *Id.*
190 *Supra* note 141, at 465.
191 ADKINS, *supra* note 65, at 98.
193 *Id.*
and to maintain sufficiently large estates so as to provide nobility with large tributes or taxes, no division of the property among siblings or others was permitted. The other children were allowed to inherit money and personal property. Technically speaking, primogeniture was a means of passing property through intestacy, but the concept was such a widely recognized underpinning of English property law that it was frequently followed in other sorts of transfers.

Property law evolved to allow for different forms of property transfer, including fee tails, entails and strict settlements. Entailment or fee tail “allowed the patriarch of the family to pass property to one line of the family. If that line failed to produce descendants or descendants were not of the right sex (generally male), the land would pass to another more distant line of the family.” A fee tail was created by explicit language in a will or deed. The basic language read “To A and the heirs of his body.” A general fee tail such as this limited the inheritance to lineal heirs only, eliminating collateral heirs. Fee tails male (inheritance restricted only to male heirs of the body) were extremely common. If there were no qualifying heirs, the land reverted back to the original grantor because he had transferred less than a fee simple estate. In an entail, the inheritance went from father (current entail) to son (the new entail) to the heir of the son’s body (future entail).

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194 Id.
195 Id.
196 Id.
198 Id.
199 Id. at 615.
200 Id.
201 Id.
202 Appel, supra note 197, at 611.
203 Id.
204 Id.
by some landowners, but eventually given the color of law.

The fee tail system began disintegrating by the late eighteenth century. Further changes in the law mitigated the harsh effects of entailment. More frequently, land was settled "not simply A in tail, but on A for life, remainder to his eldest son in tail male (if it was desired to restrict the succession to males)."
The contingent remainders were also held by a trustee who would effectively block any attempt on the part of the tenant in possession to break it up by destroying the contingent remainder. Being a life tenant, "A" could not alienate the land. If "A" had a son, he would be the tenant in tail. At his father's death, the son could bar the entail and dispose of the land through settlement.

Upon coming of age, the son would resettle the land on his father for life, then on himself for life, then on his eldest son. This still served the purpose of keeping the land in the family, but was far less restrictive. Such settlement allowed for the possibility of benefitting other members of the family, even though they would not inherit the land.

The most famous entailment in literature may be that of the Bennet family's Longbourn estate. In *Pride and Prejudice*, the plot centers around the entailment of the family estate to a male relative. Having no sons, Mr. Bennet's interest in the property passed to his nephew, the ridiculous Mr. Collins. Mrs. Bennet makes every effort to marry off one of her daughters to Mr. Collins, thereby avoiding the dire consequences of the entailment. Her plans are frustrated when Elizabeth Bennet has the good sense to refuse Mr. Collins' offer of marriage despite its obvious financial benefits.

The accuracy of Austen's depiction of the entailment has

206 Id.
208 Id.
been debated by scholars.\textsuperscript{210} Under the evolving laws of property during the early nineteenth century, it is possible that the restrictions placed on Longbourn were intended to be a settlement rather than an entailment. Under such a settlement, Mr. Bennet could arguably have terminated the restrictions, making his daughters’ future more secure.

The novel specifically refers to the restriction as an entail: “Mr. Bennet’s property consisted almost entirely in an estate of two-thousand [pounds] a year, which, unfortunately for his daughters, was entailed in default of heirs male, on a distant relation.”\textsuperscript{211} Lady Catherine De Bourgh references the Bennet entail by deriding its exclusion of the female line.\textsuperscript{212} The novel describes how Jane and Elizabeth Bennet try repeatedly to explain the nature of the entail to Mrs. Bennet, to no avail.\textsuperscript{213} Interestingly, this suggests that these two female characters would have had some understanding of the legal implications of property law.

Certainly Mr. Bennet assumes a laissez faire position about the entailment. He is criticized by Mrs. Bennet for doing nothing about the problem.\textsuperscript{214} One scholar suggests that Longbourn was settled as an entail, leaving Mr. Bennet powerless to change any restrictions.\textsuperscript{215} Whether Mr. Bennet was forbidden by law or merely lazy, the perceived entail drives the plot of one of the great English novels.

