

## Wife Sales\*

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### ABSTRACT

For over a century, English husbands sold their wives at auctions. We argue that wife sales were an institutional response to an unusual constellation of property rights in Industrial Revolution-era English law. That constellation simultaneously required most wives to obtain their husbands' consent to exit their marriages and denied most wives the right to own property. In doing so it precluded direct Coasean divorce bargains between spouses that could dissolve inefficient marriages when wives' valuation of life outside their marriages was higher than husbands' valuation of life inside them. To overcome this problem, spouses used wife sales to conduct divorce bargains indirectly. Wife-sale auctions achieved this by identifying and leveraging "suitors" — men who valued unhappy wives more than their current husbands, who unhappy wives preferred to their current husbands, and who had the property rights required to buy unhappy wives' right to exit marriage from their husbands. The resulting transactions enabled unhappy wives in inefficient marriages to exit those marriages where English law otherwise prevented them from doing so.

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“Let be, yer rogue. I wull be sold. I wants a change.”

— *Mattie, an unhappy wife, to her husband, c. 1830.*<sup>1</sup>

## 1 Introduction

“Laerdies an’ gentelmin, I ax lafe to oppose yer notice . . . Her’s a good crature . . . an’ goos pretty well in harness, wi’ a little flogging . . . Her can carry a hundred and a ‘alf o’ coals from the pit for three good miles; her can sell it well, and put it down her throat in less ner three minits . . . Now my lads, roll up, and bid spirited . . . I brought her through the turnpike and paid the mon the toll for her. I brought her wi’ a halter and had her cried . . . Now gentelmin, who bids? Goin, gooin, gooin! I cawn’t delay — as the octioneer sez, I cawn’t dwell on this lot! . . . Come, say six shillins!”

This auction was conducted in Wednesbury, England’s public market before a crowd gathered in front of the White Lion tavern. What “crature” was the auctioneer selling?

A reasonable guess would be livestock, but a reasonable guess would be wrong. The auctioneer wasn’t selling a cow. He was selling his wife.

The wife-selling husband was Moses Maggs. The lucky bidder bought Maggs’ wife, to whom she consented to be sold, for six shillings and three gallons of ale. “The bargain being thus concluded, the halter was placed in the” buyer’s “hand and the young woman received the congratulations of numerous dingy matrons. She wiped her eyes and smiled cheerfully; her new husband planted a sharp barking kiss on her rounded cheek by way of ratification, and as the new wedding party moved away the crowd broke up and slowly dispersed” (Thompson, 1991, pp. 465–466).

For over a century wife sales occurred throughout the world’s most economically civilized nation during an era of unprecedented growth and progress: Industrial Revolution-era England. This paper investigates Industrial Revolution-era England’s wife-sales institution. To do so it uses the theory of rational choice.

Wife sales were one among a variety of much more mundane methods of dissolving marriage *de facto* in a time and place where doing so *de jure* was extraordinarily difficult for all but a few. The existence of numerous “ordinary” methods of *de*

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<sup>1</sup> Quoted in Thompson (1991, p. 462).

*facto* divorce in Industrial Revolution-era England, such as judicial separation and private separation agreement, poses a puzzle for explaining the existence of wife sales. Given the availability of such methods, what explains the particular and peculiar practice of selling wives?

Historians have suggested an answer to this puzzle: wife sales were public (see, for instance, Menefee, 1981; Stone, 1990; Thompson, 1991). Industrial Revolution-era English law imposed marital obligations on spouses, such as husbands' responsibility for debts their wives incurred on their behalf. To relieve themselves of these obligations in their community's eyes, divorcing spouses needed to inform community members, such as potential creditors, that their marital obligations to one another had ended. Unlike other methods of divorce, wife sales frequently took place at public marketplaces where community members gathered. Thus, when both husbands and wives wanted to dissolve their marriages, they sometimes resorted to wife sales.

This explanation for wife sales is unsatisfying in a simple but crucial way. It does not explain wife sales' most important and intriguing feature: the *sale of wives*. Spouses' need to inform their communities about the effective end of their marital obligations when they divorced was surely important. But the practice of wife selling does not follow from it.

Just as numerous ordinary methods of *de facto* divorce were available to spouses who wanted to dissolve their marriages in Industrial Revolution-era England, numerous ordinary methods of publicly informing communities about the end of their marital obligations were available to these spouses too. Moreover, these methods were cheaper than wife sales. Spouses could place ads in newspapers; announce their news at marketplaces or other public places; put up written public notices; hire criers to spread the word; or create records certifying mutual acknowledgment of their new marital status to provide others when one spouse's marital status to the other was relevant to counterparties in a transaction.

Indeed, all of these methods were actually used by divorcing spouses to publicly communicate information about their marital status in Industrial Revolution-era England. But when they were, they were often accompanied by the sale of a wife.<sup>2</sup>

For the same reason that the difficulty of divorcing *de jure* in Industrial Revolution-era England cannot explain wife sales, the privateness of ordinary methods of divorce in Industrial Revolution-era England cannot either. The former

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<sup>2</sup> Another difficulty for the historical interpretation of wife sales is that some wife sales were not public. Thus, in addition to accounting for the sale of wives, a useful theory of wife sales should be able to account for private wife sales. Our theory does both.

explains the practice of *de facto* divorce. And the latter explains the practice of public communication. But neither explains the practice of selling wives.

This paper's purpose is to explain the practice of selling wives. Our analysis uncovers both why spouses in Industrial Revolution-era England sometimes required an alternative to ordinary methods of *de facto* divorce and why that alternative took the specific and strange form of selling wives at auction.

We argue that wife sales were an institutional response to an unusual constellation of property rights in English law before the turn of the twentieth century. That constellation simultaneously required most wives to obtain their husbands' consent to exit their marriages and denied most wives the right to own property. In doing so it precluded direct Coasean divorce bargains between spouses that could dissolve inefficient marriages when wives' valuation of life outside their marriages was higher than husbands' valuation of life inside them.

To overcome this problem, spouses used wife sales to conduct divorce bargains indirectly. Wife-sale auctions achieved this by identifying and leveraging "suitors" — men who valued unhappy wives more than their current husbands, who unhappy wives preferred to their current husbands, and who had the property rights required to buy unhappy wives' right to exit marriage from their husbands. The resulting transactions enabled unhappy wives in inefficient marriages to exit those marriages where English law otherwise prevented them from doing so.

Although most historians who have discussed wife sales suggest that these sales benefited the wives who were sold (see, for instance, Menefee, 1981; Stone, 1990; Thompson, 1991), several others have expressed discomfort with this conclusion (Samuel, 1992; Thompson and Samuel, 1993; Clark, 1997). The source of this discomfort appears to reside in the fact that wife selling reflected male dominance over females in a legal context that often treated the latter as inherently inferior to the former.

Our analysis of wife sales as a mechanism of indirect Coasean bargaining supports the view that such sales enhanced the welfare of Industrial Revolution-era English wives. As we describe below, the wives who participated in wife sales chose to participate, and even those who seemed to do so reluctantly had the power to veto their sales. This ensured that wives were sold only when they preferred being sold to remaining in their existing marriages and only when they were sold to men they preferred to their existing husbands as spouses. Wife sales permitted unhappy wives to trade marriages they valued less for marriages they valued more.

Thus, while the legal context that gave rise to the institution of wife sales may rightly be regarded as an example of the "subjection of women" (Thompson and

Samuel, 1993, p. 275) or even “misogynist” (Clark, 1997, p. 86), it would be a mistake to regard the institution of wife sales this way.<sup>3</sup> Conditional on the unfortunate status of married women’s property rights in Industrial Revolution-era England, wife sales benefited married women who were unable to rely on more conventional methods of *de facto* methods divorce by providing a much-needed avenue through which they might exit their inefficient marriages. In this sense these sales’ importance to the women involved in them was significant, even if wife sales were infrequent relative to more common methods of *de facto* divorce in Industrial Revolution-era England.

