

John Austin or Jane Austen?
The Province of Jurisprudence Determined
in Pride and Prejudice

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It used to be a truth universally acknowledged that the novels of Jane Austen were narratives in want of context.¹ The Napoleonic Wars, industrialisation and the French Revolution: in fact, all the great and heroic events of the period are conspicuous by their absence in the ‘little bit (two Inches wide) of ivory’ upon which dear Jane worked with ‘so Fine a brush’.² Post-colonial critics, however, have sensitised readers to the traces of context on the margins of Austen’s *oeuvre*, and how, despite this marginality – or perhaps, as the Derrideans would say, because of it – they perform an absolutely central function in terms of the novels’ plotting, characterology and thematics. For example, the imperial context of *Mansfield Park* is the principal focus of Edward Said’s celebrated reading of that text in *Culture and Imperialism* (1994: 95-116). There, Said’s reading turns on an often overlooked narrative detail of the novel: the significance of Sir Thomas Bertrams’s Jamaican estate which, while a literal absence in the text (no scene is actually set there, though some characters – Sir Thomas notably – go missing occasionally from the storyline because of visits there), is, nonetheless, a pervasive imaginative presence (as the site and source of the Bertram family fortune). My argument today addresses a different text, *Pride and Prejudice*, but shadows that of Said and repeats many of his critical moves; however, the contextual argument which I propose to advance is not about *the* Empire but what might be called, with a nod to Ronald Dworkin, Law’s Empire. For it is my argument here that

Pride and Prejudice's principal concerns are legal, and, more precisely jurisprudential, thereby linking Jane Austen, by more than just homonymy, with the pioneering jurisprudential thinker of her day, her near contemporary, the utilitarian and positivist jurist, John Austin, the first professor of English Law at University College London and the author of the then leading standard text on common law jurisprudence, *The Province of Jurisprudence Determined*. Indeed, it will be my central thesis that Jane Austen's *Pride and Prejudice* is John Austin's *The Province of Jurisprudence Determined*, and *vice versa*.

This claim may seem strange not just because *Pride and Prejudice* predates *The Province of Jurisprudence Determined* by some years, but also because the law seems to figure so little in the novel. A sceptical reader might well exclaim, 'Where is the law in *Pride and Prejudice*?' Only one character, and a minor one at that – Mrs Bennet's brother-in-law, Mr Philips – is a lawyer. And he is not even a 'good' lawyer in the sense of belonging to the socially desirable branch of the profession: namely, the bar. Rather he is a mere pettifogger, an 'attorney' whose portrait would hang, so Caroline Bingley comments ironically, so well next to Darcy's ancestor, the eminent judge (I, X, 36). This absence of law becomes even more marked when moving, however, from the legal profession to the legal process itself. Oddly, no one seems to 'go to law' in Jane Austen's novel, though it is set, in large part, among that class of society most likely to litigate: the propertied classes of land and commerce. Sales of goods as much as leases of land seem to be unproblematic in this world, a distortion, if there ever was one, of the historical record. Even when a public wrong is committed, let alone a private dispute, no one seems to turn to the legal authorities. For example, the law is never invoked

– no magistrate notified, no justice of the peace alerted – when the wicked Wickham (who, incidentally and very tellingly, once professed his intention of studying law, (II, XII, 131)) makes off, for a second time, with another underage female: this time Lydia Bennet rather than Georgiana Darcy as his willing victim, against whom he commits, in all likelihood, what we would call today a statutory rape. But despite this juridical absence, both in terms of emplotment and characterology, the law is, like the Empire in *Mansfield Park*, an all pervasive thematic presence in *Pride and Prejudice*, informing much of its character motivation and constituting the key plot mechanism driving its narrative action. The law I speak of is the law of inheritance: specifically, the legal device of the ‘entail’ which obtains over Longbourn, the modest country seat of the Bennet family. An entail settles property on, and fixes a prescribed line of succession which cannot be altered by any of those individuals in whom the entailed property vests.³ The entail on Longbourn is in the male line (and is settled upon Mr Bennet’s nearest male next-of-kin, his cousin, Mr Collins), thereby disinheriting, and, ultimately dispossessing the Bennet sisters upon the death of their father (much adverted to by Mrs Bennet, and a source of much of the novel’s ‘gallows’s humour’).

This instantiation of what Lacan would call the ‘law of the Father’s Name’ activates, as no other device does, the plot of the novel, shifting its setting from the rather static country house comedy of manners – which the opening chapters, with their focus on the badinage of Mr and Mrs Bennet, would suggest – to a more dynamic line of action which moves, briskly, from Longbourn to Meryton, and then onto Netherfield, Hunsford, Rosings, Gracechurch St and Pemberley. This shift is more than just scenic; it is thematic, particularly in the initial displacement

from Longbourn to Meryton. Though the physical distance between the two is slight, the psychic distance is great, as Meryton seems to be *outside* the law as much as Longbourn is clearly *within* it. For all is fixity at Longbourn – its past is a matter of record; its future predetermined: both temporalities secured by virtue of the legal device of the entail – while nothing is fixed in Meryton. Its condition, instead, is one of flux, functioning as a kind of no man's land, belonging to no one in particular but through which everyone in general passes: for example, those disrupted by war, like Col Foster's regiment of Capt Carter, Denny and Wickham; or those orphaned inheritors of property like Miss King, Wickham's obscure object of desire; or those who belong nowhere and everywhere like the rootless 'new rich', the Bingleys, whose leased manorhouse, Netherfield, could act as a metaphor for all of Meryton and its environs. For *everything* is 'To Let' in Meryton, not just Netherfield but, so it seems from Mrs Bennet, 'Hay-Park ... the great house at Stoke ... Ashworth and Purvis Lodge' (III, VIII, 198). And *everyone* is price-tagged: 10,000 outright for Miss King (II, IV, 99); 5,000 pa for Bingley (I, I, 4); much less for the regimentals, so much so that even Mrs Gardiner warns Elizabeth against an 'imprudent' (II, III, 95) match with the penniless Wickham. Clearly, exchange values prevail here, and, because everyone and everything has its price and is up for sale, Meryton is a feverish scene of speculation, as all and sundry vie to renegotiate their futures (like Mr Collins and his three offers of marriage) as much as rewrite their pasts (like Mr Wickham and his reinvention of himself as victim rather than villain of the piece).