\textsuperscript{210} See supra note 209 and accompanying text.
\textsuperscript{211} Supra note 166, at 28.
\textsuperscript{212} Id. at 164.
\textsuperscript{213} Id. at 61-2.
\textsuperscript{214} “I am sure that if I had been you I should have tried long ago to do something or other about it.” Id. at 62. Presumably as the daughter and sister-in-law of attorneys she would have had some access to a legal determination of the family’s rights.
\textsuperscript{215} Appel, supra note 197.
D. Adopting Austen

Several of Austen’s novels feature characters adopted, either formally or informally, by collateral family members. Perhaps these plotlines are a reflection of Austen’s own experience with the adoption of her older brother Edward.

Adoption as it is understood today was unknown in Austen’s time. The first formal adoption law was not passed in England until 1926. When children were without parents to raise them, they were often taken in by relatives and family members as a form of kinship adoption. This ad hoc surrogate parenting did not observe many legal formalities and it was not uncommon for formal adoption to occur among families with significant property who had an estate to pass along. This practice of “surrogate heirship” was promoted by some politicians of the day as a means of maintaining the laws of landed property.

Edward Austen was twelve years old when Thomas Knight and his new bride Catherine visited Steventon, the home of his distant cousin, Reverend George Austen. The couple is reported to have taken particular interest in Jane’s older brother Edward, including him in the remainder of their wedding trip. The couple was unable to have children. Thomas Knight, as the heir to considerable property, wanted an heir of his own. The couple officially adopted Edward Austen in 1783 when he was sixteen-years old.

In fact, this was not the first time that the Knight family,

217 Id. The less fortunate were sent to orphanages and workhouses of the sort described by Charles Dickens.
218 Gilbert, supra note 192.
219 See Grover, supra note 20. A silhouette memorializing the event by famous artist William hangs in Chawton House. Id.
220 DAVIS NOKES, JANE AUSTEN: A LIFE 72-73 (1997); Jane Austen responded to Edward’s relinquishment of the Austen name for the Knight name by writing “I must learn to make a better K.” Id.
lacking a male heir, had adopted from among remote cousins. While it seems curious that the Austen family would allow their son to be adopted in this way, the practice was not unusual among landed gentry at the time. By adopting in this way, families were able to perpetuate the family name and keep their estates intact. Edward Austen, as the son of a reverend, would have had no opportunity to own an estate, much less the three he came to own. More than likely, he would have entered the church or naval service like his brothers. Instead, upon the death of Thomas and Catherine Knight, he inherited three estates: Chawton, Godmersham and Winchester. This inheritance allowed Edward to provide housing for his widowed mother and spinster sisters who would otherwise have been doomed to undesirable housing as their small income dwindled.

In providing this lodging, Edward Knight returned Jane Austen to the rural environment she loved. This helped to stimulate the most productive writing period of her life. *Mansfield Park* centers on the life of Fanny Price, a young woman informally adopted by her aunt and uncle Bertram when her parents can no longer afford to keep her. Fanny refuses to accept a marriage proposal deemed advantageous by her aunt and uncle and is sent back to her family of origin to be reminded of her good fortune. One of the protagonists in *Emma*, Frank Churchill, was adopted by a childless family member of his deceased mother. His hope of an inheritance helps to drive the plot of the novel, and often serves as an excuse for his otherwise ungentlemanly behavior.

VI. POSTHUMOUS PUZZLES AND POPULARITY

A. Where There's a Will...

Austen was never a wealthy woman in her lifetime. As is the case with so many artists, her “value” increased upon her
death. It was only after her death that her true identity as an author was revealed by her brother.223

Austen’s health began to decline early in 1817. By April of that year, she had written her will. Shortly before her death she was taken to the city of Winchester in the hopes of further medical treatment. Austen died there in July 1817 at the age of forty-one. Her death has been attributed to Addison’s disease or leukemia.224 She was buried in Winchester Cathedral, although there was no notation of her work as a writer upon her gravestone.225

Austen’s will, like her prose, is a model of clarity and

223 MITTON, supra note 50, at 130.
224 Hindley, supra note 9.
225 The text of her tombstone, set out below (transcribed and analyzed by CLAIRE TOMALIN in JANE AUSTEN: A LIFE (Penguin 2000), is thought to have been prepared by her brother Henry:

In Memory of
JANE AUSTEN,
Youngest daughter of the late
Revd GEORGE AUSTEN
formerly Rector of Steventon in this County she departed this Life on the 18th July, 1817 aged 41, after a long illness supported with the patience and the hopes of a Christian.

The benevolence of her heart, the sweetness of her temper, and the extraordinary endowments of her mind obtained the regard of all who knew her and the warmest love of her intimate connections.