Our analysis draws on 222 unique cases of wife sales in Great Britain between 1735 and 1899. We collect these cases from historical records of wife sales reported in eighteenth- and nineteenth-century English newspapers. Our sample reflects what may be only a small fraction of the wife sales that occurred during this period.<sup>4</sup> Still, the cases it contains provide an up-close, in-depth look at the institution of wife sales that spouses used to dissolve inefficient marriages and create new ones in Industrial Revolution-era England.

Economists have said nothing about wife sales.<sup>5</sup> But they have discussed Coasean divorce bargains in less explicitly economic contexts. This paper is most closely connected to that literature.

Becker *et al.* (1977) were the first to point out that when transaction costs are low, laws that assign spousal property rights over marital status have no effect on divorce rates (see also, Landes, 1978; Becker, 1981). A sufficiently unhappy spouse will be willing to pay his or her marital partner enough to secure the right

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<sup>3</sup> Another potential objection to wife sales is that, while the wives who were sold consented to be sold, it was only their husbands’ mistreatment that made them desire this. While this was surely true in some cases, wife sales remained welfare enhancing for unhappy wives. Given abusive husbands, wife sales permitted unhappy, abused wives to exit their marriages where they would have otherwise often been unable to do so. Husband mistreatment made life difficult for many wives. And a legal system that denied economic rights to most married women and made divorce hard to obtain only made it easier for this mistreatment to take place. But wives would have been worse off still if they did not have wife sales as a means of marital exit.

<sup>4</sup> Historians are divided on the number of wife sales that took place. Stone (1990, p. 148) suggests they were rare and that the number of cases collected so far is not terribly far from the actual number of wife sales that took place. Thompson (1991, p. 412) challenges Stone’s assertion and suggests that the cases collected thus far may merely be the “tip of an iceberg.”

<sup>5</sup> However, several scholars outside of economics have discussed them. See, Kenny (1929), Meneff (1981), Stone (1990), Thompson (1991), Hill (1994), Wright (2004), Vaessen (2006), Suk (2013).

to exit marriage when one or both spouses has veto rights over the decision to divorce. Similarly, a spouse who values keeping his or her marriage intact will be willing to pay his or her marital partner enough to induce them to remain married when the law permits either spouse to terminate their marriage at will. Becker *et al.*'s important insight applies the Coase theorem to divorce. Our analysis of wife sales contributes to the literature on Coasean divorce bargains by examining legal impediments to these bargains and the solutions that inefficiently married couples develop to overcome them.

This paper is also closely connected to the literature that uses rational choice theory to understand unusual legal institutions. Friedman (1979) was among the first contributors to this literature. He considers the economics of legal institutions that stateless people in medieval Iceland used to create social order. Posner (1980) explores the economics of legal systems in primitive societies. Leeson (2007) examines the economics of eighteenth-century pirates' legal institutions. He also analyzes, for example, the economics of judicial ordeals, Gypsy law, vermin trials, and liturgical cursing (Leeson, 2012, 2013a, b, 2014a, b, c). Our paper contributes to this literature by making economic sense of an unusual and neglected legal institution in Industrial Revolution-era England: wife sales.

## 2 Til Death Do Us Part

### 2.1 *Marriage in Industrial Revolution-Era England*

Industrial Revolution-era English law called an unmarried woman's legal status *feme sole*. Such a woman could own property, enter contracts, and enjoyed freedom of her person. In these respects, legally, she was like a man.

Upon getting married English law converted a woman's status to *feme covert*. For the typical wife, all the property she owned before marriage, and all that would have come into her possession as an unmarried woman, such as inheritance, her wages from working, and the revenues generated by real estate she formerly owned, became her husband's exclusive property.<sup>6</sup>

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<sup>6</sup> Technically, husbands did not acquire wives' real property *per se*, but rather were seized of such property and enjoyed exclusive rights to revenues flowing from it (Baker, 2007, p. 485). In practice this distinction meant simply that if husbands alienated their wives' land inheritances against their wives' will, their wives (or their heirs) could get them back after their husbands' death (and wives married after 1833 lost the ability to recover; see, Crane, 1960, p. 985). Wives, however, could not sell, rent, or mortgage their real property without their husbands' consent.

A married woman also lost the right to enter contracts. Indeed, she lost most of her legal personality. Those rights and attendant obligations, for example, responsibility for debts a wife incurred on her husband's behalf, accrued to her husband too.

In many ways a woman herself became her husband's property when she got married. Her husband could beat her "within reason." He could have sexual relations with her on demand. And he could "restrain a wife of her liberty" — i.e., imprison her in his home — "in case of any gross misbehaviour," where he determined what constituted grossness (Hill, 1994, p. 199).

Wives retained some important property rights in their persons. Their husbands could not murder or mutilate them. Nor could they enslave their wives, sell their wives into slavery, or otherwise compel their wives to service others. Still, legally husbands' property rights in their wives was extensive.<sup>7</sup>

In return for surrendering her property rights to her husband, a woman who married received a legal claim to her and, if she had any, her children's maintenance from her husband. The law required him to provide them sustenance and shelter consonant with his means. The sacrifice most women were willing to make to obtain such support — relinquishing their property rights and much of their personal freedom — attests to the importance they attached to it.<sup>8</sup>

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Since both control rights and cash-flow rights to wives' real property devolved exclusively to their husbands upon marriage, for nearly all intents and purposes, wives lost and husbands gained ownership in the former's real property when they got married.

<sup>7</sup> As Barzel (1977) points out, the absence of *de jure* property rights need not in all cases preclude one from exercising some property rights, and thus bargaining power, *de facto*. For example, Industrial Revolution-era wives deprived of legal property rights might still wield bargaining power in their marriages by performing household services less diligently, shirking in employment, proving less desirable lovers, and more generally behaving in ways that made their husbands miserable. Of course, countering this was husbands' ability — in part legally supported — to make their wives miserable by physically or otherwise abusing them, confining them, and so on. In such cases wife sales, which we describe below, provided spouses "at war" with one another a means of exiting this scenario to their mutual benefit.

<sup>8</sup> At least outside the nobility, the dominant pattern of family formation in eighteenth- and nineteenth-century England was for individuals to choose whom they wished to marry. The freely given consent of both parties has been considered a core tenet of marriage in England since the thirteenth century. The Hardwicke Act of 1753 mandated that minors attain parental consent prior to marriage, but marriages without the consent of both parties would not have been solemnized or held to be valid by the courts (Stone, 1990, pp. 52, 122–124). Even the exertion of parental pressure in marriages had ebbed by the eighteenth century. Largely as a result of early industrialization, English youths were earning wages earlier and, as such, were less susceptible to parental influence (Gillis, 1985, p. 119). Moreover, the combined effect of low life expectancies and high average age of first marriage meant that many young people had already been living away from home and may have even lost one or both of their parents before the time came to marry (Adair, 1996, pp. 129–148; Hill, 1994, p. 185). Stone (1977,

Compared to men, Industrial Revolution-era women's employment prospects were slim and the wages they earned were low. Many working-class women could not earn enough to support themselves, especially if they had children (Menefee, 1981, pp. 61–62). They required men's higher wages for their maintenance, which marriage offered them.

Men also benefited from marriage. They enjoyed the economies of scale that marriage conferred. And they added to their incomes through their wives' labor and inheritances. Marriage also allowed men to enjoy on-demand sexual satisfaction, children, and companionship.

## 2.2 *Divorce in Industrial Revolution-Era England*

Like contemporary marriages, eighteenth- and nineteenth-century English marriages could break down. The reason for this is familiar: marriage is an experience good. A spouse may prove less materially productive, less sexually satisfying, less fertile, or for other reasons a less acceptable marriage partner than anticipated. If life outside the marriage — alone or with another spouse — appears more valuable to one or both spouses than life inside the marriage, one or both spouses will desire the marriage's dissolution. He or she will want a divorce.

