Rent to Own;
or, What’s Entailed in
Pride and Prejudice

‘Oh! my dear,’ Mrs. Bennet says to her family over breakfast one morning,

“I cannot bear to hear that mentioned. Pray do not talk of that odious man. I do think it is the hardest thing in the world, that your estate should be entailed away from your own children; and I am sure if I had been you, I should have tried long ago to do something or other about it.”

Jane and Elizabeth attempted to explain to her the nature of an entail. They had often attempted it before, but it was a subject on which Mrs. Bennet was beyond the reach of reason; and she continued to rail bitterly against the cruelty of settling an estate away from a family of five daughters, in favour of a man whom nobody cared anything about.¹

This exchange from the opening chapters of Pride and Prejudice is immensely funny, and not only because it marks the entrance into the plot of the “odious” Mr. Collins. The joke would have been apparent to a contemporary readership, but for most of us—even those of us who might be lawyers—it doesn’t register clearly. Yet it is impossible to get the full effect of Mrs. Bennet’s obtuseness, and thus to comprehend what is wrong with her characteristic way of thinking, unless you know what an entail is, and what it isn’t.

Estate law has been, or at least has seemed a significant feature of Austen criticism since Alistair Duckworth’s influential 1971 book The Improvement of the Estate. Duckworth argued that in Austen, “the estate as an ordered physical structure is a metonym for other inherited structures—society as a whole, a code of morality, a body of manners, a system of language”—in other words, for the entitlements and conventions of English class structure.² For him, and for his successors among the “political” critics (most famously, Marilyn Butler), estate law was understood primarily as a vehicle for, if not a version of, politics.³ It wasn’t necessary to analyze

ABSTRACT This essay attempts to explain the function of the most famous entail in literary history. The essay begins with a brief survey of the legal history of entailment, focusing in particular on the contradictory notions of agency and obligation embedded in the English fee. The author argues that Austen is familiar with this history and these contradictions, and that in Pride and Prejudice, the entail—which had seemed a threat to social obligation—becomes a model form of sociability. What is entailed in Pride and Prejudice, she concludes, is an argument about short- and long-term obligations: an argument on behalf of a model of obligation whose durability and impersonality is enabled by the technology—at once conceptual and historical—of entailment. / Representations 82. Spring 2003 © The Regents of the University of California. issn 0734-6018 pages 1–23. All rights reserved. Send requests for permission to reprint to Rights and Permissions, University of California Press, Journals Division, 2000 Center St., Ste. 303, Berkeley, CA 94704-1223.
laws of inheritance in any detail because one already knew all she needed to know about them: they underwrote in a transparent way class—and for later critics gender—privilege. This commitment to political allegory was for Duckworth a way of avoiding the quietism of the “subversive critics,” for whom Austenian irony signaled the author’s detachment from the social conventions she described, and in whom “detachment” was synonymous with “autonomous” and “self-responsible moral judgment.” Duckworth’s reorientation of the critical discussion away from formal and ethical questions constituted a paradigm shift; and in a strange violation of the materialist logic of that shift, few accounts of Austen’s novels published since 1971 have engaged the history of English land law in any detail. Only two essays take up the challenge of explaining entailment in *Pride and Prejudice*, and neither is cited in other criticism on the novel. The recent essay by Clara Tuite, whose title, “Decadent Austen Entails,” promises an account of entailment, doesn’t in the end offer one: Tuite, too, uses “entail” allegorically to register something like “literary succession” or “tradition.”

In what follows I want to revisit the question of the Longbourn entail, for it seems to me that in losing—or losing interest in—the acquaintance with land law that the first readers of *Pride and Prejudice* possessed, we have lost sight of one of the novel’s key investments. The entail is not merely a plot device designed to set in motion and to serve the marriage comedy. It is difficult to fully comprehend the way the novel thinks about relationship (dynastic and affective) without understanding with some precision the legal logic of entailment. Land law, rather than marriage or class, is the ground upon which Austen works out the way in which persons are, and ought to be, connected to others. Ultimately entailment is less interesting to her for the way it manages material relations than for the way it imagines ethical ones; but the link between ethics and the law is not, therefore, merely allegorical. What is entailed in *Pride and Prejudice* is an argument about short- and long-term obligations: an argument on behalf of a model of obligation whose durability and impersonality, whose extension through time and social space, is enabled by the technology—at once conceptual and historical—of entailment.

What’s funny about Mrs. Bennet’s rant about entails—what Jane and Elizabeth have apparently long tried to explain to her—is that you can’t blame anyone for them. Or rather, you can’t, as Mrs. Bennet wants to do, blame Mr. Bennet or Mr. Collins: the former couldn’t have done “something or other” about the disinherision of his five daughters; the latter bears no particular distinction in or responsibility for being “favored” by the inheritance. Mrs. Bennet attempts to particularize, and to make agentive—to make the effect of someone’s agency or act of omission—a legal structure that is purely formal, and whose raison d’etre is to make impossible anyone’s agency but the original donor of the fee. In order to understand what is ridiculous and impracticable, wrong both logically and ethically with such an
attempt, we need to be at least as familiar with English land law as are Jane and Elizabeth—and as is Austen herself.

Acquiring such familiarity is complicated by the fact that legal historians tell different stories about the common law of real property. Or to be more precise, they tell the same story until they get to the question of which modality of property has the better (read: more libertarian) politics. Whiggishness is perhaps inevitable in a discipline organized around the notion that beginning in 1660 (when the Statute of Tenures abolished feudal exactions), and certainly after 1870 (when the Forfeiture Act abolished forfeiture and escheat), one witnesses the progressive erosion of the tenurial system and the unstoppable march “from status to contract.” It seems absurd to challenge such a teleology: villeinage, fealty, primer seisin, escheat, are clearly things of the past, and few feel any nostalgia for their passing. Historians of the land law therefore tend to acquiesce in the teleology and preoccupy themselves instead with producing refinements on the political question. As a result, common-law historiography doesn’t offer us any easy way out of the allegorical turn in Austen criticism—the tendency to see land law as a species of politics—for it would seem to have helped make such a turn possible in the first place. And so I am going to try to tell my own story about the history of English land law, one that draws heavily upon the breathtaking expertise of legal historians such as J. H. Baker and A. W. B. Simpson, but that subjects their accounts of legal history to a further historicization. In this way I hope to determine not only what Austen could have known about the law but also what she might have known more clearly than we.