All of which is to say that, perhaps, Meryton is not so much *outside* the Law as previously suggested. Indeed, the

constant round of offer, counter-offer, rejection and acceptance which constitutes much of Meryton's social tie suggests a regime which, while very different from that of Longbourn's entailment and its status certainties, is, nonetheless, a *legal* regime: namely that of contract. Of course, the contract most often negotiated in Meryton is the marriage contract, itself a bargain for a new sort of status. But note the absence of great arranged alliances of the classic status society. Only one such example is proffered in the novel: that of Miss Ann de Bourgh to Darcy, an engagement which even Lady Catherine describes as of a 'peculiar kind' (III, XIV, 228) and which never comes to fruition. Thus, even aristocratic marriage in the novel has come under the sway of contract's exchange values. For those actually in Meryton and subject directly to its regime of contract, like the dispossessed Bennet sisters, the change is even more dramatic; they enact what the eminent nineteenth-century legal anthropologist and comparativist Sir Henry Maine said was the classic move of 'modernity', a move which is also jurisprudential: the movement from status to contract (Maine 1963: 165).

The citation of this well-worn formula – the move from status to contract – should not be read, however, as some Whiggish celebration of the shift from Longbourn (the society of status) to Meryton (the society of contract) – as allegorising the movement from the realm of necessity to that of freedom. Make no mistake about it, Meryton is no realm of freedom released from the constraints of necessity. Options, choices, even autonomy itself are constrained there by the material conditions within which each of its inhabitants is situated, and which skew, in turn, the putatively level playing field of freedom of contract, and, indeed, the entire network of capitalist relations of which it

is a symbol. Consider just one example: Jane Bennet's explanation to the appalled Elizabeth why her close friend and confidante, Charlotte Lucas, would entertain, let alone accept, a man of Mr Collins's severe limitations. 'Remember that she is one of a large family; that as to fortune, it is a most eligible match'(II, I, 88). Examples such as these – pointing to material conditions which constrain and distort the freedom of contract and Capital – proliferate throughout the novel, so much so that the representation which emerges of Meryton, and its regime of contract, is anything but an 'Eden of the innate rights of man'. Or, if it is a paradisaical realm of the Rousseauesque social contract, then it is only so in the highly ironic way Marx – the author of the above cited sobriquet – intended it in *Capital*: that is, as a place where 'alone rule Freedom, Equality, Property and Bentham', so that freedom produces wage slavery, equality leads to substantive inequity, property reinforces rather than challenges *bourgeois* privilege, and Bentham masks and mitigates the master-slave relationship between, as he puts it in *Capital*, 'the capitalist; (and) the possessor of labour-power (who) follows as his labourer. The one with an air of importance, smirking, intent on business; the other, timid and holding back, like one who is bringing his own hide to market and has nothing to expect but – a hiding' (Marx 1954: 416).

The reference to Bentham here is very *apropos* *Pride and Prejudice*, particularly the scenes set in Meryton. For if there is any jurist who underwrites Meryton's regime of contract it is that apostle of utility, Jeremy Bentham, whose *Introduction to the Principles of Morals and Legislation* supplies not just the community's doctrinal core but its very vocabulary. Consider, for example, the language of the two women most anxious to

maximise their pleasure and minimise their pain in making a good match: Caroline Bingley and Charlotte Lucas. In one of her poison pen letters to Jane, Caroline Bingley uses a very telling phrase to describe the hoped-for match between her brother, Charles, and Georgiana Darcy. This alliance of 'brass and class' is described as producing 'the happiness of so many' (I, XXI, 79), a phrasing which evokes the first principle of utility itself: the 'greatest happiness for the greatest number'.⁴ Charlotte Lucas goes even further in her language, so much so that I wonder if she is, indeed, the author of the *Introduction to the Principles of Morals and Legislation*, because from the first scenes in which she is introduced – the visit to Lucas Lodge, following the assembly (I, V), and then at the reception at the Lodge – she speaks not only of 'happiness' but 'felicity' (I, VI, 16), that other great Benthamite buzzword with all of its associations of the 'calculus of felicity'.⁵ And calculate she does: urging Jane to display rather than conceal her affection for Bingley, after weighing all the advantages and disadvantages of one or the other mode of conduct (I, VI, 15); accepting Mr Collins's offer of marriage out of the 'pure and disinterested desire of an establishment' (I, XXII, 82); and even pairing off Elizabeth, when staying at Hunsford, with Darcy rather than Col Fitzwilliam because of the former's access to Anglican Church patronage (II, IX, 118). Charlotte is the Benthamite utilitarian *par excellence* though pushed to its most vulgar Posnerian extreme, anticipating those contemporary Gradgrinds, the law-and-economics movement: reason is her faculty (anticipating rational choice theory), and happiness, in its most material sense – of wealth maximisation – is her goal: 'I am not romantic', she says to Elizabeth, in a statement of the obvious if there ever was one, 'I ask only a comfortable home; and considering Mr Collins's character, connections and situation

in life, I am convinced that my chance of happiness is as fair as most people can boast ...' (I, XXII, 84):

The problem with this Benthamite logic, of course, is that it backfires spectacularly, nowhere more so than when it gives you what you want, proving the truth of the old adage that it's often a curse to get what you wished for. For is there a more chilling, nay ghoulish portrayal in nineteenth-century fiction of the lowest circle of matrimonial hell – outside the Dorothea Brooke – Mr Causabon marriage in *Middlemarch* – than the picture of the Collinses at Hunsford living together, though in splendid isolation – he in his book room, she in her back parlour (II, VII) – keeping social (and, doubtless, other forms of) intercourse to a minimum? These bleak 'scenes from a marriage' call into question the calculus of felicity, and the happiness it produces, which seems too little by far here. But I would like to argue that utility, as a force of desire (after all, what is felicity? what is happiness?), as much as reason (of calculus, of social planning), is marked by a doubleness which releases not only too little but also too much *jouissance* into the regime of contract as well as Capital, an excess of pleasure which overreaches itself, enacting utility's law of desire – the desire for more – at the very moment at which it undermines its desire for law – and its moderation of the desire for more. Lydia Bennet's amorous career is a graphic illustration of the utility principle run amok: 'untamed, unabashed, wild, noisy, and fearless' (III, IX, 201). In her, the calculus of felicity becomes the 'thoughtless' (III, V, 186) pursuit of pleasure of the crassest kind – 'extravagant in wants and heedless of the future' (III, XIX, 248), driving her from the seaside pavilions of Brighton to London's demimondaine and then finally to a shabby genteel existence, 'unsettled in the

extreme' (III, XIX, 249) on the fringe of good society in the North. It is only, however, with the figure of Mrs Bennet that utility reaches its real apogee of self-defeating excess, so much so that it produces a kind of paralysis. Hers is probably one of the most interesting pathological characters drawn in literature, condensing as she does a variety of symptoms figured individually in the other utilitarian characters: Lydia's licentiousness (in Mrs Bennet's own self-confessed fixation with officers in youth, 'I confessed ... I cried for two days together when Colonel Millar's regiment went away' (II, XVIII, 148)), Charlotte's opportunism ('A single man of large fortune; four or five thousand a year' (I, I, 1) is, after all, Mrs Bennet's *beau ideal* as much as Charlotte's) and Caroline's social climbing (Mrs Bennet is, as well, a woman of the middle classes – though the Meryton *petit bourgeois* rather than the London *haut bourgeois* of the Bingleys – pressing her way, and her family's, into the gentry and nobility). These symptoms, once condensed, are then converted, rearticulated and literally written on the 'nervous' body of Mrs Bennet, a reinscription which supplies as vivid a metaphor as there ever was for the hysterical excess of Capital, contract and its law of desire, utility: 'I ... have', says Mrs Bennet, 'such tremblings, such flutterings all over me, such spasms in my side, and pains in my head, and such beatings in my heart' (III, V, 184).