In theory, Industrial Revolution-era English law granted husbands and wives the right to exit marriage — with or without their spouse's consent — under only two circumstances: adultery and life-threatening cruelty. In practice, husbands tended to enjoy unilateral property rights over marriage. Unhappy husbands could typically exit their marriages without their wives' permission, but unhappy wives could normally do so only with their husbands' consent.

To understand this lopsided state of affairs, consider the divergent difficulty that an unhappy husband and an unhappy wife confronted in separating from their spouse under each of the means spouses had available to them for this purpose. First consider a private Act of Parliament. A private Act of Parliament was the only civil means of total divorce in Industrial Revolution-era England — i.e., divorce that permitted spouses to remarry.<sup>9</sup> If a husband could prove his wife was an adulterer and could afford to undertake the necessary legal steps, he could obtain such an

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pp. 325–404) notes that while it was not uncommon for lower-middle class parents to seek out potential spouses for their children for the sake of financial betterment, children in poor and middle-class families nevertheless tended to enjoy substantial autonomy in their marital decisions.

<sup>9</sup> However, if an ecclesiastic court determined that a marriage supposed to have taken place had not actually taken place because of the parties' ages, mental incompetence, sexual impotence,



Act. The first step in doing so was to seek a divorce *a mensa et thoro*: a judicial separation from “bed and board.” Until 1857 only an ecclesiastic court could grant such a separation.

Judicial separation permitted spouses to live apart. The court awarded the wife alimony, her husband’s obligation to maintain her remaining intact since the marriage technically remained. However, if the wife committed adultery, she forfeited her husband’s support. Such would be the case if her husband was seeking divorce through a private Act of Parliament, as adultery was the only grounds on which he could pursue such an Act.

After obtaining a judicial separation, the typical husband seeking a private Act of Parliament sued his wife’s lover for criminal conversation in a civil court.<sup>10</sup> Victory here was helpful to proving to Parliament that his wife was an adulterer. Having satisfied Parliament of as much, the Act-seeking husband secured a divorce from his wife that freed him of all financial obligations to her and permitted both spouses to remarry.

The cost of this process was enormous. Completing the steps required to obtain a private Act of Parliament could run into the thousands of pounds. In 1871, a successful unskilled laborer earned a mere 75p a week (Gibson, 1994, p. 67). Thus the only means of official divorce that English law permitted was unavailable to working-class persons.

An unhappy wife could also seek divorce through a private Act of Parliament, but the obstacles to success she faced were far greater. Since wives lacked legal personage, a wife needed to initiate legal action through an agent. She could not do so simply because her husband was an adulterer, as he could for her, however. In addition to proving her husband’s infidelity, a wife needed to prove her husband was guilty of aggravating acts, such as incest or bigamy.

Demonstrating aggravation was difficult. Parliamentary members laughed one wife out of Parliament for claiming aggravation based on repeated beatings. Thus, of the 338 persons who attempted to divorce their spouses using a private Act of Parliament in the 157 years from this instrument’s inception in 1700 to its termination in 1857, only 8 were wives. Three hundred and eighteen husbands petitioned successfully, but only four wives did so (Stone, 1990, p. 432).

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or fraud, the marriage-that-never-was was declared as much officially and the parties were free to remarry.

<sup>10</sup> Criminal conversation was a trespass action arising from adultery. A person who slept with another man’s wife encroached on the latter’s property rights by depriving him of his wife’s “comfort, fellowship and society” (Baker, 2007, pp. 456–457). This entitled such a husband to financial damages from his wife’s lover.

While a private Act of Parliament was the only means of official divorce in Industrial Revolution-era England, several means of *de facto* divorce existed — legal and illegal spousal separations that could accomplish the same unofficially.

We mentioned the first means of *de facto* divorce above: judicial separation. An unhappy husband could obtain a judicial separation by proving his wife had committed adultery. In this case, the court would award him an alimony free separation. Even without such proof, he could obtain a judicial separation indirectly by manipulating the law's operation. He did this by kicking his wife out of his house.

Under English law husbands were required to supply their wives housing. This was part of their maintenance obligation. If a husband exiled his wife, his wife could, through an agent, sue her husband for restitution of conjugal rights — the right to cohabit — in an ecclesiastic court. The husband could then refuse to allow her back into his home, at which point the court would award a separation and alimony for the wife. If he was unsatisfied with paying his wife alimony, a husband could wait for his wife to slip and sue her in an ecclesiastic court for adultery. This freed him from future alimony payments.

For an unhappy wife, separating from her spouse judicially was much harder. In principle the law allowed wives to sue for judicial separation on the grounds of adultery or life-threatening cruelty.<sup>11</sup> In practice judges tended to grant wives separation only when they could prove their husbands guilty of adultery and aggravating acts, such as infecting them with venereal diseases. Further, unlike an unhappy husband, an unhappy wife had no legal back door — no “kick-out option” — to secure a separation if her husband was not an adulterer or lethally abusive.

An equally important constraint on an unhappy wife's ability to use judicial separation to divorce her husband was the fact that judicial separation left her in a state of *feme covert*. As Lord Lyndhurst (Stone, 1990, p. 53) complained to the House of Lords in 1856, this put a judicially separated wife

“almost in a state of outlawry. She may not enter into a contract, or, if she does, she has no means of enforcing it. The law, so far from protecting, oppresses her. She is homeless, helpless, hopeless, and almost destitute of civil rights. She is liable of all manner of injustice, whether by plot or by violence. She may be wronged in all possible ways, and her character may be mercilessly defamed; yet she has no redress. She is at the mercy of her enemies.”

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<sup>11</sup> In 1857, when jurisdiction over actions granting judicial separation were moved to secular courts, the grounds for seeking such a separation were expanded to include desertion for over two years “without cause.”

The second means of *de facto* divorce in Industrial Revolution-era England was desertion. An unhappy husband could “far more easily desert his wife and children than she could desert them” (Thompson, 1991, p. 444). To desert his wife, an unhappy husband simply packed up his belongings and moved to another county or enlisted in the armed services overseas. When his wife returned home one day, he was gone. Desertion was illegal: it violated the law requiring husbands to maintain their wives. If the law caught up with a deserting husband, an ecclesiastic court could order him to pay alimony.

Unfortunately for wives, it was often difficult to bring deserting husbands to justice. Ecclesiastic courts had but one means of enforcing alimony payment directly: excommunication. By the eighteenth century this spiritual sanction carried little weight in the minds of most (Gibson, 1994, p. 17).<sup>12</sup>

For a wife, desertion was more difficult. She often had no property, no property rights, and faced higher risks fleeing to another county. It was harder for a woman to find employment. Moreover, what she could earn by herself was often insufficient to support her. “Although it was possible in some cases for the single wife to support herself, the additional burden of children often placed an unfair weight on her shoulders. The result . . . was usually impoverishment” (Menefee, 1981, pp. 61–62).

Perhaps most important, it was much more likely that a deserting wife would be caught deserting. Religious officials called overseers of the poor administered poor relief in English counties. They kept a watchful eye on newcomers to their communities with the aim of discovering and booting persons who they believed they would have to support. Normally that meant keeping an eye out for newly entering single women whose slim employment opportunities and low wage-earning potential made them greater risks to overseers’ relief doles.

Even if an unhappy wife succeeded in deserting her husband, she was likely to be identified, at which point her husband could take her back. Wives were in large part their husbands’ property. Thus the law permitted husbands to forcibly return deserting wives to their homes where they could confine them to prevent future escape.

The third means of *de facto* divorce in Industrial Revolution-era England was closely related to desertion: elopement. If he eloped with an unmarried woman,

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<sup>12</sup> However, if, after trying excommunication, an ecclesiastic court remained unable to compel payment, it could hand the matter over to secular authorities. Moreover, if a wife became a burden on her parish as the result of her husband’s failure to provide her support, her husband could be “prosecuted by the Overseers of the Poor for criminal neglect” (Stone, 1990, p. 195).

elopement was as simple a way for an unhappy husband to *de facto* dissolve his marriage as desertion. For an unhappy wife, however, things were different.

