



OXFORD JOURNALS
OXFORD UNIVERSITY PRESS

Rings and Promises

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Source: *Journal of Law, Economics, & Organization*, Spring, 1990, Vol. 6, No. 1 (Spring, 1990), pp. 203-215

Published by: Oxford University Press

Stable URL: <https://www.jstor.org/stable/764797>

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Rings and Promises

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1. INTRODUCTION

My mother had an engagement ring, but neither of my grandmothers did, although both my grandfathers were wealthy enough to afford them. Before 1930, diamond rings were certainly available. The South African diamond mines were discovered in 1880, and they soon replaced the rapidly disappearing supply of diamonds from India and Brazil (McCarthy). In fact, the first reported diamond engagement ring was given by the Emperor Maximilian to Mary of Burgundy in 1377 (Kunz: 234–35). Diamonds were associated in this country with engagement beginning in the 1840s, although they were at first given to men as well as women (Rothman: 161).

However, before the Depression, diamond rings were not considered a requisite for betrothal by most Americans. (Kunz: 230; Rothman: 161). What then made women rather suddenly demand diamonds on the occasion of their engagement, so that by 1945 the “typical” bride wore “a brilliant diamond engagement ring and a wedding ring to match in design?” (McCarthy: frontispiece).

I wish to acknowledge the thoughtful contributions of many colleagues, especially including Barry Adler, William Bishop, Steven Crafton, and Steven Eagle of the law faculty, and Michael Alexeev, Robert Tollison, and Jenny Wahl of the economics departments of George Mason University and St. Olaf’s College. David Levy of George Mason gave invaluable help with the econometrics. Thanks is also owed to my research assistant, Laurie LaCorte, and three anonymous referees.

Journal of Law, Economics, and Organization vol. 6, no. 1 Spring 1990
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The diamond ring rapidly changed from a relatively obscure token of affection to what amounted to an American tradition. It is customary to explain such a shift in demand in terms of an increase in income, a change in relative prices, or a change in tastes. This assumes a stable legal setting—that contracts are enforceable. But if the enforceability of a contract is problematic, what formerly was a relatively costly (hence unused) form of private ordering may become more viable (Kronman: 5).¹ This paper looks at the change in America's demand for diamonds during the period 1930–1985, not as a Madison Avenue success story, but rather as a natural outgrowth of economic processes. The event beginning the movement toward diamond engagement rings was the abolition, with great fanfare, of a now relatively obscure cause of action called the “breach of promise to marry.”

2. THE BREACH OF PROMISE ACTION

The breach of promise action entitled a woman whose fiancé had broken off their engagement to sue him in *assumpsit* for damages, including the actual expenses she had incurred in reliance on the marriage. She might also recover for her embarrassment, humiliation, and loss of other marriage opportunities.²

Until fairly recently, a woman's marriage was necessary to secure her social position. An “old maid” would not only be scorned because she was not attractive enough to snag a husband, but also would be disadvantaged because in later life she would not be secure financially (*Wightman v. Coates*, 15 Mass. 2, 2–4 (1918); Glendon: 31–32; Craik: 166–67; Grossberg: 36). Marriage was, as one writer noted, the “one career open to her,” and once she had made her choice of husbands, the woman's “options were suddenly, irrevocably gone” (Rothman: 163; Brinig and Carbone: 872–74).

But there was more to the doctrine than this. Many, if not most, women

1. Other forms of property have been exchanged at engagement or marriage since antiquity. The dowry gift of land or livestock by the bride's father would be returned by the man if the marriage was not consummated, but it did not belong to the woman in any event. Since the man could presumably marry his second choice, obtaining a like dowry price, he would not be substantially damaged. She, however, might be precluded from marrying as well, and she might be precluded from marrying at all if she had lost her virginity (Jenks: 313). The transformation of agrarian forms of wealth to less tangible assets may be one reason why rings, as opposed to other gifts, became useful (Glenn, 1981). The breaking of a formal engagement, with return of property, was the type of “divorce” originally contemplated by Joseph in the Bible story when he was confronted by Mary's pregnancy (Matthew 1:19–20).