It is precisely to escape this version of what might be called the 'monstrous maternal'⁶ – and the hysterical, nay psychotic logic of Meryton's Capital, contract and utility which it figures – that triggers Elizabeth's departure for Hunsford to stay at the invitation of Charlotte Lucas, now Mrs Collins. This second scene shift in the novel is, however, not so much a departure for Elizabeth as it is a return; for, in journeying to the Collinses'

vicarage, Elizabeth arrives back, at least thematically, in the same world of status with which the novel opened at Longbourn. Indeed, this world is much more status-conscious than Longbourn, being figured in the far grander, even ostentatious Rosings Park, the stately home and seat of the 'respectable, ancient, honourable though untitled' (III, XIV, 228) de Bourgh family, furnished with, among other things, Mr Collins' *objet petit a*, the chimneypiece in one of the drawing rooms alone, costing 'eight hundred pounds' (I, XVI, 51). Certainly, the regime of status is intensified here to a degree that would satisfy any Continental court of the *ancien regime*, its letter of the law being followed strictly: 'Do not make yourself uneasy, my dear cousin, about your apparel' says Mr Collins to Elizabeth on the eve of her first visit to Rosings, 'Lady Catherine is far from requiring that degree of elegance of dress in us, which becomes herself and her daughter.... She likes to have the distinction of rank preserved' (II, VI, 105). For Lady Catherine is the very spirit of the old, aristocratic order of the eighteenth-century with its compulsions about protocol, its obsessions over precedence – 'I am excessively attentive to all those things' (II, XIV, 137), she says – pathologies, incidentally, in marked contrast to the hysteria of Meryton.

In fact, Lady Catherine, and the world she represents, is quite the reverse of Meryton and its values. Unlike Meryton's *faux* gentry – take the example of the Lucases, recently in trade but now reinventing themselves as knighted country squires (I, V) – Lady Catherine is the 'real thing' (even, one might say, the horrifying *das Ding* of Kant and Lacan).⁷ No respectably born chatelaine here, Lady Catherine bears, instead, the coronet, quarterings and honorific befitting an earl's daughter, and so ranks, by birth, even above the de Bourghs and the Darcys;

indeed, in the social world of the novel, she is its very pinnacle. And it is precisely this positioning at the very top of the hierarchy and, indeed, as the spokeswoman for the previously unassailable, but now threatened and soon to be displaced aristocratic hegemon – this is, after all, a revolutionary era – that makes her the implacable class enemy of an ‘upstart ... of a young woman without family, connections, or fortune’ (III, XIV, 229), the irredeemably middle-class Elizabeth Bennet. For Lady Catherine *is* Elizabeth’s principal nemesis, and, more than any other character in *Pride and Prejudice*, she is the ‘villain of the piece’ exceeding George Wickham’s selfishness, Caroline Bingley’s spitefulness and Mrs Bennet’s meanness of spirit, though, unlike any of these characters fortune and rank have given Lady Catherine the power to implement her fantasies of control. And with what, to quote Mr Collins, ‘affability’ and ‘condescension’ (I, XIV, 45) – in short, ‘enjoyment’ in its darkest Lacanian-Zizekian⁸ sense – she carries out that control: ‘improving’ the vicarage and Charlotte’s housewifery (II, VI, 107); trading in the acceptable wage slavery of the period – the hiring and firing of governesses – by entrusting that ‘treasure’, Miss Pope to Lady Metcalf (II, VI, 108); and scheming, since their birth, for Darcy and Anne’s marriage: ‘From their infancy, they have been intended for each other. It was the favourite wish of *his* mother; as well as her’s. While in their cradles, we planned the union’ (III, XIV, 228).

My depiction of Lady Catherine as the ‘villain of the piece’, however, is not without its problems, particularly when her character is read through feminist lenses. For what, indeed, is so villainous about a woman being ‘authoritative’? ‘formidable’? even ‘self-important’? (II, VI, 106) – all adjectives used to describe her.

Aren't these the very traits of her nephew, Darcy, the putative hero of the novel? Does this suggest, as all patriarchies have tried to, that what is a virtue in a man – strength – is a weakness in a woman: an unsexing of her; so that Lady Catherine's strength of character is an affront and, indeed, a challenge to patriarchal ideology? This rehabilitation of Lady Catherine as something like a feminist icon – carried out in the critical literature of, for example, Johanna Smith (1992: 70)⁹ – is supported, in large part, by the nature of the status claims which Lady Catherine makes in her critique of the law, a critique which has some affinities with the feminism of her day and today. Like both these feminists, Lady Catherine objects to a law which excludes women, the entail obtaining over Longbourn: 'I see no occasion for entailing estates from the female line – It was not thought necessary in Sir Lewis de Bourgh's family' (II, VI, 108). Her argument for inclusiveness, however, differs from the liberal critique of her day or the critical legal feminist position of today; for Lady Catherine is no Mary Wollstonecraft declaring the 'rights of woman' (Wollstonecraft 1988), even less a Mary Jo Frug, proclaiming the 'politics of difference'.¹⁰ Certainly, it is Elizabeth's claims to at least conversational equality (she answers back on the matter of her sisters all being 'out' (II, VI, 109)) and difference (she refuses, at first, to tell her age (II, VI, 109)) which antagonises Lady Catherine. So instead of 'equality' feminism or 'difference' feminism, Lady Catherine's position might best be described as 'essentialist',¹¹ what being more essential than birth itself, particularly the bond between mother and child. Hence, her advocacy of the Natural Law of the Mother's Body – the 'noble line' (III, XIV, 228) of the house of Fitzwilliam, her birth family – and her emphasis on the maternal, line from which both Ann de Bourgh and Fitzwilliam Darcy descend, as the deciding point

in sealing their union. They both enjoy what the Inquisition called the *limpieza de sangre*, the 'purity of blood' (Johnson 1976: 307), so conspicuously absent in the Bennet, but especially Gardiner strain. Indeed, in rebuke to Elizabeth's claim of the linguistic Law of the Father's Name ('I am a gentleman's daughter' III, XIV, 229), she says point-blank: 'But who was your mother? Who were you uncles and aunts? Do not imagine me ignorant of their condition?' (III, XIV, 229). So much for universal sisterhood, the suggestion being here, in this final showdown at Longbourn, that matriarchy can be just as divisive, just as oppressive, just as hamfisted as patriarchy at its most primitive.