Eloping allowed unhappy wives to overcome one of the problems desertion posed. In running away with another man, an eloping wife had a ready means of financial support. But elopement posed another problem for unhappy wives: it could be hard to build relationships with lovers willing to run away with them in secret.

Husbands exercised close oversight over their wives. If their wives had lovers, they were likely to know their identities or, at the very least, whether their wives might be cultivating relationships with other men. If their suspicion was aroused, husbands who wanted to prevent their wives from eloping could legally confine their wives to their homes, terminating the relationship and preventing their wives from running away.

The final means of *de facto* divorce in Industrial Revolution-era England was private separation agreements. These agreements were contracts between spouses relieving them of some of marriage's obligations. Typically in such agreements, husbands agreed to pay their wives some amount of support and to return to them some of their legal rights.

In exchange, wives, through contracting agents, agreed to live apart from their husbands and to absolve their husbands from obligations for future debts they incurred. Some private separation agreements also involved the parties' agreement to not legally harass the other for potential violations of marital law. Implicitly such clauses were intended to secure husbands' promise not to sue their wives' current or future lovers for criminal conversation.

Private separation agreements permitted some unhappy wives to leverage for their betterment the one property right that English law gave women upon marriage rather than took from them: the right to their husbands' maintenance. Wives' maintenance right endowed them with a bargaining chip with which they might secure their husbands' consent to exit their marriages. In exchange for her husband's permission to live separately, an unhappy wife could agree to reduced maintenance, this arrangement being secured through private contract.

Unfortunately, not all unhappy wives were able to use private separation agreements for this purpose. Until the 1840s such agreements were not reliably enforceable in English courts, which, officially at least, did not permit spouses to privately dissolve marital obligations created legally upon marriage (Peaslee, 1902).<sup>13</sup> This

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<sup>13</sup> Although secular courts began reliably enforcing such contracts, ecclesiastic courts continued to deny their validity right up until the end of such courts' involvement in legal actions relating to marriage in 1857.

meant, for example, that a husband who agreed to separate from his wife under a private contract, but subsequently changed his mind, might forcibly seize her to reestablish cohabitation or, similarly, sue for the restitution of his conjugal rights and do so successfully. In this case, an unhappy wife remained separated from her husband under a private separation agreement only as long as her husband desired as much.

The second obstacle some unhappy wives confronted in using private separation agreements to exit their marriages was that, enforcement difficulties aside, the value of the bargaining chip that husbands' maintenance obligation bestowed upon them might not be enough to secure their husbands' consent to separate if their husbands' desire to remain married was sufficiently strong. According to the law, maintenance, recall, was to be consonant with a husband's means. For a wealthy husband, then, the reduction in maintenance he might be able to secure by permitting his wife to separate could be considerable. But for the poorer sort, this reduction might be small — too small to trade for permitting his wife to exit their marriage if he was reluctant to allow this.

The potential channels of marital exit discussed above were not useless for unhappy wives. Unhappy wives whose husbands were guilty of both adultery and aggravating acts, and could prove as much, managed to obtain judicial separations. Some unhappy wives managed to desert or elope despite overseers' and their husbands' watchful eyes. Private separation agreements permitted some unhappy wives to live apart from their husbands for at least as long as their husbands were also happy with this arrangement. And a few independently wealthy, unhappy wives managed to purchase private Acts of Parliament divorcing them from their husbands.

Such wealth was an important determinant of wives' ability to separate from their husbands without their husbands' consent. Wives with significant premarital wealth could hire lawyers to make prenuptial agreements that created agent-controlled trusts. These trusts granted wives continued rights over property they owned before marriage and the revenues flowing from it. In this way premarital wealth greatly eased the obstacles that most unhappy wives, who were not so wealthy, confronted in appealing to any of the mechanisms of marital dissolution discussed above.

Still, many unhappy wives — in particularly the working-class sort — could not rely on these channels to dissolve their marriages. Their husbands had many options for exiting marriage without their consent. But if these wives wanted to exit, they needed their husbands' permission.

### 3 A Theory of Wife Sales

According to the Coase theorem, Industrial Revolution-era English husbands' *de facto* property rights in their wives' marital status should not have prevented divorce-desiring wives from exiting relationships with their marriage-desiring husbands as long as those relationships were inefficient. If transaction costs were low, when a wife valued life outside her marriage more than her husband valued life inside it, she could simply buy the right to exit the marriage from him.

Underlying this Coasean divorce logic, however, is a crucial assumption: wives must have something with which they can buy the right to exit marriage from their husbands. That requires them to have general property rights — rights to income and ownership, which most Industrial Revolution-era English wives lacked.

A simple solution to this problem is for couples to sell their better halves. Wife sales permit spouses to bargain to mutually beneficial divorces indirectly where marital property law prevents them from doing so directly. Wife sales achieve this by leveraging the property rights of third parties: “suitors” who value unhappy wives more than wives' current husbands value them, who unhappy wives value more than their current husbands, and who have the property rights that wives lack required to purchase husbands' permission to release their wives from their marriages.

To identify the suitor whose valuation is highest, inefficiently married couples sell their better halves at public auctions. Husbands set reservation prices for their wives at their valuations of those wives and solicit bids from potential suitors. Wives agree to such auctions provided that they may veto their sales to their highest bidders, to whom they may prefer their existing husbands as spouses. Resulting sales benefit husbands, who receive payment for their wives from suitors in excess of their valuations of their wives, suitors, who receive wives from their former husbands they value in excess of what they pay for those wives and, perhaps most importantly, unhappy wives, who receive their husbands' permission to exit their marriages, exchanging husbands they prefer less for suitors they prefer more.

Wives' veto power over their sales is crucial to such an arrangement's ability to benefit wives and thus its ability to function as a mechanism of indirect Coasean divorce bargaining. Although Industrial Revolution-era English law deprived most wives of the right to own property and granted their husbands considerable property rights over them as spouses, it did not, as mentioned above, permit husbands to enslave their wives, nor did it permit them to sell their wives as slaves to others — i.e., to compel their wives to live with or service others. If a husband sold his wife to another man without her consent and, somehow, that man managed to take

possession of her against her will, such a woman could have, and presumably would have, run away at her first opportunity and sought the protection of the local justice of the peace — if a member of her family, or even a concerned citizen, had not brought the matter to the authorities' attention first.

In addition to being deprived the benefit of his purchase, it seems likely that the buyer of such a wife, as well as her seller, would have confronted the prospect of legal repercussions for his actions. For example, the buyer might be sued for kidnapping, and the seller might be sued by his wife, through an agent, for the restitution of conjugal rights. What legal consequences a coerced-wife buyer or seller may have in fact confronted is difficult to say, however, since, as we discuss below, the historical record does not contain any unambiguous cases of coerced-wife sales succeeding and indeed contains only a handful of clear cases of attempted coerced-wife selling. Thus it seems that the possibility of legal repercussions together with the fact that a coerced-wife buyer would likely have lost possession of his purchase soon after making it, making her a rather poor bargain, all but precluded such sales from occurring.

### 3.1 *From Alter to Halter*

Industrial Revolution-era English wife sales were used overwhelmingly by working-class couples.<sup>14</sup> The procedures these sales followed are familiar: they are the same ones followed in the sale of livestock. A couple seeking to sell its better half would travel to a marketplace.<sup>15</sup> The husband sometimes led his lady there with a halter rope tied around her, just as he would one of his cows.