The basic unit of feudal tenure in England was the “fee” (*feodum*), which belonged neither to lord nor tenant but was temporally divided into present and future “interests,” and into interests of varying duration. The tenant had a life interest in the estate (he possessed the land for his lifetime), but upon his death the inheritable fee reverted to the lord, and the life estate and inheritable fee were the central units of estate law until around 1200. Gradually, however, common lawyers began to think that the fee was not merely a succession of life interests, “but a single estate, owned in its entirety by the tenant in fee,” an idea that developed alongside, and helped to shore up, a new conceptual interest in alienation. As Baker puts it, the understanding of the fee as a single estate “arose when the tenant in fee was permitted to alienate to another person in fee in such a way as to disinherit his own heirs.” In other words, ownership came to be seen as dependant upon and marked by the capacity to give what one owned away (alienability); and the sign of alienability was one’s freedom to violate biological, historical, or juridical imperatives of succession. As J. R. McCulloch described it in 1824, the English fee had developed as an alternative to the strict lineal model of succession central to Greek, Roman, and Saxon law—a model of succession in which, as McCulloch quotes Alexis de Tocqueville saying, “‘the machine once set in motion, will go on for ages, and advance, as if self-directed, steadily to a certain end, according to the bias originally impressed upon it.’” Devising property to what McCulloch called one’s “natural”
or “necessary” heirs severely limited what a donor could give or withhold. The innovation in English law was to dramatically expand the possibilities for giving and withholding; and for McCulloch, this commitment to alienability entailed a corresponding, necessary commitment to disinherision: “for if a man may alienate, or dispose of his property during his lifetime, his heirs at law may be as effectually disinherited as if he were permitted to bequeath his property to others to their exclusion.”

If lineal succession was anathema to English liberty, it followed that disinherision was the touchstone of that liberty.

We will return to this observation in a moment; for now I want to note that the emerging emphasis on the ethico-juridical value of alienability had interesting consequences for the question of the fee’s duration. If the old fee had been a succession of interests with an organic limit (the life span of the donee), the tenant granted this new form of property—called a “pure fee” or “fee simple”—had something very different from a life estate: his estate “was of infinite duration,” paradoxically because he could get rid of it whenever and howsoever he liked. That is, the act of alienation—which one might intuitively expect to be a delimited act, an act that takes place once, by one person for one person—was “infinite” because its consequences for the future teleology of the estate were total and unending. (The fee is of course altered by the next act of alienation, but each of these acts affects, inalterably, the causal chain of succession.) The new durability of the estate in turn had interesting consequences for the question of agency. The fee simple’s durability presumed and upheld a strong version of the tenant’s agency, prolonging the temporality of his actions and elongating the limit of his will. But as McCulloch makes clear, the heir fared rather differently. The wording of the fee simple grant—“To A and his heirs for ever”—“gave no interest to individual heirs but merely defined as inheritable the character of the interest granted.”

If the ancestor alienated the estate during his lifetime, the heir (the person next in a biological line of succession) had “nothing to inherit and no legal standing,” because, as the law put it, “the identity of the heir could not be known until the ancestor’s death.” The “Tenant in fee-simple,” William Blackstone explains, “is he that hath lands, tenements, or hereditaments, to hold to him and his heirs for ever; generally, absolutely, and simply; without mentioning what heirs, but referring that to his own pleasure.” The development of the fee simple, which became the basis for English estate law from the thirteenth century onwards, thus rested on a contradiction: on the one hand, the guiding principle was an enhancement of alienability; on the other hand, only the donor had agency. Not only did the heir maintain a merely presumptive right to the estate; his very existence as heir was contingent on the actions of another.

There is perhaps nothing very surprising about this: that an heir cannot act—cannot exist—until someone makes him. And yet embedded in the fee simple’s privileging of the donor’s agency and intentionality at the expense of the heir’s was a surprising challenge to the instrumentalism of primogeniture or “necessary” succession. Under primogeniture you always already knew yourself to be an heir
because you knew yourself to be a firstborn son. There’s no agency for the heir here either, as Tocqueville’s mechanistic rhetoric reveals; but at least you know who you are and who you’re likely to be. This tension between fee simple and primogeniture—the way in which the former has seemed both conceptually and historically at odds with the latter—has meant that fee simple has consistently been understood as the more progressive institution. After all, the fee simple could descend to females. Yet the logic of alienability that underwrites fee simple, and the history of its statutory retrenchment, complicates the question of its politics in ways that legal historians have not fully acknowledged. Fee simple, as Blackstone consistently if unselfconsciously points out, is absolutist: the king’s “absolutum et directum dominium” is transferred to the tenant in fee, who acquires an “absolute inheritance, clear of any condition, limitation, or restrictions to particular heirs, but descendible to the heirs general, whether male or female, lineal or collateral.” “In no other sense than this,” he asserts, “is the king said to be seised in fee, he being the feudatory of no man.”

In 1285 the second statute of Westminster, *De donis conditionalibus* (“of conditional gifts”) was devised to shore up the sovereignty of the tenant in fee. According to Blackstone, the statute paid “greater regard to the private will and intentions of the donor, than to the propriety of such intentions, or any public considerations whatsoever”; and Baker agrees that it protected the “intentions of donors from frustration in the most liberal terms” and allowed them to “restrict categories of heirs in ways not possible at common law.” One of the first restrictions sought was on female inheritance. As Simpson describes it, *De donis* was a response to a “‘fragmentation’ of ownership” that had arisen earlier in the century with the development of the *maritagium*, or marriage gift. *Maritagia* were conditional gifts of a freehold in land to an affianced couple and their future heirs, and once the condition (the procreative imperative) attached to the gift “was satisfied by the birth of issue, the donee could alienate.” The alienability of the gift meant that it was not a life interest but a fee simple, and this produced a conceptual crisis: for since the fee was not identical to the freehold but represented the “heritable interest” in the freehold, it was impossible to envisage a situation in which “two people might simultaneously hold fees in the same land.” And yet this was precisely what was required in the case of *maritagia*, which pitted the alienability (and therefore possession) of the donor against that of the donee. In 1258 a group of feudal lords drafted a “Petition of the Barons” to complain of this conundrum, and in particular to complain that “when land is given to a husband and wife jointly in marriage, with a limitation to their issue, wives who survive their husband alienate the land during their widowhood and destroy the reversion [to the grantor]” and “no writ exists to enable the grantor to recover the land from the alienee.” The 1285 statute was the response to this complaint: *De donis* laid down “the general principle that in future the will of the donor, as expressed in the *forma doni*, is to prevail”; and established a new remedy—a writ of formedon in descender—that allowed the issue of a donor to
recover land if it had been alienated by a donee. De donis thus responded to a fragmentation and proliferation in ownership by reinforcing the alienability of donors at the expense of donees. And this ushered in a variation on the conditional or cut-down fee (feodum talliatum). Blackstone puts the change most succinctly: “Upon the construction of this act of parliament,” he says, “the judges determined that the donee had no longer a conditional fee-simple, which became absolute and at his own disposal, the instant any issue was born; but they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a fee-tail; and vesting in the donor the ultimate fee-simple of the land.” The “fee tail” or “entail” created by the statute differed from the conditional fee in two ways: it was not freely alienable, and it could and often did take the form of a donation “To A and B and the heirs male of their two bodies.”

The possible antifeminism of the entail was the least of its excesses. The entail granted a donor the legal capacity to alienate his property without restraint in perpetuity, and thus to deprive succeeding generations of freedom of alienation. The fee simple, as we’ve seen, was an estate limited to the feeholder’s lifetime but within that lifetime absolutely and unqualifiedly disposable by him. Transmission of the fee tended to follow customary biological or patrilineal lines of succession; but theoretically the heir’s alienability (once he was in possession of the fee) was as unrestricted as his ancestor’s. The fee tail, on the other hand, allowed a donor to severely restrict the alienability of his heirs: to entail land was to grant limited interests to a number of persons in succession—persons who were often not yet born and would not be for several generations—so that no one possessor was absolute owner, nor could anyone alter the future as it was mapped out by the donor’s will. Such gifts were therefore conditional in a radically new way: they contained “successive remainders in tail to different people, each enforceable by formedon ‘in the remainder’”; and in each case, “the fee simple stayed in the donor.”