2. The early action for breach of promise to marry was within the jurisdiction of the English ecclesiastical courts, and in many cases the filing of the action resulted in specific performance of the marriage contract rather than an award of damages since the man was financially coerced into marriage to prevent the suit (Jenks: 303; Grossberg: 34). One of the reasons given in favor of abolishing the action was that these forced marriages ought not to be encouraged (*Fearon v. Treanor*, 272 N.Y. 268, 5 N.E.2d 815, 817 (1936); *Virginia Law Review*: 314; *Marquette Law Review*: 341).

who brought such actions had not only lost a husband, but also their virginity. Particularly during the period between the two world wars, a woman was expected to remain chaste until the time of her engagement (Kinsey, 1948a: 336, 1948b: 364; Gebhard and Johnson: 288). Once she was betrothed, however, sexual intimacy with her fiancé reportedly occurred nearly half the time (Kinsey, 1948a: 336; 1948b: 364). All this was well and good, but if the marriage never came about, she was irretrievably barred from offering an unblemished self to a new suitor³ and suffered a loss in “market value” (Feinsinger, 1935a: 983). While a man could pretend inexperience, a woman’s virginity or lack of it was a verifiable physical fact.⁴ Because of the importance of premarital chastity, damages in breach of promise actions where seduction (intercourse) had occurred were far more substantial than in cases where no sexual intimacy was alleged (*Paul v. Frazier*, 3 Mass. 71, 73 (1807); Grossberg: 46–47). The trials themselves frequently became public spectacles because of testimony regarding the woman’s previous chastity (or lack of the same).⁵ By the beginning of the Depression, the breach of promise suit came to be regarded as legally sanctioned blackmail, a threat to marriage and the family (Grossberg: 62–63).⁶

In 1935, a legislator from Indiana sponsored a bill abolishing the heart-balm actions in that state (Byrnes: 94; *Marquette University*). Almost immediately thereafter, similar statutes were passed in most of the other major urban jurisdictions,⁷ so that by 1945, sixteen states had eliminated breach of marriage promise.⁸ Today, there are only scattered reported breach of marriage promise decisions from those few jurisdictions where the action remains viable.

3. *Bennett v. Beam*, 42 Mich. 346, 351 (1880); *Scharringhaus v. Hazen*, 269 Ky. 425, 107 S.W.2d 329 (1937); *Berry v. Da Costa* [1966] L.R., 1 C.P. 331; Cousins: 372.

4. One author notes that “our courts seem to demand only that the plaintiff be *virgo intacta*. All is a question of the condition of the flesh. The mind may be poisoned with filth, and the character hardened by ugly habits; in short, the spiritual hymen may have suffered many a breach, but if the physical one is not intact, the defendant will have no better alternative than to marry her or pay damages” (Brockelbank: 8).

5. *Van Houten v. Morse*, 162 Mass. 414, 38 N.E. 705 (1894); *Barrett v. Vander-Meulen*, 264 Ky. 441, 94 S.W.2d 983 (1936); *Baylor Law Review*.

6. There are relatively few appellate breach of promise cases that have been reported at any time. This might be because the action has never had a great deal of use. It is more probable, however, that in most cases there was no interesting legal question involved that was worth the various costs of an appeal to the defendant, that the case was “settled” by marriage of the parties either before a trial or after a verdict for damages, or that the very fact that the action existed deterred men from breaking engagements. For a discussion of the deterrent effect of laws regarding morality, see Devlin.

7. In 1935, in addition to Indiana, breach of promise actions were abolished in Alabama, Illinois, New York, New Jersey, Michigan, and Pennsylvania.

8. These states, with the year of legislation, are North Dakota (1877), Illinois (1935), Indiana (1935), New Jersey (1935), Pennsylvania (1935), Alabama (1935), New York (1935), Michigan (1935), Colorado (1937), Massachusetts (1938), California (1939), Maine (1941), Wyoming (1941), New Hampshire (1941), Nevada (1943), and Florida (1945).