To thicken the market, some wife-selling husbands hired criers who strolled the streets and other public places on the day of the market, or shortly before, ringing a bell and announcing news of the wife for sale, the sale's location, and its time (see, for instance, *Hampshire Advertiser & Salisbury Guardian*, May 12, 1849; Menefee, 1981, p. 77; *The Leeds Mercury*, June 7, 1879). Another option was to advertise impending wife sales in local newspapers, such as the following ad from a late eighteenth-century paper (Vaessen, 2006, p. 26):

“To be sold for *Five Shillings*, my Wife, Jane Hebbard. She is stoutly built, stands firm on her posterns, and is sound wind and limb. She

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<sup>14</sup> Thus the wives put up for sale came from lower- and middle-class couples. However, used-wife buyers could be and, as we note below, sometimes were persons of more substantial means.

<sup>15</sup> Alternatively, the couple might wait for a fair instead. Fairs were also markets, but were “considered important events in the social calendar” (Menefee, 1981, p. 37). Thus fairs attracted larger audiences from further distances.

can sow and reap, hold a plough, and drive a team, and would answer any stout able man, that can hold a *tight rein*, for she is damned *hard mouthed* and headstrong; but if properly managed, would either lead or drive as tame as a rabbit. She now and then makes a *false* step. Her husband parts with her because she is too much for him. — Enquire of the Printer. N.B. All her body clothes will be given with her.”<sup>16</sup>

Cheaper still, wife-selling husbands could post notifications of impending sales in public places (see, for instance, Thompson, 1991, p. 419). These tactics for thickening the market worked. Wife sales attracted hundreds and sometimes thousands of attendees (Menefee, 1981, p. 57).

To participate in public markets, wife-selling husbands paid the market tolls collected from everyone seeking to sell their goods. They might also pay turnpike tolls for access to roads leading to market grounds. Once he was admitted to the marketplace, a wife-selling husband sometimes walked her around the venue so potential buyers could get a closer look.

Next his wife was auctioned off amidst cattle and horses. An auctioneer prefaced the bidding by extolling the virtues of the wife on the block. A wife-selling husband could purchase the services of a professional for this purpose or, as occurred more commonly, act as his own auctioneer instead. “Henry Broom, of the parish of Buckerell,” for example, “put his wife up at auction,” but only “after enumerating her various qualifications in the language and style of a jockey” (*The Morning Chronicle*, July 21, 1828).

Wife-selling husbands surely erred on the side of emphasizing their wives’ finer points in pre-auction priming. But some were shockingly honest in describing their lots to crowds of bidders. Consider how the wife-selling husband of a woman described by one observer as “a spruce, lively, buxom damsel” presented his wife to potential bidders (*The Times*, April 26, 1832):

“Gentlemen, I have to offer to your notice my wife . . . whom I mean to sell to the highest and fairest bidder. Gentlemen, it is her wish as well as mine to part for ever. She has been to me only a bosom serpent. I took her for my comfort, and the good of my house, but she became

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<sup>16</sup> Wife-selling husbands also used criers and newspaper ads to publicly notify purveyors that their wives’ future debts were no longer their concern — but were rather the concern of their wives’ purchasers — after a successful sale (see, for instance, *The Times*, June 15, 1831; *Grub Street Journal*, March 27, 1735; Menefee, 1981, pp. 97–98; *The Morning Chronicle*, January 2, 1819).



my tormentor, a domestic curse, a night invasion, and a daily devil . . . . Now I have shown you the dark side of my wife, and told you her faults and her failings; I will now introduce the bright and sunny side of her, and explain her qualifications and goodness. She can read novels and milk cows; she can laugh and weep with the same ease that you could take a glass of ale when thirsty . . . . She can make butter and scold the maid, she can sing Moore's melodies, and plait her frills and caps; she cannot make rum, gin, or whisky; but she is a good judge of the quality from long experience tasting them. I therefore offer her with all her perfections and imperfections, for the sum of 50s."

In some cases, husbands' honesty more likely reflected the fact that their wives' imperfections were readily observable. Thus the husband in York whose wife, according to one observer, "appeared to be on the wrong side of 50; has lost one leg, and has a wooden substitute," was probably unable to avoid mentioning these features at her sale. The same reasoning probably motivated another wife-selling husband to describe his wife this way: she has two eyes, one of which "looks straight at you, the other wanders up to the North" (Menefee, 1981, p. 52).

After describing the wife for sale, the auctioneer solicited bids from the crowd. The husband could set a reservation bid. The highest bidder who satisfied this reservation, to whom the wife consented to be sold, won the wife. Provided that a sale conformed to these customs, in the eyes of participants and transaction observers — if not always in the eyes of the law, as we discuss below — all the selling husbands' property rights in and obligations to the wife transferred to her buyer. The wife sale terminated one marriage and began another.

To formalize such sales, the parties involved sometimes procured the services of a lawyer who drew up a receipt recording the exchange, transfer of rights and obligations, and one or more of the parties' signatures (see, for instance, Menefee, 1981, p. 96; *The Sheffield & Rotherham Independent*, January 13, 1877; *The Derby Mercury*, January 5, 1881; *The Newcastle Courant etc.*, June 17, 1881). In other cases parties formalized their transactions with receipts from market toll collectors, such as this one (Thompson, 1991, p. 425; see also, *The Sheffield & Rotherham Independent*, October 16, 1880):

"Aug. 31, 1773. Samuel Whitehouse, of the parish of Willenhall, in the county of Stafford, this day sold his wife Mary Whitehouse, in open Market, to Thomas Griffiths of Birmingham *value, one shilling*. To take her with all faults."

More commonly, wife-sale parties drew up their own memoranda of certification (see, for instance, *The Aberdeen Journal*, December 12, 1860; *The Blackburn Standard*, January 15, 1868; *The Graphic*, October 28, 1871; *The Dundee Courier & Argus*, November 10, 1875; *The Bristol Mercury*, February 10, 1877; *The Pall Mall Gazette*, July 4, 1882; *The York Herald*, May 9, 1884; *Nottinghamshire Guardian*, November 26, 1886; *The Leeds Mercury*, July 15, 1887; *Birmingham Daily Post*, December 19, 1893; *Morning Chronicle*, June 13, 1797).

Crucially, an auctioned “wife was able to exercise a veto” over her sale (Thompson, 1991, p. 433). For an exchange to occur, her “consent was essential” (Thompson, 1991, p. 432; see also, Kenny, 1929), and “in many instances the wife appears to have been retained because she did not like her purchaser” (Menefee, 1981, p. 109). When a wife vetoed a transaction, the auction would end. Or, if she was willing, her husband could immediately auction her again to the remaining bidders (Menefee, 1981, p. 93). For example, as a report from Manchester in 1824 described one case of wife veto, “after several biddings she was knocked down for 5s; but not liking the purchaser, she was put up again for 3s and a quart of ale” (Thompson, 1991, p. 433).

As in any market, in the market for used wives, too, there was a handful of fraudulent sellers — husbands who tried to sell their unconsenting wives to purchasers as consenting ones. But these sales typically failed. Among the 218 cases E.P. Thompson (1991, p. 430) collected covering the years from 1760 to 1880, he found only four instances in which a wife whose husband offered her for sale clearly did not consent to the transaction. Only one of these sales transpired despite the wife’s protest, and this case of allegedly successful coercion is suspect. After her sale the supposedly unwilling wife wrote a letter of complaint to the magistrate. But she did not complain that she was sold against her will. She complained that her former husband was not honoring the terms of her sale agreement: he was pestering the man he sold her to for more money.

The necessity of wives’ consent to be sold to new husbands explains the happiness many wives displayed at their sales’ conclusion.<sup>17</sup> After being sold at Smithfield market, one “woman declared it was the happiest moment of her life” (*Hampshire*

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<sup>17</sup> Of course, not every sold wife expressed happiness at her sale. Being auctioned like cattle, even if the result was to improve one’s marital situation, could surely be traumatic. Moreover, while wives’ veto power ensured that wives were sold only when they preferred their buyers to their existing spouses, this does not mean that sold wives could not be saddened by the failure of their existing marriages or that they could not be disappointed that joining their buyer, while the best of their available options, and thus desirable in a relative sense, was nevertheless undesirable in an absolute sense.