Baker is typical of common-law historians in assuming that because of its “unattractive” interference with freedom of alienation, the fee tail has “opposite characteristics from the fee simple”: it was, he says (quoting S. F. C. Milsom), a “juridical monster.” (Blackstone is less hyperbolic: estates tail, he says, “were justly branded . . . mischiefs unknown to the common law; and almost universally considered as the common grievance of the realm.”) Yet if, as Baker also says, the idea of “ownership entire” that underwrites fee simple depends upon protecting donors’ intentions, and especially their capacity to disinherit or otherwise control their heirs, then entailment is not “opposite” to fee simple but is its logical apotheosis. He admits as much when he asks a question he thinks of as merely rhetorical: “Could freedom of alienation include the freedom to prevent future alienation?”

By the 1830s McCulloch had thought that the answer to this was “yes”: if disinherition is the touchstone of English liberty, then entailment perfects rather than threatens the logic of possessive individualism. For while the entail certainly vitiated the alienability of the heir, it also assumed that the owner of land in fee was sovereign,
and moreover that the individual must not be subject to genetic or historical determinism but must be able to re-imagine family formation—to make family, to construct unprecedented networks of affiliation and obligation.

As a result, by the seventeenth century entails were primarily favored by the newly gentried, successful lawyers, merchants, or tradesmen who’d amassed fortune enough to purchase an estate they didn’t want to see wasted, mortgaged, or sold by profligate heirs. Entails were not, that is, favored by Tories with whom absolutism is usually associated, but by Whigs who wanted to see acquired land achieve the same durability as land with a centuries-long pedigree. Whig landowners thus dabbled in a “monstrous” juridical absolutism that seemed to contradict their own anti-absolutist politics, constructing elaborate conveyances that punished spendthrift sons by devising property to a series of collateral heirs (who were themselves granted only life-tenancies), or that prevented spending altogether by ensuring that heirs inherited nothing they could really call their own. But the contradiction is only apparent, since it is also true that during the Exclusion Crisis it was to the entail that Whigs looked for a way to bar James’s and justify William’s succession to the throne. This fact makes the Revolution Settlement—that paradigmatic instance of Whig politics—look less contractarian than even a revisionist might have expected, and reveals the degree to which entailment was once a vehicle for Whig ascendency, rather than, as it became, its antithesis.

When by end of century a similar class of would-be squires found that the preference for entails encouraged an endogamy that prevented them from doing what their predecessors had done, a rigorous critique of entailment emerged from the context of—and subsequently became synonymous with—Whig commercialism. “Although it is a praiseworthy thing for someone who has risen from little or nothing . . . to desire the continuance [of an estate] in his name and family,” said one of these critics, “when a man endeavours to make it so firm and stable that neither the law of the realm nor the providence of God may alter it, then it is an unlawful thing . . . and if such perpetuities were allowed it would in a short while take away all commerce and contract from the realm, for no one would be able to buy or sell . . . land for any cause, be it never so important.” In the Wealth of Nations, Adam Smith offered an elaborate defense for this sense of the mutual exclusivity of liberty and entailment. His argument was grounded on the assumption that “entails are the natural consequence of the law of primogeniture,” a claim that is by no means self-evident since, as we’ve seen, entails are expressly designed to violate the determinism and instrumentalism of primogeniture. Despite the speciousness of its grounding presupposition, however, Smith’s conclusion—that entails “are founded upon the most absurd of all suppositions, the supposition that every successive generation of men have not an equal right to the earth, and to all that it possesses; but that the property of the present generation should be restrained and regulated according to the fancy of those who died perhaps five hundred years ago”; and that they thus maintain the “exclusive privilege of the nobility to the great offices and
honours of their country”—forever made entailment seem a Tory phenomenon, obscuring its whig-libertarian logic and its Whig politics.\(^\text{31}\)

Not only was Smith’s attack on entailment somewhat disingenuous, it was, in the context of English law, belated.\(^\text{32}\) In the 1680s a precedent had emerged that was meant to counteract the totalizing and monopolistic properties of entailment complained of in the preceding paragraph. Commonly known as the “rule against perpetuities,” the Duke of Norfolk’s Case (1680–83) introduced a relaxation in estate law that favored “complex contingencies” less extensive in duration and remote in time.\(^\text{33}\) By the early eighteenth century this relaxed version of entailment—for example, “To A for life with a remainder in tail male to the heirs of B”—took on a structure that lasted three hundred years. Under what came to be called the “strict settlement,” the maximum duration allowed for postponing the fee simple (that is for postponing the reversion of the estate to an alienable fee) was the “life in being” of the donee plus a term of twenty-one years.\(^\text{34}\) The alienability of both the donor and the heir was thereby preserved: donors could still control the transmission of an estate, but now through only two generations; heirs could alienate the fee, but were limited in what they could do with it by the requirement that the estate descend intact to their heirs. (They could, for example, mortgage the estate to make money on it, but they couldn’t sell it or bequeath it to anyone other than the remainderman stipulated in the original settlement.) The strict settlement thus presumed and demanded that there would be a resettlement each generation so as to accommodate changes in family structure. But while this produced a certain kind of flexibility, Smith’s anxiety makes it clear that a century later the problems of endogamy and monopoly (and of course the default patriarchalism of succession) were not solved. Indeed, despite a professed commitment to enhanced alienability—one reiterated by legal historians who optimistically claim that strict settlement “limited the patriarchal capacity of fathers by circumscribing their powers over disinher-itage” and thus weakened the tradition of patrilineal descent—\(^\text{35}\)—in substance the strict settlement continued to function “as an entail of unlimited duration.”\(^\text{36}\)

My point is that Austen knows all this. And not only is she familiar with the logic and the history of land law, she has a highly articulate position on it. By calling an “entail” what by 1813 could only have been a strict settlement, for example, Austen questions the historical and political distinction that had developed between the two. She recognizes more clearly than legal historians have done, that with respect to the question of the agency and durability of the donor’s will—and especially with respect to the question of gender—fee simple, fee tail, and strict settlement are structurally identical. Given the pathos generated by the five Bennet girls’ disinherison, it looks as though her position on entailment is that it is bad. But this is an assumption I want us to resist, and ultimately to reject.

Austen takes a great deal of time in the opening pages of the novel laying out the specifics of families’ estates. The Miss Bingleys, we’re told, “were of a respect-
able family in 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” (11). Mr. Bingley has inherited the proceeds of this trade “to the amount of nearly an hundred thousand pounds”; and we’re informed that his father intended to purchase an estate with this money “but did not live to do it,” and that “Mr. Bingley intended it likewise . . . but as he was now provided with a good house and liberty of a manor, it was doubtful to many of those who best knew the easiness of his temper, whether he might not spend the remainder of his days at Netherfield, and leave the next generation to purchase” (11). Bingley rents. And renting—his preference for short-over long-term commitment—becomes a marker of his “easiness of temper”: Bingley rents because he’s genial.