There is something truly atavistic in Lady Catherine's endogamous sanction here, an anthropological overtone which is heightened by her cry that an alliance with a family which includes the Wickhams would 'pollute the shades of Pemberley' (III, XIV, 229), a phrasing evocative of *Totem and Taboo*.¹² For Lady Catherine is a totemic figure – and, for Mr Collins, even more, a fetish – who bears comparison with the Freudian 'primal father'. Like the primal father, Lady Catherine speaks a sexual prohibition – a 'No. In thunder', refusing the exogamous marriage of Darcy to Elizabeth in favour of the endogamous marriage with Ann: 'Tell me once for all, are you engaged to him?', she demands, securing, in turn, Elizabeth's admission, 'I am not' (III, XIV, 229). And, equally, like the primal father, her prohibition, ultimately, is transgressed: it is Elizabeth's flat refusal ('I will make no promise of the kind', III, XIV, 229) not 'to enter into such an engagement' (III, XIV, 229) which teaches Darcy to 'hope' (III, XVI, 245) that a second proposal might not go amiss. But unlike the 'primal father' who is, after all, himself sacrificed by the tribe in *Totem and Taboo*, the 'primal mother' survives here, as the

epilogue clearly tells us, still insisting, one imagines, that all and sundry sacrifice themselves – their very subjectivities – to her, a reading of Lady Catherine's function which is more Lacanian than Freudian. For is there a grimmer representation of the Lacanian 'mirror phase' (Lacan: 1977: 1-7), and its specular sacrifice of subjectivity in its looking-glass lures, than in the self-abnegation which Mr Collins undergoes in his 'misrecognition' of Lady Catherine as his ego-ideal? Collins is lucky, though, in that he still lives to flatter her Ladyship with those rehearsed 'elegant compliments' (I, XV, 46) which gave Mr Bennet so much amusement, a damning comment on not only the sycophancy of his character but the erastian cringe of Anglicanism. At least, however, he survives, a fate which is not so clearly marked out for Ann de Bourgh who is repeatedly referred to as 'thin and small' (II, VI, 104), 'pale and sickly' (II, VI, 104) and 'sickly and cross' (II, VI, 104), the suggestion being that she may not live to enjoy her splendid inheritance. What, or more to the point, *who* is killing Miss de Bourgh? I would like to suggest that it is not just aristocratic in-breeding but Lady Catherine's 'ill breeding' (II, VIII, 113) which is killing Ann, draining her of life and, even, possibly, of blood. For Lady Catherine is of that species of the 'monstrous maternal' which exceeds even that of Mrs Bennet's calibre: she devours her young.

With Elizabeth's departure from Rosings the narrative, as well as this argument, reaches a crossroads (literalised in the text by the stay at the inn in Book II, Chapter XVI where she is met by Lydia and Kitty). This crossroads is also an impasse. For where is Elizabeth to go? Having been 'foreclosed' from both instantiations of the status society – the Symbolic Order of the linguistic Law of the Father's Name (Longbourn), from which

she is barred by virtue of her sex; and the Imaginary Order of the Natural Law of the Mother's Body (Rosings), from which she is tabooed because of the impurity of blood of her kinship network – she now has only the Real of the hystericised, even psychotic economy of Meryton's regime of contract to which to return, a temptation which she rightly resists. All of which raises the issue as to whether there is, somewhere else, an alternative space, another country, as it were, subject to a different kind of law – unfettered by status but more anchored than contract – in which Elizabeth can assume a subjectivity and establish a social tie. I would like to suggest that such a location presents itself while Elizabeth is on her rural rambles with those centres of moral authority, the Gardiners, during their Peak District holidays in Derbyshire. The scene is a famous one, so I quote at some length:

The park was very large, and contained a great variety of ground. They entered it in one of its lowest points, and drove for some time through a beautiful wood, stretching over a wide extent... They gradually ascended for half a mile, and then found themselves at the top of a considerable eminence, where the wood ceased, and the eye was instantly caught by ... a large, handsome, stone building, standing well on rising ground, and backed by a ridge of high woody hills – and, in front, a stream of some natural importance was swelled into greater, but without any artificial appearance. Its banks were neither formal, nor falsely adorned. Elizabeth was delighted (III, I, 156).

This passage, describing Elizabeth's approach to, and arrival at the ancestral seat of the Darcys and her future home, Pemberley, is justly celebrated by narratologists like Michael Riffaterre (1990), though not, as might be expected in a novel of realist conventions, for its scenic detail. In fact, quite the reverse, since the passage

utilises, as Riffaterre argues very persuasively, a language of descriptive markers which tell the reader virtually nothing in terms of setting: empty adjectives like 'large', 'beautiful', 'wide' and 'handsome', creating absolutely no picture for the reader. For what is really being envisaged here, according to Riffaterre, is not so much a picture of a place as it is a 'portrait of a lady', and, particularly – to continue the Jamesian analogy – of her individual consciousness reacting to a place, registering her 'delight'; and, in so doing, indicating a complete shift in point of view, a reorientation of affect and a new love interest. Remember, Elizabeth will confide later to Jane, however tongue-in-cheek this confidence may seem, that she first fell in love with Mr Darcy when she first saw his 'beautiful grounds at Pemberley' (III, XVII, 240), a comment which echoes and renders explicit her feeling here that 'To be mistress of Pemberley would be something indeed' (III, I, 156).