*Telegraph and Sussex Chronicle etc.*, June 15, 1812). Another sold wife “appeared overjoyed at the change” (*World*, November 12, 1790). In Whitechapel a wife was sold and, “the bargain being made, she went off, in high spirits, with her new master” (*Public Advertiser*, June 25, 1791). Or, as an observer remarked following a wife sale in Southrepps, Norfolk, “All parties seemed perfectly contented and happy with the exchange” (*The Essex Standard, and Colchester and County Advertiser*, June 2, 1832). As one historian notes, “in almost all examples” we have of wife sales, “there was a tendency for the wife to be upwardly mobile.” Indeed, “in no case was the woman left with a partner who was demonstrably socially inferior to the man who sold her” (Menefee, 1981, p. 55).

Multiple factors could contribute to sold wives’ unhappiness in their existing marriages and thus willingness to resort to wife sales to establish new ones, but perhaps chief among these were romantic attachments to other men. For example, one couple decided that they should resort to a wife sale, “hav[ing] lately lived together on unpleasant terms, in consequence of the wife having a strong ‘affinity’ for a man on the opposite side of the street” (*The Illustrated Police News*, November 19, 1870). Similarly, in another case, “The alleged ground of the separation was the incontinence of the wife, whose affections were stated to have been alienated by an old delver, who had occasionally got his dinners at their house” (*The Times*, February 9, 1837).

It is unsurprising, then, that “[t]he offer to purchase seems to have been made by the lover on most occasions” (Menefee, 1981, p. 78). For instance, one husband “from West Hallam, named Hart, sold his wife in Nottingham Market-place, for 1s., to a fellow named Smith, with whom the woman had been living for several years. A rope was tied round the woman’s waist, and, on the bargain being completed, and the money paid, it was given to the purchaser, who carried off his prize. All parties seemed satisfied” (*The Times*, December 30, 1843). Likewise, another husband “sold his wife . . . at Leeds, for a sovereign, to a person with whom she had been for some time cohabiting” (*The Blackburn Standard*, December 15, 1852; see also, *The Times*, September 23, 1834; *The Standard*, December 29, 1843). Explicit or implicit references to sold wives’ extramarital relations in period accounts are common (see, for instance, *True Briton*, August 11, 1797; *Oracle and Public Advertiser*, July 20, 1797; *The Leeds Mercury*, April 7, 1827; *The Manchester Times and Gazette*, June 20, 1848; *The Huddersfield Daily Chronicle*, January 3, 1873; *The Sheffield & Rotherham Independent*, May 2, 1882; *The Illustrated Police News etc.*, April 18, 1885; *The Blackburn Standard: Darwen Observer, and North-East Lancashire Advertiser*, May 7, 1887; *The Times*, February 3, 1837; *The Times*, July 15, 1837; *The Times*, September 23, 1834).

Of course husband philandering could lead to the conditions motivating couples to use wife sales too. When a husband's affections were devoted elsewhere, his wife's valuation of him as husband was likely to drop significantly, making the marriage more likely to be inefficient and the wife more likely to desire exit. Thus adultery appears to be the "most common . . . cause for sales . . . often, but not exclusively, by the wife" (Menefee, 1981, p. 63).

The frequent existence of a ready and likely high bidder — a wife's lover — explains why some wife sales were transacted without auctions and why, even in some cases when they were, "the affair was a pre-arranged one between the buyer, the seller, and the sold" (*The Illustrated Police News*, November 19, 1870; see also, Menefee, 1981, p. 2). If a wife-selling husband was fairly certain that his wife's lover was her highest-valuing user, an auction was unnecessary to identify an appropriate suitor. Alternatively, if a wife-selling husband thought his wife's lover might be among the highest-valuing users of her, but that perhaps an unknown suitor might value her more highly still, he may want to put her up for auction if only to see whether he could motivate her lover to raise his bid. Thus, at a wife sale in London, for example, though the couple had prearranged a buyer "and he offered the price demanded, the husband still repeated his cries to try to draw some bidders, but none appearing, he pocketed the money" (Menefee, 1981, p. 92).

Wife sales' winning bidders were not always auctioned wives' lovers. In some cases, they were not even wives' ultimate buyers — the men who sought them as spouses. Some bidders were agents operating on wife-seeking clients' behalf. In other cases wives' winning bidders were not men seeking new mates at all. They were wives' family members, purchasing their sister's or child's right to exit her unhappy marriage (see, for instance, *Liverpool Mercury etc.*, July 26, 1833; *Liverpool Mercury etc.*, April 6, 1849; *The Lancaster Gazette and General Advertiser, for Lancashire, Westmorland, & c.*, December 6, 1806).

Although wife sales lacked sanction in English law, they "were popularly believed" by those who participated in them "to be a legal and valid form of divorce" (Menefee, 1981, p. 1). This belief was in no small part due to the ambivalent and sometimes confused attitude of public officials toward the institution. Such officials were aware of wife sales, but most turned a blind eye to them. Indeed, one early nineteenth-century newspaper concluded "from the frequency of such occurrences" that England's magistrates "must either be ignorant or negligent of their duty" (*The Times*, February, 25, 1832).

Some public officials did more than turn a blind eye. They participated in wife sales as toll collectors and marketplace constables where wives were sold. Further, while the law did not consider divorces or marriages achieved through wife sales

legitimate, several jurists expressed confusion about whether wife selling *per se* was prohibited. “As to the action of the sale itself,” one judge remarked, “I do not believe in the right to prevent it, even to put an obstacle in its way, because it was founded on a custom preserved by the people, a custom, perhaps, that it would even be dangerous to pass a law which abolished it” (Menefee, 1981, p. 146).<sup>18</sup> Authorities prosecuted some wife-sale parties for their participation in these transactions. But prosecutions were rare, and convicted persons typically received light sentences (see, for instance, *The Illustrated Police News*, November 24, 1883).

Religious authorities’ attitudes toward wife sales were equally confused. Some religious authorities condemned wife selling. But others seemed to condone it, if not in word, in practice. By attaching relief-dependent wives to new husbands, wife sales eased the burden on welfare doles that religious authorities were charged with financing. Thus, far from aiding the prosecution of wife sales, several religious authorities encouraged them (Stone, 1990, p. 51; Thompson, 1991, p. 437). For example, “prompted by a desire to keep women from becoming (or remaining) a charge on the parish,” an eighteenth-century parish officer at Barton-under-Needwood helped a husband arrange the sale of his wife. He was not alone. A nineteenth-century parochial workhouse master at Epping did the same (Menefee, 1981, p. 56).

Secular and religious officials’ *laissez-faire* attitude toward wife sales helps explain why, though the institution of selling wives lacked legal sanction and in some respects clearly flouted it, wife sales were often conducted in the open, in the most public of marketplaces, before throngs of spectators, and were commonly reported in newspapers for all to see.

## 4 Predictions and Evidence

Our theory of Industrial Revolution-era wife sales generates two predictions the historical record allows us to test. The evidence supports them.

### 4.1 *Wife-Sale Prices are Positive*

According to our theory, wife sales reflected Coasean divorce bargains whereby unhappy wives in inefficient marriages purchased the right to exit marriage from

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<sup>18</sup> Indeed, “the legitimacy of ritual wife sale went unquestioned in the parishes of Effingham and Dorking” in 1814–1815 (Thompson, 1991, p. 438).

their husbands indirectly. If this is in fact what wife sales reflected, wife-sale prices should be positive. Positive wife-sale prices are consistent with unhappy wives purchasing, through wife-buying suitors, the right to exit marriage from their husbands.<sup>19</sup> In contrast, negative prices are consistent with unhappy husbands purchasing, through wife-buying suitors, the right to exit marriage from their wives.