Sir William Lucas, it seems, also rents. We’re told in the next chapter that he “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 major-alty”; and that like Bingley he’s used the money to remove his family “to a house about a mile from Meryton, denominated from that period Lucas Lodge” (13). Austen’s use of “denominated” suggests that this is what the estate is called, but that in reality it is not Lucas—nor Lucas’s—Lodge at all: it is inhabited rather than owned. And again this eschewing of ownership is aligned with geniality of character: Sir William is “civil to all the world,” “all attention to everybody,” “inoffensive, friendly and obliging” (13). It is as though it is because he rents that he can be civil to “everybody”: because he is not tied to a particular place or to the particularity of dynastic obligation embodied in the freehold, he can be obliged and obliging to “all the world.”

Darcy, on the other hand, has by this point been established as the possessor of a freehold, and simultaneously established as the possessor of a “disgust[ing]” personality. “He was discovered to be proud,” the narrator explains, “to be above the company, and above being pleased; and not all his large estate in Derbyshire could then save him from having a most forbidding, disagreeable countenance, and being unworthy to be compared with his friend” (8). Given the ways in which one’s character and one’s relation to land are lining up, however, the problem for Darcy is not that the Derbyshire freehold cannot save him from being disagreeable; rather, it is precisely the ownership of the estate—ownership per se—that makes him disagreeable. And his “unworthiness” is later confirmed when Mrs. Bennet informs the assembled company that “he would have talked to Mrs. Long. [But] . . . I dare say he had heard somehow that Mrs. Long does not keep a carriage, and had come to the ball in a hack chaise [a rented carriage]”—his lack of sociability signaled by his contempt for those who rent (14).

The only other male character in the novel with any connection to a freehold is Mr. Bennet. “Mr. Bennet’s property consisted entirely in an estate of two thousand a year,” the narrator again helpfully informs us, “which, unfortunately for his daughters, was entailed in default of heirs male, on a distant relation” (19–20). Austen’s
syntax here self-consciously echoes the wording of a settlement in tail male; and while we never know where the settlement comes from we can gather that on paper it looks something like this: “To A for life with a remainder in tail male to the heirs of his body, and on failure of such heirs a remainder to B and the heirs male of his body.”37 We know that Mr. Bennet has only a life interest in the estate because otherwise he could alienate the feehold so as to disinherit Mr. Collins. We know that the estate must beremaindered to a male heir of Mr. Bennet’s because we are told late in the novel that he had hoped to have a son who would “join in cutting off the entail, as soon as he should be of age” (196). (A son would have become “tenant-in-tail in remainder” and upon his maturity could join his father in a lawsuit that would have barred the entail and made the feehold alienable once more.)38 And we know that the estate must have been again remaindered to a collateral male heir (Mr. Collins pere) and to his heir male—which is how one arrives at Mr. Collins.

The reader arrives at Mr. Collins through the letter that produces the outburst from Mrs. Bennet with which this essay began. Mr. Collins’s entrance into the novel’s plot—embedded as it is in a rigorous discussion of how entails work—functions as an allegory of his imminent entry into possession of the estate, of the fact that he stands to be “seised of” (literally, entered onto) the freehold. Mrs. Bennet’s “bitter railing” against this predicament is met by her husband with a response that at once highlights and ironizes her commitment to blaming the hapless heir: “It certainly is a most iniquitous affair,” said Mr. Bennet, ‘and nothing can clear Mr. Collins from the guilt of inheriting Longbourn” (42). It is by now easy for us to get the joke, since it is absurd to blame Mr. Collins for a state of affairs mapped out long ago by someone neither he nor we have any connection to; and it is equally absurd to attribute malice—to attribute any agency at all—to heirs.

Understanding the precise way in which this joke works helps to explain what is so egregious about Mr. Collins’s characteristic investment in apologia. Elizabeth’s response to the offending letter is to observe that there is “‘something very pompous in his stile’”; for “‘what can he mean by apologizing for being next in the entail?—We cannot suppose he would help it, if he could’” (44). Elizabeth comprehends something her mother does not: that by being “next in the entail” Mr. Collins is a mere cog in an elaborate conveyance that preexists him and will outlast him. By apologizing—by “continu[ing] to apologise for about a quarter of an hour” (45) after he arrives in the flesh—he is ascribing to himself a distinction and an agency in relation to entailment that he doesn’t in fact possess. It is quite delightful to accumulate instances of this phenomenon: at Mrs. Phillips’s whist party we are told that he “apologis[ed] for his intrusion,” “repeated his apologies in quitting the room” (50), and on the way home in the carriage “repeatedly fear[ed] that he crowded his cousins” (57). After being rejected by Elizabeth, he responds by telling her baffled parents, “I here beg leave to apologise” (77); and once he embarks upon his courtship of Charlotte Lucas, “he sometimes returned to Longbourn only in time to make an apology for his absence before the family went to bed” (87). At the Neth-
erfield ball he is described as “apologising instead of attending” (61) to his partners on the dance floor; and in the most hilarious example, he earnestly explains to Elizabeth that he is heading over to apologize to Mr. Darcy for not having introduced himself (in violation of a code that says he should be sorry for introducing himself to someone to whom he is not known), and to her dismay, from across the room she sees “in the motion of his lips the words ‘apology,’ ‘Hunsford,’ and ‘Lady Catherine de Bourgh’” (65–66).

Entailment is in part a problem because it makes apologia a social pathology, a compulsively felt and broadly distributed need, and at the same time seems to foreclose the possibility of blame and accountability. We share Collins’s sense that he is a necessary cause of the girls’ dispossession, and this is true even if we don’t know that heirs could, though they very rarely did, refuse an inheritance. Even had he opted out of the entail, however, the estate would have continued to bypass the Bennet girls. In the context of entailment, refusal is an act without effect, hardly an act at all: remediation does not and cannot happen. If Collins can’t be the hero he wants to imagine himself, then, he also can’t be the villain Mrs. Bennet (and perhaps the reader) wants to imagine him to be. And if you can’t blame anyone for an entail, or can’t locate the person who is to blame, a world structured by entailment is a world in which obligation appears largely impossible. Once again, Austen uses Mrs. Bennet’s obtuseness about land law to make this point. “It is a grievous affair to my poor girls, you must confess,” she tells Mr. Collins; “Not that I mean to find fault with you, for such things I know are all chance in this world. There is no knowing how estates will go when once they come to be entailed” (44). Mrs. Bennet seems finally to have understood that Mr. Collins has not acted to make and cannot act to unmake the entail; but her understanding remains comically confused. The point about entails, of course, is that there is nothing at all “chancy” about them: one knows all too well “how they will go”; their trajectory through a perpetual series of remaindersmen is clear and incontrovertible even if the ontological (as opposed to structural) identity of those men remains obscure. Yet if Mrs. Bennet is wrong about why she can’t, she’s right that she can’t “find fault” with Mr. Collins. Simpson notes that a “curious characteristic” of entailment was that it “protected against attachment for debts incurred by the tenant in tail.”