As compelling as I find this reading, I would like to suggest another not so much as an alternative but as complementary, one which stresses the *exteriority* of the physical scene as much as the interiority of Elizabeth's consciousness. For what does this scene represent but a house, specifically a country house in the grand style? Now the country house is a significant structural device and potent symbol in nineteenth and twentieth-century literature, evoking a range of associations, some national, some cultural, some political, but almost always legal. The country house is *the* house of law – whether natural, positivist or otherwise, the overarching question about it being the legal one of who will inherit, for example, Tipton? Gardencourt? Howard's End? Brideshead? This question of inheritance, however, can be as much a burden as a benefit, even a curse, as amply demonstrated by

the Gothicised, and sinister haunted houses of law found throughout the period, both in English literature (eg. in Dickens's *Bleak House*, the source of controversy in the case *Jarndyce v Jarndyce*), and in American literature (eg. in Nathaniel Hawthorne's *House of the Seven Gables*, the site of several crimes – murder principally – perpetrated by, or against the Pyncheon family of Salem). Nothing could be further from the haunted house of law, however, than the representation of Pemberley here; indeed, the solidity of its foundations, the symmetry of its architecture, the harmony that obtains between its structure and natural setting, the timelessness of the style, all these details suggest, in their very coherence, integrity and abstractedness the ideal of the English common law as reimagined by not just the utilitarian Bentham, but his positivist disciple, John Austin.

John Austin's *The Province of Jurisprudence Determined*, as much as Bentham's much earlier *Limits of Jurisprudence Defined*, reimagines the law along virtually architectural lines. Consider Austin's description of the law when viewed from the vantage of his jurisprudence, a perception of structural order, almost Palladian in its proportions, which recalls – indeed, mimics – Pemberley's elegant lines and Elizabeth's appreciation of them. He writes:

[I]f ... approached ... with a well-grounded knowledge of the general principles of jurisprudence, and with the map of a body of law distinctly impressed upon his brain, he ['the student ... of the English Law'] might obtain a clear conception of it (as a system or organic whole) with comparative ease and rapidity ... he might perceive the various relations of its various parts; the dependence of its minuter rules on its general principles; and

the subordination of such of these principles as are less general or extensive, to such of them as are more general, and run through the whole of the structure (Austin 1954: 379).

This 'approach' to this house of law, however, differs from Elizabeth's in that Pemberley is already a finished product, while the common law still requires massive repair work. For Austin's jurisprudential project was, like Bentham's, a blueprint ('the map of a body of law') for legal reconstruction which, if 'impressed on the brain', enabled one to see beyond the common law's 'arbitrary and unconnected rules' (Austin 1954: 379), to the 'organic' method underlying its surface madness. The first step in releasing this organicism – the 'dependence' and 'subordination' of part to whole, particular to general – was to strip bare the house of law of artifice, particularly those excrescences, 'legal fictions'¹³ which 'Judge & Co'¹⁴ had contrived to cover the gaps, cracks and fissures in the system's structural supports. Instead of concealing these design flaws, Bentham and Austin wanted first to expose them, bringing to light all the law's contradictions, indeterminacies and aporias. But this exposure only served to set the stage for their shared 'expository' agenda;¹⁵ for Austin, as much as Bentham, wanted to order, classify and structure the common law, resetting it on a 'posited' – man-made – foundation with none of the philosophical 'nonsense upon stilts' of the Continental natural law tradition and its moral baggage of either revolutionary natural rights or reactionary Roman Catholic doctrine of the Aquinian sort. So the 'positivist' house of law which Bentham and Austin construct, and which Austen figures in Pemberley, is very different from, and indeed hostile to, the law of status, either in the form of the Law of the Father's Name (the 'rights of *man*', imaged in Longbourn) or the Mother's Body

(the divinely ordained hierarchy of birth, represented in Rosings), and all their respective gender and class sanctions (no women need apply at Longbourn; no *bourgeois* at Rosings). Instead of these sanctions, a Rule of Law doctrine would hold sway in the positivist house of law, guaranteeing equal access to all. The same access, in fact, that obtains at Pemberley, as evidenced by Mrs Reynolds's obliging tour of the house (III, I), indicating that this space is not only open to the nobility (Col Fitzwilliam, Lady Catherine, Miss de Bourgh), the gentry (Darcy, Georgiana) and their class allies, the *haut bourgeois* (the Bingleys and Hursts), but the very middle class Gardiners of Cheapside and Elizabeth herself.

Anchoring this site of open access and free movement, and giving it a centre – in sharp contrast to the flux of Meryton – is Fitzwilliam Darcy himself who, as master of Pemberley, functions also as the utilitarian 'sovereign' of this house of law, a connection which Elizabeth makes explicit when she ruminates, 'As a brother, a landlord, a master, she considered how many people's happiness were in his guardianship – How much pleasure or pain it was in his power to bestow. How much good or evil must be done by him' (III, I, 158). Speculation, however, about the nature of Darcy's 'sovereignty' are almost instantly resolved by the good reports of Mrs Reynolds: the 'best landlord and best master' to his staff and tenants (III, I, 159); a 'good brother' to his sister, giving her 'whatever is to give her pleasure' (III, I, 159); and a man of the most benevolent 'good-nature' who has never had a 'cross word' for his old housekeeper since he was four years old (III, I, 158). Now, given the source, this testimonial may sound like one of those sentimentalizations of the feudal order which abound in romance literature, usually ventriloquised by old

retainers, nurses or mammies who love their masters, charges or white folk more than themselves; and that Darcy is the benign *grand seigneur* is precisely what his 'civility' (III, I, 165) and 'stately' manners (III, I, 164) suggest, initially, to the Gardiners: the whim of a great man (III, I, 164). I would argue, however, for Darcy in the role of the utilitarian sovereign in the best Benthamite mode because he seems guided not so much by *noblesse oblige* but by the 'greatest happiness for the greatest number' in his dealings with people. Nowhere does this seem more so than in his handling of the Lydia-Wickham elopement for which he blames himself and his pride for failing in his public 'duty to step forward, and endeavour to remedy the evil' by making Wickham's 'worthlessness ... so well known, as to make it impossible for any young woman of character, to love or confide in him' (III, X, 205). By securing Wickham's marriage to Lydia at the price of clearing his debts, settling monies upon Lydia, purchasing his commission and even standing up as groomsman at the ceremony – doubtless to his extreme mortification – Darcy performs, as Elizabeth, says an 'unexampled kindness' (III, XVI, 234) for the little community at Longbourn, an act which, indeed, secures the greatest happiness for the greatest number.