To see whether wife-sale prices were positive or negative, we collect data on wife sales from eighteenth- and nineteenth-century newspaper accounts preserved in the Gale database's "seventeenth–eighteenth Century Burney Collection Newspapers" and "nineteenth-Century British Library Newspapers." To identify newspaper reports relating to wife sales, we perform a search for the terms "wife sale," "sale of wives," and related variations on these keywords. We then examine the resulting articles to isolate those that pertain to the institution of wife sales in England and Wales.<sup>20</sup>

Our data collection yields a sample of 222 unique cases of wife selling in the area of Great Britain governed by common law. These cases span the 165 years from 1735, when the first wife-sale case in our data appears, to 1899, when the last case in our data appears.

All but 13 of the 222 cases of wife selling our data contain provide some information about the price paid for the wife sold. In the reports we draw our data from, these prices are expressed in terms of money, goods, or a combination of the two. Alcohol was a popular supplement to cash compensation. But one can also find payments via lottery ticket, dinner, and a donkey.

A total of 192 of our 222 cases have price data that are either wholly or partly monetary and thus data we can reliably convert into British pounds sterling. In 37

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<sup>19</sup> The fact that wives were economic "goods" (i.e., valued by their buyers) does not render positive wife-sale prices equally consistent with unhappy husbands purchasing permission to exit marriage from their wives. Such a husband who accepted a positive sum for his wife from a buyer would (indirectly) pay his wife a negative price for permission to exit their marriage rather than the positive price she would require to grant that permission if she had property rights in their marriage. Although positive wife-sale prices are not consistent exclusively with unhappy wives purchasing the right to exit their marriages from their husbands indirectly, the fact that used wives were economic goods does not by itself imply positive wife-sale prices.

<sup>20</sup> In our search we came across a handful of potentially similar cases in Australia, New Zealand, and the American colonies. A few newspaper reports also referred to wife sales in France, Russia, and China. We omit these cases from our study, not only because we are interested in the English institution of wife sales, but also because of their extreme rarity and lack of substantiation for their authenticity.

of these cases, a wife was sold for money and goods. For these cases the price data we report reflect only the monetary part of payments. For example, if a wife sold for a shilling and a beer, only the shilling is included in our price data. These data therefore tend to understate the prices for which wives were sold, making our test for positive wife-sale prices more difficult for our theory to pass.

Since our price data span over a century, it is important to adjust them for the changing value of British currency over time. Further, to express our price data in common units, we need to reduce reported wife-sale prices to pounds sterling. To do this we first convert the wife-sale prices reported in the newspaper articles from which we draw them into fractions of pounds sterling. Next we convert those figures to constant pounds sterling in 1800. To accomplish the latter we use the index of average earnings in Britain compiled by Officer (2009) as part of the “Measuring Worth Project.”

Our sample unavoidably includes what may be only a small fraction of the total number of wife sales that took place in eighteenth- and nineteenth-century England. Even in the decade in which we find the largest number of wife-sale cases, 1830, when there were 30 wife sales for which price data are available, the number of observations is small. Because of this, it is important to interpret our data with caution. We cannot be sure our sample is representative. Further, the small number of observations our sample includes prevents us from drawing any reliable inferences from the relative height of wife-sale prices over time.

Table 1 presents our wife-sale price data. The second column presents mean wife-sale prices by decade for the cases in our sample, the third column presents median prices, and the fourth and fifth columns report minimum and maximum wife-sale prices, respectively. Between 1735 and 1899 the mean wife in our sample sold for £5.72, though prices vary significantly by decade. In every decade, however, both mean and median wife prices are positive.

Disaggregating our data on wife-sale prices to see whether any individual wife sales transacted at negative prices delivers nearly the same result. Of the 192 wife-sale cases we consider, only two have negative prices. The first case is from 1788 when a husband in Blackfriars paid a suitor £0.85 to take his wife. In the other case, in 1812, a husband sold his wife in Sheffield to a suitor for 6 pence. However, the halter rope he tied around her, which went with the wife to her purchaser, cost him 9 pence. This means the husband effectively paid the suitor he sold her to £0.01 to take her. These two cases reflect approximately one percent of our sample. In the remaining 99 percent of our cases, wife-sale prices are positive.

**Table 1.** Wife-sale prices, 1735–1899.

Decade	Number of sales	Mean price (constant 1800 £)	Median price (constant 1800 £)	Min price (constant 1800 £)	Max price (constant 1800 £)
1730	2	9.71	9.71	0.01	19.40
1760	5	11.22	3.98	0.46	37.20
1770	4	0.93	0.92	0.09	1.80
1780	8	2.02	0.67	−0.85	8.30
1790	15	18.59	1.37	0.03	229.00
1800	24	5.95	0.59	0.02	92.70
1810	14	0.97	0.18	−0.01	9.41
1820	18	1.98	0.27	0.01	20.50
1830	30	0.95	0.26	0.02	15.60
1840	16	9.50	0.22	0.03	145.00
1850	9	1.81	0.90	0.02	8.19
1860	8	25.27	1.58	0.20	155.00
1870	15	5.07	0.30	<0.01	34.00
1880	14	1.72	0.12	<0.01	13.20
1890	10	3.21	0.10	0.01	18.30
All	192	5.72	0.33	−0.85	229.00

#### 4.2 *Wife Sales Decline when English Law Grants Wives Property Rights*

According to our theory, wife sales emerged as an institutional response to a constellation of Industrial Revolution-era English property rights that required most wives to obtain their husbands' consent to exit their marriages and denied most wives the right to own property. Our theory therefore predicts that wife sales should have declined when the law granted wives such rights.

The evolution of English wife selling and English property law supports this prediction. Wife sales went into decline in the second half of the nineteenth century and became nearly extinct by the turn of the twentieth century. This period corresponds to the period in which English law granted wives property rights.



The first step in English law granting wives property rights was the Matrimonial Causes Act of 1857. That Act declared that a wife “who obtained a decree of judicial separation . . . should henceforth be treated as a *feme sole* with respect to her property and contracts” and permitted deserted wives to own property they earned or received after their desertion (Shanley, 1982, p. 370). The 1857 Act also made it easier to obtain a *de jure* divorce — one enabling remarriage — by replacing the costly and laborious private-Act-of-Parliament process for this purpose with a cheaper and less onerous process through the secular courts.<sup>21</sup> Albeit only for judicially separated and deserted wives, who in a sense had already managed to exit marriage from their husbands, this legislation granted the right to own property with which such wives might purchase the right to formally exit marriage from their husbands directly.

The next English legal change bearing on wives’ property rights was much more significant. That was the Married Women’s Property Act of 1870. This Act endowed married women who earned income separately from their husbands with property rights in such income earned after the Act’s passage, as well as income from investments they made based on those earnings. Further, the Act endowed wives married after its passage with rights to revenues from real property inheritances; to personal property inheritances from their next of kin, including cash up to £200; and to maintain legal action in their own names for the recovery of such property.

According to the Act (Rubenstein, 1882, pp. 89–93):

“The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property . . . .

[A]ny woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin or one

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<sup>21</sup> Further, this Act expanded the grounds on which wives could seek a *de jure* divorce. Those grounds included her husband’s adultery aggravated by either incest, bigamy, vicious cruelty, or desertion for a period of two years of more without “reasonable excuse,” or rape, sodomy, or bestiality.

of the next of kin of an intestate, or to any sum of money not exceeding two hundred pounds under any deed or will.

When any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act . . . the rents and profits of such property shall . . . belong to such a woman for her separate use . . . .

A married woman may maintain an action in her own name for the recovery of any wages, earnings, money and property by this Act to be her separate property . . . as if such wages, earnings, moneys, chattels, and property belonged to her as an unmarried woman.”

In 1882 the Married Women’s Property Act was modified to include still more comprehensive changes. In addition to clarifying and expanding the property wives could own, most important, the 1882 Act extended these rights to women regardless of when they married and covered property regardless of when wives earned or received it. The effect of this legislation was to give all English wives complete and unfettered property rights, as well as rights to bring legal action pertaining to them, consonant with those they were entitled to as unmarried women.