Because the tenant didn’t own the freehold, that is, he couldn’t be responsible for it—neither for damages to it, nor for improvements. As Francis Bacon enumerated the problem in 1630, “Entayles of Land” “made the Sonne to bee disobedient, negligent, and wastfull”; “made the owners of the land less fearefull to commit Murthers, Felonies, treasons, and Manslaughters”; “hindred men that had intayled lands, that they could not make the best of their lands by fine and improuement”; and “did defraud the Crowne, and many Subjects of their Debts; for that the land was not lyable longer then his owne life-time; which caused that the King could not safely commit any office of accompt to such, whose land were entailed, nor other men trust them with loane of money.” This inability to “commit any office
of accompt” to tenants in tail begins to explain why Sir William Lucas’s capacious sense of responsibility—his commitment to “all the world” and “every body”—is aligned with a refusal to participate in the technologies of landed succession.

But if from one perspective it looks as though the novel is a critique of heredibility on behalf of mobile property—of owning (or possessing) on behalf of renting—from another, renting is as much a threat to the future happiness and domestic stability of the Bennet girls as entailment. When early in their acquaintance Mrs. Bennet tells Mr. Bingley that she hopes he will “‘not think of quitting [Netherfield] in a hurry . . . though you have but a short lease,’” his response—“‘Whatever I do is done in a hurry’”—is meant to signal to Elizabeth that he has quickly fallen in love with her sister Jane (29). “‘You begin to comprehend me, do you?’” he inquires of Elizabeth; and she, immediately conscious of the double entendre, replies approvingly: “‘that is exactly what I should have supposed of you’” (29). His description of his tendency to “do things in a hurry,” that is, paradoxically is meant as a description of (romantic) commitment. But the exchange also foreshadows Bingley’s precipitous abandonment of Netherfield and of Jane at the slightest hint from Darcy; and the irony of Elizabeth’s approval is played out in the next chapter as she elevates haste to the status of an ethic. In response to his sister’s observation that he “writes in the most careless way,” Bingley explains: “My ideas flow so rapidly that I have not time to express them.” When Darcy accuses his friend of taking pride in the defects produced by this characteristic precipitancy—“‘you consider them as proceeding from a rapidity of thought and carelessness of execution, which if not estimable, you think at least highly interesting’”—Elizabeth responds by insisting that such defects are estimable, and moreover that they are part and parcel of Bingley’s “sweetness of . . . temper” (33). She chastises Darcy for allowing “‘nothing for the influence of friendship and affection,’” thus implicitly establishing haste as sign and signifier of a capacity for affection: “‘a regard for the requester,’” she explains, “‘would often make one readily yield to a request, without waiting for arguments to reason one into it’” (34). Darcy’s commitment to duration (we are told that he writes exceedingly slowly) is contrasted unfavorably with Bingley’s precipitancy; and yet given what Bingley’s “regard” for his friend does to Jane—a regard that sends him fleeing Netherfield for London—being easily and quickly moved by one’s affection for particular people is a dubious virtue.

Jane too is associated with an investment in affective particularity (or “regard”) that likewise functions as a sign of her sweetness of temper; but again, particularism is an ambivalent, even dangerous, mode. Jane’s tendency to think well of everyone makes it look as though she operates on a principle—one the novel seems to commend—contrary to that governing her mother’s behavior: Mrs. Bennet wants to blame people for things for which they are not accountable; Jane wants to let people off the hook even when they are. Yet Mrs. Bennet’s willful misunderstanding of entailments derivates in the end from her own brand of particularism. “‘How any one could have the conscience to entail away an estate from one’s own daughters I can-
not understand; and all for the sake of Mr. Collins too!” she again complains to her husband. “‘Why should he have it more than anybody else?’” (88). When she is finally made to understand that Mr. Collins has not been granted the estate “for his sake”—that is, not for any distinction in his character, not by reason of anyone’s affection—she promptly deems his possession illegitimate: “‘Well if [the Collinses] can be easy with an estate that is not lawfully their own, so much the better;’” she concludes; “‘I should be ashamed of having one that was only entailed upon me’” (147). Mrs. Bennet’s desire to see property follow affection or moral distinction (character) is satirized here; and this complicates the question of Jane’s, and everyone else’s, good-natured investment in affective or particularist models of attachment and valuation.

Jane’s particularism is consistently couched in the language and the logic of equity. We are told that she is “the only creature who could suppose there might be any extenuating circumstances in the case” of Wickham versus Darcy; and that her “mild and steady candour always pleaded for allowances, and urged the possibility of mistakes” (91–92). Once again her commitment to exculpation is implicitly, and favorably, contrasted with her mother’s fondness for invective. “‘Blame you! Oh, no,’” Jane responds in horror when, after confessing that she’s rejected Darcy’s proposal, Elizabeth asks, “‘You do not blame me, however, for refusing him?’” (144); and when Elizabeth proceeds to inform her that, as she suspected, things are not as they seem between Wickham and Darcy, Jane is described as “earnestly” laboring to “prove the probability of error,” seeking “to clear one, without involving the other” (145). We’re meant to hear in Jane’s concern with “allowances,” “mistakes,” and “errors,” familiar justifications of the equity courts: Aristotle had described equity as “a means of correcting general laws which in their nature could not provide for every eventuality”; and Lord Ellesmere famously agreed that the need for Chancery arose because “men’s actions are so diverse and infinite that it is impossible to make a general law which may aptly meet with every particular and not fail in some circumstances.”

A popular eighteenth-century treatise put its benefits this way: “Equality is Equity,” “Equity prevents Mischief.” We’re meant, that is, to hear in Jane’s characteristic eschewal of blame an anxiety about legal formalism, and also to recall that entailment is the example par excellence of such formalism. “A perpetuity is a thing odious in law,” asserted one justice involved in establishing the Rule Against Perpetuities, “and is not to be countenanced in equity.”

But the value the novel seems to ascribe to Jane’s equitable and equanimous temper is complicated by the fact that the other purveyor of equity argument in the novel is Wickham. Wickham’s duplicity succeeds precisely by describing Darcy as a cold-hearted formalist in a community in which formalism is exorciated. “‘There was just such an informality in the terms of the bequest [from Darcy’s father] as to give me no hope from law,’” he tells Elizabeth; “‘A man of honour could not have doubted the intention, but Mr. Darcy chose to doubt it—or to treat it as a merely...
conditional recommendation, and to assert that I had forfeited all claim to it by extravagance, imprudence, in short any thing or nothing” (54). Wickham’s account of his predicament, and of the law, is quite ingenious. He begins by making it look as though the problem he confronts is a lack of formality—the bequest not being formal enough; but quickly shifts ground to say that the greater problem is Darcy’s formalism, his caring more for the letter than the spirit of the law. He proceeds to establish an opposition between legal formalism and the “kindness” that prompted the gift in the first place. The late Mr. Darcy, he says, was “excessively attached to me” and “meant to provide for me amply; and thought he had done it”; yet Darcy has read the will as though it were a “conditional” gift (or entail), a misreading that derives not from any ambiguity in the forma doni but from Darcy’s lack of a capacity for affection, a lack signaled by and through his investment in the tyrannical logic of entailment. Coldness of temper makes it impossible for Darcy to understand either gifts or feelings as unconditional, and as a result, like those seventeenth-century Whigs he entails away the clerical living to a collateral heir as punishment for the presumptive heir’s “imprudence.” And although Wickham insists he “cannot accuse [himself] of having really done any thing to deserve to lose it,” he concludes by attributing his imprudence—as Elizabeth does Bingley’s—to a “warm, unguarded temper” (54).