Their grief is in proportion to their affection they know their loss to be irreparable, but in their deepest affliction they are consoled by a firm though humble hope that her charity, devotion, faith and purity have rendered her soul acceptable in the sight of her REDEEMER.
wisdom. The British National Archives displays wills representing each of the six centuries, and Jane Austen’s will was chosen to exemplify the nineteenth century. The entire will is set out below:

I Jane Austen of the Parish of Chawton do by this my last will & testament give and bequeath to my dearest sister, Cassandra Elizabeth everything of which I may die possessed, or which may be hereafter due to me, subject to the payment of my Funeral expences, & to a Legacy of £50. to my Brother Henry, & £50 to Mde de Bigeon - which I request may be paid as soon as convenient. And I appoint my said dear sister the executrix of this my last will & testament.

Jane Austen
April 27 1817

Austen’s estate was valued at approximately £800. It seems only natural that she should leave the bulk of her estate to her beloved sister Cassandra. Not only were the two sisters exceptionally close, but Cassandra was a single woman without fortune, dependent upon the charity of her brother and a small income from a legacy of a thousand pounds left to her by her deceased fiancé. Among the possessions bequeathed to

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227 Id.
228 Tieken-Boon Van Ostade, supra note 39.
229 The legacy brought Cassandra an income of thirty-five pounds, an amount equal to approximately $100 per month today. Id. at 325.
Cassandra were two unpublished novels, *Northanger Abbey* and *Persuasion*. The publication of these novels brought Cassandra a sum of just over £500.230 Austen’s bequest of fifty pounds to her brother Henry is also a reflection of financial need. Henry was ruined financially when the bank he owned collapsed.231 As to the mysterious Madame de Bigeon, it appears that she was a servant of Henry Austen’s family, reportedly a nurse who tended to Henry’s wife (and Jane’s cousin) Eliza.232 There are suggestions that Madame de Bigeon had also lost money invested in Henry’s bank.233

The will was not formally witnessed. In order for it to be processed, two friends had to swear in a written statement that they had known Jane Austen for years and that the will was written in her handwriting.234 Austen’s will has been analyzed from all manners of perspective. Her spelling, grammar and usage have been dissected.235 The absence of religious language in the will of a clergyman’s daughter has been duly noted.236 A software program has been applied to Austen’s letters to determine her familiarity with the testamentary language.237

Legal scholars have used predicaments in Jane Austen’s novels to exemplify everything from contracts238 to the rules of evidence.239 Whether or not John Dashwood’s deathbed promise to his father to care for his sisters and stepmother is a binding

230 Le Faye, supra note 8; see also Tieken-Boon Van Ostade, supra note 39, at 325
231 Hildebrand, supra note 2.
233 Tieken-Boon Van Ostade, supra note 39, at 322-341.
234 Id.
235 Id. at 329.
236 Id. at 324.
237 Id. at 331; Mike Scott of the University of Liverpool developed WordSmith Tools, a program applied to Austen’s correspondence examining the use of words like “bequeath” “will” and “legacy.”
239 Id.
obligation, and if so, whether he has satisfied that obligation when he gives them a meager sum far less than any of the parties anticipated? This is the stuff of law school exams. While the morals and manners of Austen’s day are long past, legal issues raised by Austen and her work continue to arise in contemporary society.

B. American Idol vs. British Idol

In 2013, pop star (and the first winner of the star search television show “American Idol”) Kelly Clarkson learned just how important Jane Austen is to the British national psyche. Clarkson, an avowed Austenite, purchased a ring once owned by Jane Austen. Clarkson bid anonymously on the ring at a Sotheby’s auction, beating out seven other bidders to purchase the ring for

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Austen had bequeathed the ring, and the other two pieces of jewelry, to her beloved sister Cassandra upon her death. The ring was passed down among Austen descendants, one of whom eventually put it up for auction.

While Clarkson was permitted to purchase the ring, she was forbidden by the United Kingdom’s Minister of Culture from bringing the ring to her home in America. The Minister put a temporary export ban on the ring in the hope that it would instead be purchased by someone in England.

The authority for the Minister’s action lies in a British law that requires the owner of a “national treasure” to seek a license to take it out of the country. The law was a response to an art drain faced by the United Kingdom as many cash poor aristocrats sought to shore up the family fortunes by selling their vast art collections. The restriction requires that an owner seeking to export certain goods must seek a license from the Export Control Organisation, part of the Department for Business, Innovation and Skills. Typically, these restrictions target shipments of arms, militarily strategic goods and material used in making nuclear weapons.