Darcy himself, however, complicates this claim that he is the utilitarian sovereign, at least of the reforming Benthamite stripe when he retorts to Elizabeth: 'I thought only of you' (III, XVI, 235). Far from being motivated by the principle of utility – and its calculations for the widest distribution of happiness – his objective has been a personal one, focused and specific: Elizabeth herself. Now I want to ask: why? Why does Mr Darcy, master of Pemberley, whom even Lady Catherine treats as *primus inter pares*, coax, cajole and bribe his nemesis Wickham into marriage, restore

Mr Bingley to Jane, and even endure the none-too-subtle jibes of Mrs Bennet for a woman whose connections and 'condition in life is so decidedly beneath ... [his] own' (II, XI, 125)? What is the attraction? Of course, the obvious answer is love; as he says at Hunsford, 'You must allow me to tell you how ardently I admire and love you' (II, XI, 123). But why does Mr Darcy love Elizabeth? What is there that is loveable about her when, in her own words, her 'behaviour to ... [him] was at least always bordering on the uncivil', never speaking without 'wishing to give ... [him] pain' (III, XVIII, 244). A quick review of her behaviour confirms that all she has done to provoke his love is snipe (as at the Meryton, Netherfield and Rosings where all is pointed innuendo), shout (as at Hunsford where innuendo is dropped for direct insult at his condescending proposal), or burst into tears (as at Pemberley when she receives the news of Lydia's catastrophic elopement). In what lies her attraction, aside from, as Elizabeth herself playfully suggests at the close of the novel, her 'impertinence' (III, XVIII, 244)? A romantic reading of the novel would have Darcy looking through Elizabeth's 'impertinence' and straight into her soul through those windows to which he pointedly, and much to the chagrin of Miss Bingley, refers as her 'fine eyes' (I, VII, 19). But I would like to suggest that it is precisely this 'impertinence' – this resistance to Darcy, be it either passive (as at Meryton, Netherfield, Rosings or Pemberley), or active (as at Hunsford) – which is the source of Elizabeth's appeal, a choice example of the law of desire: of wanting what you cannot have.

I want, however, to link this psychic condition with earlier claims to Darcy's sovereign status because it is precisely this 'desire for the desire of the Other' which confirms his political and juridical role, though conceived now more in Austinian rather

than Benthamite terms. For John Austin departs from, as much as disseminates, his old mentor's theories, largely dropping the utilitarian frame of Bentham's philosophy, and its reformist agenda (Morrison 1982: 2), in favour of a definition of sovereignty which focuses on power,¹⁶ a power which I think is at work in, and underpins the Darcy-Elizabeth match. The source of this power, according to Austin, is the sovereign who is nothing more than the one whose 'commands' are 'obeyed';¹⁷ hence, the popular sobriquet of the 'command theory of law' to describe his jurisprudence (Freeman 1994: 213-14). And, certainly, if there is an Austinian sovereign in *Pride and Prejudice*, whose commands are, indeed, obeyed, it is Darcy. 'He is the kind of man', says the most querulous, least obliging character in the novel, Mr Bennet, 'to whom I should never refuse anything should he condescend to act' (III, XVII, 242). Almost everyone else in the world of the novel evinces a similar habit of obedience towards Darcy, either sooner (like Bingley, who needs his 'permission', as Elizabeth puts it, to court Jane (III, XVIII, 239)) or later (like Wickham who is, eventually, induced to marry Lydia). All, of course, except one: Elizabeth Bennet. Her refusal to obey Darcy, in fact, is one of the constants of the novel: from her decline of his offer to dance at Lucas Lodge ('Mr Darcy with grave propriety requested to be allowed the honour of her hand; but in vain. Elizabeth was determined' (I, VI, 18)) to the spectacular refusal of his proposal at Hunsford (where he is 'the last man in the world whom I could ever be prevailed upon to marry' (II, XI, 126)).

Why Elizabeth refuses Darcy is attributable to her defining trait which Darcy says, at the end of the novel, attracts him in the first place: her 'liveliness of mind' (III, XVIII, 244) which enables her to see through, and critique his 'arrogance', 'conceit'

and 'selfish disdain for the feelings of others' (II, XII, 126). Certainly, Elizabeth is *the* critical intelligence of the book, both as a suspicious close reader of texts (think of how well she construes the real import of Caroline Bingley's letters) as well as of character itself, which she reads just as sceptically: the superciliousness of the Bingley sisters ('proud and conceited' (I, IV, 11)), the thoughtlessness of Mr Bingley (particularly his 'want of attention to other people's feelings' (II, I 90)), the silliness of Collins ('Can he be a sensible man?', is her reaction, even before she meets him, to his letter of introduction (I, XIV, 44)), the forwardness of her younger sisters ('Vain, ignorant, idle and absolutely uncontrolled', with Lydia a 'determined flirt' and Kitty sure to 'follow' Lydia's lead, (II, XVIII, 149)), the glibness of her father (she had 'never been blind to the impropriety of her father's behaviour as a husband' (II, XIX, 152)), the opportunism of Charlotte (upon the announcement of Charlotte's engagement, she feels the 'pang of a friend disgracing herself and sunk in her esteem' (I, XXII, 84)), even the amiability of her confidante and ally Jane ('you are a great deal too apt you know, to like people in general' (I, IV, 11)). This repeated emphasis on Elizabeth's capacity to critique – in short, to censure – suggests a jurisprudential analogue to parallel Darcy's sovereignty: that of the 'censorial' jurist who is not merely content to say what the law *is* (the 'expository' project of Austin)¹⁸ but what it *ought* to be¹⁹ – that is, a Benthamite reformer alert to the discrepancies, indeed, the iniquities of the juridical but also political status quo. And it is in embodying this reformist agenda of censorial critique which accounts for why Elizabeth, for all her acuity, is duped by Wickham: because Wickham tells her the story that she, as the critical legal lawyer – the censorial jurist, wants to hear, that of natural merit overlooked, even wronged by hereditary privilege,

in Darcy's supposed refusal to bestow the beneficed living of Kympton on him, a narrative even Jane suspects ('her mild and steady candour always pleaded for allowances, and urged the possibility of mistakes' (II, I)). In allowing Elizabeth to be so 'blind, partial, prejudiced and absurd' (II, XIII, 135) in favour of Wickham at the expense of Darcy, Austen ironises critique and shifts the philosophical, political but particularly jurisprudential orientation of the novel away from Bentham, and his advocacy of the 'censorial' agenda, and towards Austin, and his focus on power, propped up by the 'expository' law. For John Austin – as much, if not more than Jane Austen – is motivated by a profoundly conservative vision of the law, and, indeed, politics and society;²⁰ critique has no place here, or, if it does, it must be brought to heel, co-opted, even silenced. 'Censorial jurisprudence' must, and is, in turn, *censored* in the work of John Austin as well as Jane Austen.