This opposing of “warmth” and formalism, equity and entailment, is a pervasive gesture in the novel: Mrs. Bennet does it, Jane does it, even Elizabeth does it, and Wickham merely exploits its normative coherence. In Wickham’s hands we see the problem with thinking gifts and obligations ought to be shot through with feeling; and we begin to see a problem with feeling per se. When Bingley’s “unguarded temper” sends him off to London and away from Jane, Jane’s response is to echo Wickham’s exculpatory emphasis on “warmth”: “We must not be so ready to fancy ourselves intentionally injured,” she tells Elizabeth; “We must not expect a lively young man to be always so guarded and circumspect” (90). This is not the last time Jane will claim that heedless indiscretion is something for which one cannot be held accountable. When Wickham’s duplicity is finally revealed by his seduction of Lydia, Elizabeth suggests that had they “told what [they] knew of him, this could not have happened”; but Jane asserts with her characteristic equanimity—an equanimity that looks too much like Wickham’s self-exoneration for comfort—“We acted with the best intentions” (185–86). Elizabeth’s reply to this line of argument is, I think, the novel’s reply: “without scheming to do wrong, or to make others unhappy,” she has earlier told Jane, “there may be error” (90). On the face of it, Elizabeth’s use of “error” is less juridical than ethical: what she wants by invoking the term is a more capacious category of wrong than the law can give. Error thus seems to be an equity category, as it is in Jane’s vocabulary. And yet, given the way blame is worked out in the closing chapters of the novel, Elizabeth’s “error” functions more precisely as a kind of legal formalism—indeed, like entailment—in the way it understands obligation and accountability as radically prior to and beyond
the individual’s control: a system one cannot opt out of or be excused from, a system in which one finds oneself tied to persons she has not chosen and for whom she did not know herself to be responsible.45

To register the significance of this moment, and of Elizabeth’s account of accountability, is to begin to explain the mistake Mrs. Bennet makes about Mr. Collins and that he makes about himself—a point to which I will return. It also helps to explain Darcy’s relation to the problem of Lydia. On the one hand, entailment is responsible for the fact that Mr. Bennet can’t himself bail Lydia out of her unfortunate predicament. The narrator tells us that he “had very often wished, before this period of his life, that, instead of spending his whole income, he had laid by an annual sum, for the better provision of his children, and of his wife,” and explains that he hasn’t done this as “economy was held to be perfectly useless; for, of course, they were to have a son” (196)—the son who would bar the entail and make it possible for Mr. Bennet to mortgage or sell the estate. Entailment is here described as a form of estate planning on the part of the original donor that impedes others’ ability to plan, indeed to act at all. Lady Catherine’s relation to entailment is important in this regard. Although she offers a critique of the patriarchalism of the fee tail male—“I see no occasion for entailing estates from the female line,” she says (108)—her investment in the logic of entailment is revealed by her desire to control in minute detail the lives of anyone with even a remote connection to her, a tyrannical extensiveness of self that, as we see in the encounter with Elizabeth (when she attempts to coerce Elizabeth’s nonconsent to Darcy’s imminent marriage proposal), seeks to deprive others of the freedom to act and to choose.

On the other hand, Mr. Bennet’s indolence and inertia, which comes from entailment, is not unlike Bingley’s precipitousness, which comes from renting; if being embedded in the structure of landed succession is a problem, so too is not being embedded. In both cases an inability to commit oneself to duration, to extending one’s actions in time and ethical space, constitutes a threat to the safety of others. Lady Catherine imagines herself to be connected to and responsible for persons to whom she is not related, and whom she does not like (Mr. Collins, Elizabeth); and while this trait is objectionable in her, in Darcy it works quite differently. Darcy’s protection of Lydia, which critics have read as an instance of Austen’s general investment in good-old-fashioned noblesse oblige—an investment literally mapped onto the grounds of Pemberley—doesn’t in fact depend upon the customary models of affiliation (chivalry, paternalism) that Pemberley is supposed to embody.46 It doesn’t depend upon whether one is connected to or wants to be connected to a particular person, in fact it makes irrelevant the question of affiliation and of affect. Darcy saves Lydia not because he cares about Lydia, or about the Bennets—not even because he cares about Elizabeth. Elizabeth acknowledges that Darcy had “done all this for a girl whom he could neither regard nor esteem”; and since she still has trouble thinking of obligation in the absence of “regard,” she flirts with the idea that “he had done it for her” (208). But this is merely her own feeling
talking (“her heart did whisper” it); for it turns out that Darcy saves Lydia because he feels himself, without having “schem[ed] to do wrong,” to be accountable for Wickham.

It might make sense to read Darcy’s responsibility for Wickham as essentially nostalgic and neofeudalist, deriving, for example, from old common-law actions of trespass for vicarious liability that made masters strictly liable for the acts of their servants. Although she doesn’t put it in these terms, Susan Fraiman gestures in this direction when she describes Darcy as “deus ex machina, exerting an implausible power to set everything straight—a power Mr. Bennet conspicuously lacks,” thus making Darcy’s agency part and parcel of the unencumbered quality of his estate.47

It might, that is, make sense to argue that fee simple ownership is the novel’s ultimate value, the preferred, necessary medium for ethical agency. Something like such a claim is implicit in the line of criticism invoked earlier, which sees Pemberley as a symbol of Darcy’s authority and of the conservative, recuperative impulses of marriage comedy tout court. It is true that Darcy is the only character seised of an unconditional fee; and this accords him a power of alienation, and thus a capacity for action that others lack. But it is also true that Darcy’s responsibility for Wickham in part derives from his having overinvested in the aristocratic ethos underwriting the freehold. Darcy’s preoccupation with Georgiana’s reputation and with the integrity of the family name and estate leads him to suppress what he knows about Wickham’s past and thus ensures the success of Wickham’s future predations; his fastidiousness about character (and about one character’s character in particular) leads him to neglect the interests of the community. This makes it difficult to maintain, as Gilbert Ryle does, that Austen’s novels are invested in an ethics of character;48 and impossible to say of Pride and Prejudice that it “affirm[s]” the “majesty of Pemberley” and all that the freehold represents.49 For Darcy’s affirming Pemberley at the expense of larger obligations is a source of, rather than the solution to, the escalating crises of volume three.

It is only to the extent that fee simple works like entailment that it enables ethical action in Pride and Prejudice. What distinguished fee simple from fee tail, we recall, was a strong commitment to donor intentionality. Fee tail was what happened to others when the donor got his will. Fee-simple sovereignty is what Elizabeth means to mark when she describes Darcy as committed to “doing what he likes” (119). “He likes to have his own way very well,” agrees Colonel Fitzwilliam; “But so we all do. It is only that he has better means of having it than many others’” (119). Such intentionality—and especially an intentionalist account of blameworthiness—is subject to intense pressure in the novel, and ultimately rejected for the way it allows people like Wickham to continue to think well of themselves. And it is only as Darcy moves from “doing what he likes” to doing what he must, from a fee-simple to a fee-tail model of agency and accountability, that he can embody ethical subjectivity. Darcy’s sense of responsibility comes from the logic of entailment, a logic grounded in seeing attachment as radically abstract, extended
across time and space, and, in important ways, involuntary. From the perspective of the tenant in tail, allegiance happens without choice or deliberation: one finds oneself connected to others through no act of one’s own. From the perspective of the donor, allegiance is again not fully deliberative: one connects oneself to others whom one does not know and who do not yet exist—allegiance happens in the absence of interpersonal connection, perhaps in the absence of (material) persons at all. Inheritance—the dispensing of a gift, the ascription of an obligation—does not on this account derive from preference, prepossession, or “regard”: it is not a sign of affection or of desert. Entitlement is an escape from sentimental and contractual or volitional models of affiliation. Its role in Pride and Prejudice is to suggest a way out of the sentimental economy that has caused so much trouble in the novel: “How despicably I have acted!” Elizabeth asserts: “Pleased with the preference of one, and offended by the neglect of the other . . . I have courted prepossession and ignorance, and driven reason away” (135).