It is a matter of common sense to any Austen aficionado that any item which belonged to her would constitute a national treasure. The legal basis for the classification is, however, sometimes misunderstood. Commentators have referred to the United Kingdom’s Treasure Act, which defines the circumstances under which a treasure trove escheats to the state. Under the Treasure Act of 1996, a treasure is defined as:

243 Id.
245 Id.
247 Id.
(a) any object at least 300 years old when found which—

(i) is not a coin but has metallic content of which at least 10 per cent by weight is precious metal;

(ii) when found, is one of at least two coins in the same find which are at least 300 years old at that time and have that percentage of precious metal; or

(iii) when found, is one of at least ten coins in the same find which are at least 300 years old at that time;

Strictly speaking, the ring was not "found" in the sense of an archeological discovery. It was known to exist for many years. Thus, the Treasure Act is inapplicable.

Instead, the authority lies in the Export of Objects of Cultural Interest Order of 2003.248 Under the order, there are three types of export licenses: Open General Export License (OGEL); an Open Individual Export License (OIEL); and the Individual Export License (SIEL).249 The OGEL offers a presumptive license where the financial value of the good is below a certain threshold, where the export is temporary, and where a European Union export license has been granted.250 The OIEL is similar, applied

249 Id.
primarily to business entities and professional organizations.

The Individual Export License at issue in Clarkson’s case restricts the exportation of those objects valued at or above the financial thresholds in the OGEL, and which have been in the United Kingdom for more than fifty years, and are of “national importance.” In evaluating national importance, the matter is considered by an expert advisor appointed by the Secretary of State. These advisors, often selected from among museum professionals, apply what is known as the Waverly Criteria to make the determination. The criteria are:

Waverley one:

Is the object so closely connected with our history and national life that its departure would be a misfortune?

Waverley two:

Is it of outstanding aesthetic importance?

Waverley three

Is it of outstanding significance for the study of some particular branch of art, learning or history?


252 Id.
As a result of the Quinquennial Review, these criteria were revised in 2003 by the Committee on the Export of Works of Art. The revisions provide more explanations and examples of these very broad criteria. Regarding Criteria One—whether the object’s loss to the country would be a “misfortune”—the revision specifies that “[t]his criterion refers to national treasures, whose departure from the country would be a misfortune since they possess outstanding artistic, historical, or archaeological value.” This category can include items which have been produced outside the United Kingdom, but which have acquired national importance by association with an important person, location or event. The first criterion was originally intended to catch such objects as the ‘Alfred jewel’ or the manuscript of Gray’s Elegy, but it is also interpreted to include items which are of major importance for local history, or which have been part of collections which are of great historical significance, or which are associated with significant historical events, people or places. Examples of ‘Waverley One’ items include:

The deposit from the ‘royal’ ship burial from Sutton Hoo, the Middleham jewel, the Lutterell psalter, The Dog of Alcibiades, a portrait miniature of Henry Stuart, Lord Darnley, the archive of manuscripts relating to the editing of Newton’s Principia Mathematica, decorations awarded to Sir William Carnegie in connection with the battle of Trafalgar, Lewis Carroll’s photographs of Alice Liddell (the Alice of Alice in Wonderland), the Royal Standard belonging to Sir Ernest Shackleton and Captain Scott’s sledging flag.

Concerning the second criteria—aesthetic importance—the committee noted that such works were not restricted to great works of painting or sculpture, but could include decorative practical items such as snuffboxes. The explanation also suggests that even if the object was the work of a master artist, condition and quality of the work would still come into play.

253 Id. at para. 12.
254 Id.
Examples of ‘Waverley Two’ items include the paintings \textit{Venus} and \textit{Adonis} by Titian and \textit{The Holy Family with the Infant St. John} by Fra Bartolommeo, a pair of George II open armchairs by William and John Linnell, Henry Moore’s sculpture, \textit{Bird Basket}, a George III mahogany commode attributed to Thomas Chippendale, a drawing by Gainsborough, \textit{A Peasant Family Going to Market}, and the Van Gogh watercolour, \textit{Harvest in Provence}.\footnote{Id.}