This is why, I would like to suggest, Darcy marries Elizabeth because, in so doing, the Austinian sovereign is co-opting his greatest critic – the 'censorial' jurist – who, in her refusal to obey, threatens the delicate equilibrium of the 'expository' order of the positivist house of law. This co-optation of critique by a reconstituted status quo is, as Gramsci has taught us,²¹ the standard ideological move of 'modernity' because it produces the appearance of a society based on 'consent' when, in fact, it is predicated upon silence. And this is precisely what Darcy does to Elizabeth in her marrying her: he silences her. So much so, in fact, that from the moment he makes his second proposal at Longbourn, she loses her voice. Consider her response to his proposal which we never actually hear spoken, but which is rendered through the most tortured circumlocution: 'Elizabeth

feeling all the more common awkwardness and anxiety of his situation, now forced herself to speak; and, immediately, though not very fluently, gave him to understand, that her sentiment had undergone so material a change, since the period he alluded, as to make her receive with gratitude and pleasure, his present assurances' (III, XVI, 235). We hear nothing directly here; and nor do we ever really hear directly from Elizabeth again, much to the concern of Jane ('My dear, dear Lizzy, I would – I do congratulate you – but are you certain?' (III, XVII, 240)) and the alarm of Mr Bennet ('What are you doing? Are you out of your senses to be accepting this man?' (III, XVII, 242)). All, in fact, we do hear is a kind of ventriloquism in which Elizabeth celebrates her sovereign, arguing that he has 'no improper pride' (III, XVII, 242). Gone, indeed, is critique. So Elizabeth's fate is sealed: she will be mistress of Pemberly, metonymised in terms of its economy of objects, which her mother gloatingly itemises, 'how rich and great you will be! What pin-money, what jewels, what carriages you will have! ... a house in town! Ten thousand a year!' (III, XVII, 243). These credits, however, are offset by the tremendous debt to be paid – the sacrifice of the Elizabeth's very self, her 'different voice' as Carol Gilligan (1982) might put it – in order to reign as the silent chatelaine of the house of law.

I stress the word 'reign' in connection with Elizabeth's new role, because it is Darcy who continues to 'rule' at Pemberley, even when – or rather, especially when – this rule is challenged in a minor way by Elizabeth's flippancy which gives so much 'astonishment' to Georgiana (III, XIX, 249) but which, interestingly, the reader never hears dialogised. Indeed, Darcy's rule is secured by Elizabeth's reign; her occasional dissent attesting to an overarching consent which, more than anything else, ensures

the persistence of Pemberley and the social, political and legal values for which it stands. For what is the last scene of the novel but a rendering of Pemberley as the site of class reconciliation, visited not only by that emblem of status, Lady Catherine (who is, doubtless, there out of 'curiosity to see how ... (Darcy's) wife conducted herself' (III, XIX, 249) but also the Gardiners, of whom, tellingly, the last line of the novel speaks. Why are the Gardiners the last characters to be referred to in *Pride and Prejudice*? On one level – the sentimental one – it is because, as the reader is told, they were the 'means of uniting' Elizabeth and Darcy (II, XIX, 250). So they seem to be the great romantic allies of Pemberley, but I would also like to suggest, on the basis of a more material reading – that of class analysis, that the Gardiners are also its greatest threat. For who are the Gardiners but the urban, affluent, educated *bourgeoisie*, precisely the class leading the calls for reform in England (for, indeed, the Reform Bill of 1832), and revolution elsewhere? Clearly in any other country Mr Gardiner would be a Jacobin, inciting the mob to burn Pemberley (and Rosings, Netherfield and Longbourn) to the ground, and guillotining its inhabitants – imagine the 'affability' and 'condescension' of Lady Catherine in the tumbrils, or better yet hanging from the entrails of Mr Collins. I allude to the sanguinary sentiment of the Jacobins – not content to rest until the last aristocrat was hanging from a lamp-post by the last priest's entrails – because it is against this political background that Jane Austen is writing; she, after all, had a cousin married to a French count who perished in the Terror.²² As well, it is this political future to which, with just as much if not more trepidation, John Austin looks forward in anticipating not just the Reform Act but Chartism and the 'making of English working class'. Hence, in light of these political threats, both past and

future, it is absolutely critical that the middle-class Gardiners be integrated into the house of law, now positivised as the Austinian command of the sovereign' rather than the 'divine right of kings'. And where better than at Pemberley, because it is here that the Austinian 'province of jurisprudence' finds its determination: in mediating a very English compromise through a law which, in marrying 'pride' (Mr Darcy) to 'prejudice' (Elizabeth), preserves the forms of status (the organicism of the old order, imaged in the country house at harmony with nature), all the while embracing the emergent forms of contract (the interests of commercial and industrial capital for which the Gardiners speak).

All of which returns me to the question which entitles this article: Who wrote *Pride and Prejudice*? – Jane Austen or John Austin? This question of authorship is closely related to each author's relation to authority, and the troubling issue of Austin's but, particularly, Austen's politics as either transgressive or regressive, liberal or conservative.²³ I would like to argue, by way of conclusion, that they are both and neither liberal and/or conservative, a doubling which mimics the classic move of legal ideology of facilitating change at the very moment it conserves tradition. For example, Austen's politics, as much as Austin's, are liberal in that they both attack the world of status: he, in his assault on natural law, and the uncoupling of the positive law from morality; she, in her satires of the aristocracy (here in Lady Catherine, but also in Sir Walter Elliot, Miss Elliot and the Viscountess Dalrymple in *Persuasion*) and the Established Church (here in Mr Collins but also in Mr Elton in *Emma*). Both, however, are conservative in the sense that the house of law each constructs becomes a sort of positivist panoptical prisonhouse, in which are consigned Austen's 'censorial' heroines – Elizabeth

at Pemberley, but also, Marianne Dashwood at Delaford, even Emma at her old home, Hartfield – and over which an Austinian sovereign commands: Mr Darcy, Col Brandon and Mr Knightley. But I would like to suggest that Jane Austen goes one step further than John Austin in that she actually supercedes both readings – the liberal and the conservative – at the very moment she authorises each, opening up a space for a third reading: one which might be called the critical legal reading. For in rendering, at the close of the novel, both Elizabeth and Darcy as so thoroughly *in situ* at Pemberley, Austen points us to the critical legal insight that, far from being empty – and, hence, belonging to everyone because it belongs to no one, the house of law is *inhabited*. Who inhabits this house of law?: that is *the* question which critical legal studies will ask and answer, variously, and depending upon its particular stripe, as the ruling class (CLS in its Marxist form), the patriarch (CLS in its feminist form) and the coloniser (CLS in its race theory form). Austen has been quick to anticipate these answers, entwining these strands into the enraced, engendered and classified body of Mr Darcy. In exposing this white, male ruling class body behind, and indeed controlling the letter of the law, Austen contests, as much as confirms the positive law which Darcy represents, anticipating not only Austin's positivism but its critique. So, in answer to the question, 'who wrote *Pride and Prejudice*?', clearly Jane Austen; but, in so doing, Austen proleptically writes and then critiques Austin's *The Province of Jurisprudence Determined* because in figuring jurisprudence as a stately home, Jane Austen looks not just to its 'determination' – that is, its boundaries – but beyond them, past its barriers to the crowds (the critical-legal mob?) massing at its gates waiting to enter, ransack and put to the torch the positivist house of law.