This famous indictment—of her own feelings, of feeling as a basis for moral action—lays the groundwork for a philosophy and a rhetoric of blame that escalates as the novel reaches its denouement. If Mr. Collins’s apologies were unsuccessful because he lacked alienability, it would seem to follow that Darcy alone is equipped to engage in apologia. “I am sorry, exceedingly sorry,” he tells Elizabeth; and indeed he is, and can be (234). But Elizabeth’s reply—a version of her reply to Jane that there is error and thus accountability even in the absence of “intentional injury”—is to insist that accountability is shared, and moreover that it is something we cannot be sure we’ve escaped. “We will not quarrel for the greater share of blame,” she assures Darcy: “the conduct of neither, if strictly examined, will be irreproachable” (236). A novel that begins with Mrs. Bennet “railing” against specific persons for the wrong reasons, ends with Elizabeth holding to account all persons, and for the right ones: not because they are in control of the ways in which they might be tied to others, but precisely because they are not. This is ethics understood as a species of accident—a secular version of the fortunate fall. And it explains, finally, the mistake represented by Mr. Collins. Mr. Collins wants to dispense favors like a fee-simple landlord: he wants to be the kind of agent—the agent as such—he thinks the tenancy in tail makes him. He understands his marriage proposal to Elizabeth as a dispensation, at once moral and legal—in other words as a will (which is what marriage settlements were). But the novel rejects the presumptuous sovereignty of this dispensation, and especially its particularism—his choosing only one of the dispossessed girls to redeem. Mr. Collins and Mrs. Bennet think this is what moral action looks like. The mistake they make—the mistake the novel seeks to correct—is thinking that responsibility for others requires or implies the will.

In Pride and Prejudice, the ethical subject is willed rather than willing—subject to rather than issuing forth donations. And Darcy, paradoxically, is the exemplary ethical subject. By recognizing his responsibility for Wickham he puts the ethics of
entailment to work in a way that the tenant in tail Mr. Collins does not. Darcy’s abstract and a posteriori sense of responsibility, detached, in contradistinction to Sir William, from geniality of sentiment, makes possible the social order established in the novel’s comic resolution. “When nature has bestowed little sympathy of heart on a person, when he (otherwise an honourable man) is by temperament cold and indifferent,” observes Immanuel Kant in the 1798 English translation of his *Groundwork of the Metaphysic of Morals*, “the worth of a character, which is moral and beyond all comparison the highest, begins exactly here, namely, to do good, not from inclination, but from duty.”51 There is no evidence that Austen was familiar with this translation, just as there is no evidence that she was familiar with the legal treatises that proliferated in England after 1760. Yet the similarities between Kant’s critique of “pathological” morality and her own are as striking and persuasive as is her obvious legal expertise. “For love as inclination cannot be commanded,” Kant continues, “but to do good from duty itself, though no inclination at all incites thereto, nay, even though natural and insuperable aversion opposes, is not pathological, but practical love, which lies in the will and not in the propensity of sensation, in principles of action and not in melting participation.”52 Kant does not mean by “will” here an act of deliberation or volition—he does not meant to describe an act at all. As he puts it, the will is not an action but a “principle of action.” Will is not volitional but formal, an effect of a structure of obligation that the individual recognizes but does not create—and where recognition is not, properly speaking, the same as accession. Will is the moral law: like the entail it is a technology into which one finds oneself inserted. It doesn’t make sense to describe one’s relation to the technology as chosen, as another instance (as Friedrich Nietzsche would have it) of the will to power. The moral law, like the law of entail, is indifferent: indifferent to what an individual might think or feel, indifferent, even, to how she might act since her action will in no way alter the form of the donation. This indifference—indifference as a mode of being and, paradoxically, as a kind of caring—is what Darcy embodies. He comes to function as a model of ethical agency in the novel—of “practical love”—not because he is rich, or because he has a fee-simple estate, or because he is a man, or because he has “reformed” into the “private, emotive individual of modernity”; but because for Austen, as for Kant, we need not care for someone to find that we are obliged to take care of them.53 Responsibility, even for “odious” persons, is entailed upon us all. And in the end, Bingley buys.

Notes

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7. Although it is not the one I am telling here, there is a story to be told about entailment and eighteenth-century marriage law. One critic of Lord Hardwicke’s 1753 clandestine marriage bill said that he “look[ed] upon the Bill only as the prelude to another bill for restoring the old law of intails.” The bill became the infamous Marriage Act, legislation that Austen clearly has in mind in the Wickham/Lydia subplot. The act was under heavy attack in the decades during which Austen was at work on *Pride and Prejudice* and was repealed in 1823. In “Radical Marriage,” Sarah Emsley argues that the novel is an implicit critique of the statute; but I wonder whether Austen’s revisionist defense of entailment might not also entail a commitment to the legal logic of the act—in particular its formalism and anti-intentionalism. See William Cobbett, *The Parliamentary History of England* (1813; reprint, New York, 1966), 15:61; and Sarah Emsley, “Radical Marriage,” *Eighteenth-Century Fiction* II, no. 4 (1999): 477–98.


10. Ibid., 223.

11. A. W. B. Simpson argues, in *A History of the Land Law*, 2d ed. (Oxford, 1986), that “ownership” is an inappropriate category to apply to the fee simple. According to him, the fee is never owned but only “seised.” Seisin he distinguishes from possession and from proprietorship, and also from title (to which it is most closely analogous). In a real action—writs that helped to consolidate the category of real property—“what is recovered,” he says (somewhat tautologically) “is not the ownership of the land, nor the possession of the land, but the seisin of land” (37–38). The transitive verb “to seize”
described the action of a feudal lord in establishing his vassal on the land as tenant; but the noun form denotes “a condition rather than an event, a relationship between person and land” (40). Seisin is the basis of entitlement, and duration is what distinguishes a stronger title from a weaker one: “the person who can base his title upon the earliest seisin is best entitled to recover seisin” (38). This distinction seems very rich to me, but it doesn’t substantially affect the issue of agency and alienability; it merely asks that we call freedom of alienation by some other word than “ownership.”