The third criteria—the importance of the object to learning and scholarship—is also given a broad interpretation. Acknowledging that the object might not be of “outstanding significance on its own,” the criteria recognizes the usefulness of an object’s connection with an important person, place or event, and its utility in assessing and understanding the value of those items more readily recognizable as “treasure.” “Learning” is also broadly defined to recognize a wider range of disciplines, including “art history, archaeology, ethnography, anthropology, paleontology (subject to definition of ‘fossils’) science, engineering, architecture or literature, etc.”\footnote{Id. at paras. 18-19 (What constitutes a fair market price is determined by the Reviewing Committee).}

‘Waverley Three’ items include: a lady’s secretaire by Thomas Chippendale, mathematical instruments associated with Charles, Earl Stanhope, ledgers and account books of Messrs. Fribourg and Treyer, three albums compromising photographs of Indian architecture and scenery by Samuel Bourne, a Hutton racing car, and the Swan Roll manuscript.\footnote{Id.} Under the Waverly criteria, there can be little doubt that any of the few remaining possessions of Jane Austen constitutes a national treasure.

Procedurally, the Order calls for a deferral of the license for a period of two to six months to try to find a competing buyer who will not export the object. The buyer is required to pay a fair market price.\footnote{Id.}
Clarkson’s application for an export license was deferred for two months.\textsuperscript{259} Within a short time, the fair market price of approximately $250,000 U.S. was raised by Chawton House Museum.\textsuperscript{260} Donations were reported to come from around the world, including one donation of £100,000.\textsuperscript{261} Clarkson was reportedly gracious in agreeing to re-sell the ring.\textsuperscript{262} The ring is now kept at the museum, located where Austen spent the last eight years of her life.

\textit{C. Legal Tender}

In 2013, Mark Carney, Governor of the Bank of England, announced that Jane Austen would become the face of Britain’s ten pound note.\textsuperscript{263} Carney said, “Jane Austen certainly merits a place in the select group of historical figures to appear on our banknotes. Her novels have an enduring and universal appeal and she is recognized as one of the greatest writers in English literature.”\textsuperscript{264} She joins authors William Shakespeare and Charles Dickens who have also appeared on British currency in recent history.\textsuperscript{265}

\textsuperscript{259} BBC NEWS, \textit{supra} note 242.
\textsuperscript{261} \textit{Id}.
\textsuperscript{262} BBC NEWS, \textit{supra} note 242.
\textsuperscript{263} BBC NEWS, \textit{supra} note 43.
\textsuperscript{264} \textit{Id}.
\textsuperscript{265} Dickens was on the 20 pound note and Shakespeare on the 10 pound note. \textit{Id}. 
The design of the note is said to include a portrait of Austen adapted from the picture painted by her sister Cassandra, a picture of her writing table housed in Chawton, and an illustration of one her most famous characters, Elizabeth Bennet. The design of the note is said to include a portrait of Austen adapted from the picture painted by her sister Cassandra, a picture of her writing table housed in Chawton, and an illustration of one her most famous characters, Elizabeth Bennet. Austen is set to replace Charles Darwin on the note in 2017. When she does, she will be the only female other than the Queen to be featured on British Currency. The absence of women on the currency has created controversy in Britain. An online petition received 35,000 signatures and there was the threat of legal action to force the government’s hand. The announcement of Austen’s ten pound note was met with widespread acclaim.

VII. CONCLUSION

Even though we have been able to piece together Jane Austen’s education and experience, there is no clear explanation

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267 BBC NEWS, supra note 43.
268 Social reformer Elizabeth Fry is set to be replaced on the five pound note by Sir Winston Churchill in 2016. Id.
269 Id.
270 “Chancellor George Osborn tweeted the move showed ‘sense and sensibility.’” Id.
for the extent of her knowledge of the legal matters of the day. It seems frivolous to imagine that it was the result of an ill-fated romance with an Irish lawyer. The existence of the romance itself is open to question and that the two would have spent their time together discussing important legal matters seems even less likely. It is possible that Jane Austen’s knowledge comes from her wide and varied reading of literature and press. Unlike many women of her time, Austen was encouraged to read widely and well. She was not limited to a particular type of “ladies’ literature” by her father or family. She was bright and curious and was inclined to absorb information from the environment around her, despite the sheltered nature of her upbringing. Perhaps it is her own limited life experience which contributed to her knowledge of entailments and adoptions.\(^{271}\) It is clearly understood that Jane Austen’s novels have influenced countless readers to examine unfairness inherent in class systems, to step beyond proscribed societal norms to seek what is true, and to do what is right. Perhaps that is Austen’s greatest influence on the law.

\(^{271}\) This position is supported by at least one expert in the field of English property law. See Grover, supra note 20.