This new legal environment greatly diminished the importance of wife sales as means for unhappy wives to purchase the right to exit their inefficient marriages from their husbands indirectly. In consequence, wife sales declined precipitously. Indeed, more than three quarters of the 222 wife-sale cases in our data occurred before first major English legal reform, which granted some wives property rights in 1857. More than 80 percent of these cases occurred before the next significant legal change, which extended wives’ property rights in 1870. And more than 90 percent of the wife-sale cases in our data occurred before the final important English legal change, which granted all wives total property rights in 1882.

According to our data, between 1870 and 1879 there were 17 wife sales. Between 1880 and 1889 there were 16. And between 1890 and 1899 there were 10 wife sales. After that our data end. However, Menefee (1981) reports nine cases between 1900 and 1909. Rare reports of English wife sales pop up after that — one as late as 1972. But by the turn of the twentieth century, English wife sales were exceptional.

It is unsurprising that wife sales took some years to disappear following England’s earlier legislation. As noted above, important provisions in the 1870 Act, for instance, applied only to women who married after its passage, and others applied only to property that wives received after this date. Even after 1882, when these limitations were lifted, liquidity constraints, confronted in particular by poorer wives, likely prevented direct Coasean divorce bargaining between some spouses. The 1882

Act made it possible for all wives to own the property required to purchase marital exit from their husbands, but it did not endow any wives with such property.

Although wife sales did not become exceptional until the turn of the twentieth century, their usage may have begun to go into decline some 17 years before the first English legal change granting wives some property rights discussed above. “Use of the institution appears to have gradually decreased from the 1840s on” (Menefee, 1981, p. 47). Indeed, around 1840 wife sales appear to experience a sharp decline. In the 1830s our data find 35 cases of wife sales. In the 1840s they find only slightly more than half that number.

The sharp decline in wife-sale cases we observe around 1840 may simply be an artifact of data availability or newspaper reporting on wife sales. Alternatively, it may be related to England’s Custody of Infants Act, which Parliament introduced in 1839. Under that Act, wives who were judicially separated from their husbands received the right to custody of their children under age 7 and access to their older children if the court deemed fit. Prior to this, wives’ children, like nearly everything else they had, was their husbands’ exclusive property. Wives had no right to custody of their children, nor even the right to see them.

The fall in wife sales that appears in our data around 1840 is consistent with our theory if one thinks about the Custody of Infants Act as granting wives some new property rights in their children. If husbands desired guardianship of their children because, for instance, they cared for them, they would not want to lose their custody. In endowing judicially separated wives with at least limited property rights in their children, the Custody of Infants Act of 1839 may therefore have given some unhappy wives seeking to exit inefficient marriages formally a new and significant bargaining chip for negotiating with their husbands. Judicially separated wives could agree not to seek custody in exchange for their husbands’ consent to officially divorce.

Since the property rights in their children that the Custody of Infants Act granted wives was contingent and applied only to those who were judicially separated, and the apparent decline in wife sales around 1840 is large — rather too large, it would seem, to be explained by reference to this Act alone — we don’t wish to push this argument too far. Still, it provides a potential, contributing reason to the drop off in wife-sale usage around this time that is consistent with our theory of wife sales as indirect Coasean bargains.

Another potential contributor to the decline in wife sales observed around 1840 was a contemporaneous improvement in the legal enforceability of private separation agreements between spouses. In 1835 Parliament clarified the confused, and

confusing, legal status of the financial terms contained in such contracts by declaring that these terms should be enforced in secular courts. Over the course of the next 13 years, legislators extended the variety provisions in private separation agreements that should be considered enforceable, which, by 1848, included nearly all of them.

Recall that, at least in principle, private separation agreements permitted some unhappy wives to leverage the one property right that English law granted them upon marriage — the right to their husbands' maintenance — to secure their husbands' consent to exit their marriages. By reducing one of the impediments to effective reliance on such agreements — enforceability — the legal changes described above improved at least some wives' ability to secure marital exit through private contracts, reducing, though not eliminating, reliance on wife sales for this purpose.

## 5 Concluding Remarks

Our economic analysis of Industrial Revolution-era English wife sales leads to several conclusions. First, our analysis suggests that Ronald Coase's (1960) seminal insight has even greater applicability than is usually thought. Coase pointed out that when transaction costs are low, regardless of the initial allocation of property rights, those rights tend to wind up in their efficient holders' hands. The logic underlying his insight is simple: efficient users of inefficiently assigned property rights will buy those rights from their inefficient holders. But this logic assumes that a property right's efficient holder has some property rights to bargain with. If he does not, Coase's insight would seem to break down.

The institution of wife sales in Industrial Revolution-era England demonstrates that it need not. English law established a peculiar constellation of rights that both required most wives to obtain their husbands' consent to exit their marriages and deprived most wives of the property rights required to purchase such consent from their husbands directly. This situation precluded direct bargains between husbands and wives that could terminate inefficient marriages rendered so by a wife's higher valuation of life outside her existing marriage than her husband's valuation of life inside it.

Spouses' inability to conduct divorce bargains directly left gains from trade on the table when unhappy wives sought to exit inefficient marriages. To capture these gains, spouses devised a means of conducting divorce bargains indirectly. They did so by auctioning their better halves to potential suitors who valued the wives for sale more than wives' current husbands did, and who the auctioned wives preferred as husbands to their existing ones. Unlike the wives they purchased, these suitors

had the property rights required to purchase unhappy wives' right to exit from their husbands.

The institution of wife sales suggests we might profitably render the Coase theorem in more encompassing terms than it is usually rendered. That rendering is this: where gains from trade exist, people find ways of overcoming hurdles that stand in the way of their ability to capture them. The presence of these gains alone may be enough to generate a tendency for individuals to capture them — i.e., a tendency toward efficiency.

Further, our analysis suggests that wife sales benefited wives rather than harmed them. Without the wife-sales institution, at least some unhappy wives in Industrial Revolution-era England would have remained trapped in inefficient marriages they wanted to exit when preferable alternative marriages were available. Wife sales required wives' consent. Given the unhappy marital situations wives sometimes found themselves in, and given a legal environment that effectively gave most husbands rights to their wives' marital status and denied most wives general property rights, this alone is enough to ensure that wife sales made the wives who chose to participate in them better off.

Of course wife sales were not a panacea to wives' problems in Industrial Revolution-era England. This paper focused on one kind of problem that wives confronted as a result of English law: the problem of obtaining permission to exit their existing marriages when their valuation of life outside those marriages was higher than their husbands' valuation of life inside them. Our analysis demonstrates how wife sales helped unhappy wives overcome this problem.

But there was another kind of problem that Industrial Revolution-era English wives confronted because of English law: the problem of inducing unhappy husbands whose valuation of life outside their existing marriages was higher than their valuation of life inside them to stay in those marriages when wives' valuation of life inside those marriages was higher still. Wife sales helped unhappy wives exit *inefficient* marriages. But they could not help wives hold their *efficient* marriages together when their unhappy husbands wanted to exit instead.

Coasean logic suggests that wives in the latter situation would simply bribe their husbands to remain married to them. But the same legal difficulty that prevented many wives from bribing their husbands to let them exit when their marriages were inefficient prevented many wives from bribing their husbands to stay when their marriages were efficient. Until the second half of the nineteenth century, most wives had no property rights. Since many unhappy husbands were largely unconstrained in their ability to *de facto* divorce their wives, when pastures appeared greener to

them outside their existing marriages, they often left them. Wife sales benefited wives. But they did so only for one kind of marital problem wives confronted.

It is sensible to lament the marital and generic property rights, or rather lack thereof, that Industrial Revolution-era English law conferred on wives. But lamenting the institutional response to those rights embodied in wife sales does not follow. Given the constraints that Industrial Revolution-era English wives confronted, wife sales improved their welfare.

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