13. Ibid., 5.
15. Ibid., 300.
18. Ibid., 2:106.
19. Ibid., 2:112; Baker, *Introduction*, 3d ed., 311; Baker, *Introduction*, 2d ed., 232. In the third edition, Baker describes *De donis* this way: “So liberally was the statute construed that donors were able to restrict the inheritance in ways not permissible at common law but deemed to fall within the equity of the statute. Thus, a gift could be restricted to A and the heirs *male* of his body, whereas a gift to *A* and his heirs *male* (without words of procreation) at common law passed a fee simple inheritance by females” (312). The change in wording from the second edition is designed to emphasize the structural antifeminism of entailment.
21. Ibid., 81–82.
23. There are, of course, other modalities of property besides fee simple and fee tail. But these are the basic forms of real property (as distinct from copyhold, for example), and legal scholars from Sir Edward Coke to Simpson ground their histories of the common law upon them.
25. Ibid., 319.
31. Ibid., 1:385.
32. Entails were alive and well in Scotland until the mid-nineteenth century, and this in part accounts for the fact that Smith is more worried about them than is Blackstone. Blackstone asserts that developments in conveyancing have “greatly abridged estates-tail with regard to their duration” and that they have become “by degrees unfettered.” But it was Smith’s paranoia rather than Blackstone’s sanguinity that governed the rhetoric of entailment in the period: Whig politicians continued, even after the Rule Against Perpetuities, to invoke the specter of entailment wherever and whenever they saw a
threat to their “ancient liberties” (the very liberties, I am suggesting, entail helped to perfect); Blackstone, Commentaries, 2:119.


34. Ibid.


36. Simpson, History of the Land Law, 238. Simpson doesn’t elaborate upon this claim, but Redmond’s essay on Pride and Prejudice helps explain how the strict settlement continued to function like an entail: “A son, coming of age, wanted to take the Grand Tour of the European continent, present himself at the London season, and in general live a more interesting life than could be found in the realm of riding to hounds and assembly balls. In return for sufficient cash for his pursuits, he signed away his interest as tenant in fee tail. A series of documents was drawn up, the effect of which was to settle the land on the father for life, remainder to the son for life, remainder in fee tail to his sons. This moved the fee tail up one generation, since the son’s son would be tenant in tail and could do the same when his own sons came of age. The process, like the fee tail itself, could continue indefinitely.” The system thus works to postpone indefinitely the possession of a fee simple; Redmond, “Land, Law, and Love,” 49–50.


38. Rossdale makes this point; Rossdale, “What Caused the Quarrel Between Mr. Collins and Mr. Bennet?” 503.

39. I am grateful to Michael Hoeflich, of the Law School at the University of Kansas, for the observation that Collins could have refused the tenancy in tail.


43. R. Francis, Maxims of Equity (London, 1727). Equitable decisions are not necessarily exculpatory ones, but I am less interested in how equity courts actually functioned than I am in the ideology of equity. Proponents of equity assumed, and indeed continue to assume, that equitable laws are ones that take account of extenuating circumstances (where, that is, circumstances are by and large understood as extenuating). For a recent example of this argument, see Peter Goodrich’s work on the Courts of Love, in Law in the Courts of Love: Literature and the Other Minor Jurisprudences (New York, 1996).


46. This argument receives its most influential treatment in Butler, whose assertions about Pride and Prejudice’s “conservatism” depend in part upon taking seriously Sir Walter Scott’s claim that Elizabeth is moved in Darcy’s favor when she encounters Pemberley
and the social and economic value it represents. Butler notes that Scott has been “teased” for declaring that when Elizabeth sees Pemberley “her prudence” subdues “her prejudice”; and she says we are not supposed to take literally Elizabeth’s own joke to Jane that “she must date her love for Darcy from first seeing his beautiful grounds.” But she then proceeds to do just this; Butler, *Jane Austen and the War of Ideas*, 214. Sir Walter Scott, “Emma,” *Quarterly Review* 14 (1815): 194. For similar arguments about the role Pemberley plays in the novel, see Susan Fraiman, “The Humiliation of Elizabeth Bennet,” in *Refiguring the Father: New Feminist Readings of Patriarchy*, ed. Patricia Yaeger and Beth Kowaleski-Wallace (Carbondale, Ill., 1989); and Karen Newman, “Can This Marriage Be Saved: Jane Austen Makes Sense of an Ending,” *ELH* 50 (1983): 693–710. For an interesting variation on the argument, see Claudia Brodsky Lacour, who says that Pemberley becomes the formal marker of Darcy’s value not because Austen fetishizes the aristocracy, but because for her, as for G. W. F. Hegel, understanding is only possible in the absence of persons; Claudia Brodsky Lacour, “Austen’s *Pride and Prejudice* and Hegel’s ‘Truth in Art’: Concept, Reference, and History,” *ELH* 59 (1992): 597–623.

48. Gilbert Ryle, “Jane Austen and the Moralists,” in *Collected Papers* (New York, 1971), 1:278. Ryle’s argument about Austen’s Aristotelianism largely ignores the presence in the novel of the sustained critique of particularism that I have been delineating. “The Aristotelian pattern of ethical ideas,” he notes, “represents people as differing from one another in degree and not in kind . . . [and] in respect of a whole spectrum of specific week-day attributes” (284). Aristotle, on this account, is a particularist of the highest order; and so is Austen: “Her descriptions of people mention their tempers, habits, dispositions, moods, inclinations, impulses, sentiments, feelings, affections, thoughts, reflections, opinions, principles, prejudices, imaginations, fancies” (289). Charmed by Austen’s realist/particularist aesthetic, Ryle makes this aesthetic identical with an ethical philosophy—missing all the ways and moments in which particularism fails to produce ethical ideas or actions.

49. I am quoting Claudia Johnson, but other critics have made a version of this claim. See Susan Morgan’s succinct summary of the work of “all who would locate the embodiment of [the novel’s] final harmony among the stately and tasteful grounds of Pemberley”; Susan Morgan, *In the Meantime: Character and Perception in Jane Austen’s Fiction* (Chicago, 1980), 78–79. Johnson, *Women, Politics, and the Novel*, 89.
50. In this, the ethics of entailment seem to resemble what William Deresiewicz, in “Community and Cognition in *Pride and Prejudice,*” *ELH* 64 (1997):503–35, calls “density.” “The novel,” he says, “is structured so as to suggest that its plot emerges from the threshing of communal mechanism more than from the movements of individual will” (516). But for Deresiewicz, density is ultimately sentimental: it is based on the idea that one’s “every action will bear consequences for people to whom she feels, and feels she ought to feel, significant responsibility” (514).

51. Immanuel Kant, *Essays and Treatises on Moral, Political, and Various Philosophical Subjects* (London, 1798), 1:36. I am grateful to the Spencer Research Library at the University of Kansas for allowing me to consult their copy of the 1798 English edition of Kant’s works.
52. Ibid., 1:37.
53. Ryle, “Jane Austen and the Moralists,” 279; Duckworth, *Improvement of the Estate*, 535 n. 21. It is frequently argued that both Elizabeth and Darcy reform by the end of the
novel, and that the latter in particular becomes endowed with an affective life he did not formerly possess. As I hope to have made clear, I don’t think the novel’s resolution hinges on this kind of change: Darcy’s “coldness,” after all—his legal and ethical formalism—was throughout improperly understood and in the end validated. The “private, emotive individual” is the one who comes in for reformation, as Bingley, in the end, puts aside his precipitance in favor of a Darcy-esque duration.