Notes

- ¹ A version of this article was delivered first as a lecture to my joint LL.B./LL.M. seminar, Legal Fictions: Representations of Law in Cinema, Philosophy and Literature, at the Faculty of Law, University of Hong Kong. My thanks to the participants for their useful criticisms. Second, this article was given as a talk to the Department of English at the University of Hong Kong. I would like to thank the organisers, and, particularly, Dr. Elaine Ho, for their suggestions. Thanks, as well, to my colleague Anne Carver for her comments on a draft of this article. Finally, last but certainly not least, thanks to my mother-in-law, Mrs Muriel Adams, who first heard the germ of this article, two years ago, during a very enjoyable Christmas viewing of the recent BBC dramatisation of *Pride and Prejudice*.
- ² Letter to J. Edward Austen, 16 December 1816, quoted in Jane Austen, *Pride and Prejudice* (1993: 270).
- ³ See the entry for 'entail' in Walker (1980).
- ⁴ Bentham writes in a footnote: 'To this denomination has of late been added or substituted the *greatest happiness* or *greatest felicity* principle: this for shortness, instead of *saying that principle* which states the greater happiness of all those whose interest is in question, as being the right and proper, and only right and proper and universally desirable, end of human action' (1996: 11a).
- ⁵ Indeed, the opening paragraph of *An Introduction to the Principles of Morals and Legislation* explicitly links utility with this term, arguing that the purpose of this principle is 'to rear the fabric of felicity by the hands of reason and of law' (1996: 11). Such 'felicity', moreover, is subject to precise calculations as Bentham clearly demonstrates in the fourth chapter, entitled 'Value of a Lot of Pleasure or Pain, How to be Measured... Sum up all the values of all the *pleasures* on the one side, and those of all the

pains on the other. The balance, if it be on the side of pleasure will give the *good* tendency of the act upon the whole, with respect to the interests of that *individual* person; if on the side of pain, the *bad* tendency of it upon the whole' (1996: 40).

⁶ I borrow, with some modification, Barbara Creed's phrase, the "monstrous feminine" – a very rich metaphor for Kristevan abjection (1993: 3).

⁷ See especially 'On the Moral Law' in Lacan (1992: 71-84).

⁸ Zizek (1991: 3, 7-11, 30-31, 231-4, 237-41 and 271).

⁹ Smith emphasises, quite rightly, the ambiguities of Eliabeth's 'victory over Lady Catherine' which, while 'in some sense a feminist one, the episode also has antifeminist as well as antiaristocracy elements'. Lady Catherine is, after all a 'titled woman' and a spokesperson for 'matrilineal desire'.

¹⁰ Frug (1992), see especially chapter 3, 'Progressive Feminist Legal Scholarship: Can We Claim "A Different Voice?"'.

¹¹ For a critique of this term and position within a feminist legal context, see Cornell (1991), particularly ch 1, "The Maternal and the Feminine: Social Reality, Fantasy and Ethical Relation".

¹² Freud writes: "There is only a violent jealous father who keeps all the females to himself and drives away the growing sons. This primal state of society has nowhere been observed. The most primitive organisation we know, which today is still in force among certain tribes, is *associations of men* consisting of members with equal rights, subject to the restrictions of the totem system, and founded on matriarchy, or descent through the mother' (1985: 883).

¹³ A "legal fiction" is, according to *The Oxford Companion to Law*: 'Any assumption which conceals or affects to conceal the fact that a rule of law has undergone alteration, its letter remaining

unchanged, its operation being modified'. See the entry for 'Fiction, legal'. Bentham, particularly, was a vociferous critic of fictions. See Ogden (1932).

- ¹⁴ The term is, again, Bentham's, and used, highly pejoratively, to describe the judicial monopoly of the law, and its ill effects: piecemeal legislating, policy-less judging, linguistic legerdemain. See: Wacks (1995: 39); Postema (1986: 267).
- ¹⁵ John Austin writes in *The Uses of the Study of Jurisprudence* that: 'As principles abstracted from positive systems are the subject of general jurisprudence, so is the exposition of such principles its exclusive or appropriate object' (1954: 366).
- ¹⁶ Austin writes in *The Province of Jurisprudence Determined* that law is a species of command and that: 'A command is distinguished ... by the power and the purpose of the party commanding to inflict an evil or pain' (1954: 14).
- ¹⁷ Austin writes in *The Province of Jurisprudence Determined*: 'The superiority which is styled sovereignty ... is distinguished from other superiority, and from other society, by the following marks or characters: 1. The *bulk* of the given society are in a *habit* of obedience or submission to a *determinate* and *common* superior' (1954: 193-194).
- ¹⁸ Austin writes 'Having suggested the *purpose* of my attempt to determine the province of jurisprudence: to distinguish positive law, the appropriate matter of jurisprudence, from the various objects to which it is related by resemblance, and to which it is related, nearly or remotely, by a strong or slender analogy' (1954: 13).
- ¹⁹ Bentham writes, essentially of his own project: 'To know what is meant by jurisprudence, we must know, for example, what is meant by a book of jurisprudence. A book of jurisprudence can have but one or the other of two objects: 1. to ascertain what

the *law* is: 2. to ascertain what it ought to be. In the former case it may be styled a book of *expository* jurisprudence; in the latter, a book of *censorial* jurisprudence; or, in other words, a book on the *art of legislation*' (1996: 11a).

²⁰ Indeed, Austin's principal modern advocate, Morison, calls his outlook "reactionary" in ch 4, "Austin: conservative or reformer" (1982). Jane Austen's conservatism, particularly with regard to *Pride and Prejudice*, has been emphasised by Duckworth (1971: 116-28, 140-43) and Butler (1975: 197-98, 203-7, 210-13).

²¹ Gramsci writes, for example, 'The spontaneous consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group; this consent is 'historically' caused by the prestige (and consequent confidence) which the dominant group enjoys because of its position and function in the world of production' (1988: 307).

²² For the extremely romantic, indeed "novelistic" story of Eliza, Comtesse de Feuillade, see the detailed and informative account of the Austen-Leigh family in Tucker (1983: 45-50).

²³ For the former, classic 'subversive' reading of Austen, particularly *Pride and Prejudice*, see Harding (1940: 346-47, 351-54, 362) and Mudrick (1952: 107-13, 116-20, 123-25) The standard, 'reactionary' readings of Austen are Duckworth (1971) and Butler (1975). For Austin, the same debate about politics – conservative or liberal? – is staged internally in Morison's (1982) text.

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