3. DEMAND FOR DIAMONDS

At the same time the cause of action for breach of promise was being reconsidered, the diamond industry had faced a period of lessened demand and increased supply. For a few years following 1932, diamonds were stockpiled in Europe to prevent a glut on the market (Epstein, 1982a: 85–87). By the mid-1930s, DeBeers, the diamond-importing institution, was holding stocks valued at four times its annual sales (Koskoff: 272). New sources of diamonds had been discovered, particularly in the Soviet Union, and the price of diamonds had been in decline for some years (Koskoff: 272).⁹

There was not only a greater supply but also a reduced demand, for sales during the twenty-year period prior to 1939 declined by nearly 100 percent (Epstein, 1982b: 122–23). National advertising was thought of as “vulgar” before the Great Depression (Koskoff: 272), but in 1939, four years after the first states abolished the breach of promise action, DeBeers formed an alliance with a prominent New York advertising agency, Ayers, and prepared to release a significant advertising campaign focused on the slogan that “a diamond is forever” (Koskoff).

The advertising agency from the start aimed at a national market. One of its more successful techniques was exploitation of the burgeoning film industry: Hollywood stars were given large and conspicuous diamonds to wear off stage, and special scenes involving the presentation of engagement rings were introduced into popular movies after intervention by Ayers (Epstein, 1982b: 123–32), a notable example of which is the Mae West–Cary Grant classic *She Done Him Wrong*.¹⁰

The industry enjoyed a phenomenal success during the period following 1935, and by 1965, 80 percent of all brides chose diamond engagement rings (Ward et al.: 144). DeBeers attributed the changing market to the Ayers advertising campaign (Epstein, 1982b: 125–63), but, in fact, the market for diamonds began its growth four years before national advertising when the breach of promise action was first abolished in a significant number of important states. (North Dakota had abrogated breach of marriage promise actions

9. The diamond industry, which is represented by one importer, DeBeers (Epstein, 1982a: 23), has completely controlled the quantity of diamonds brought into the United States since its organization in South Africa in 1888 (Epstein, 1982a: 23; 1982b: 81). DeBeers therefore could meter the supply of diamonds, setting price according to the downward-sloping demand curve characteristic of a monopoly.

10. The sentiments of the heroine in that movie are echoed in the trial court’s observations in *Goldstein v. Rosenthal*, 56 N.Y. Misc. 2d 311, 288 N.Y.S.2d 503 (1968): “When the burning blue white flames of romance died out, all that was left was the blue white diamond. The defendant does not wish to keep plaintiff’s hand, but she does wish to keep his ring on her finger. In the words of the popular song: ‘She took it off her finger, now it doesn’t mean a thing.’”

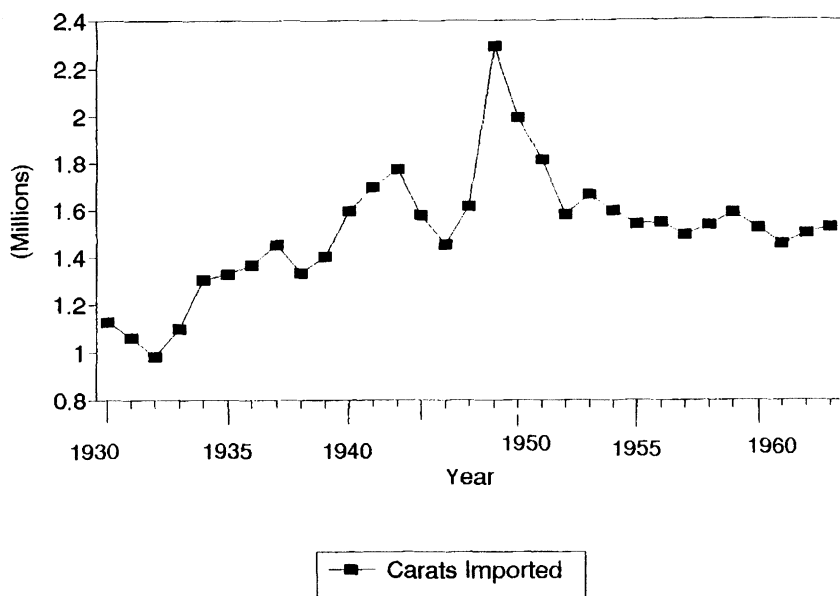


Figure 1. Diamond imports by year.

in the nineteenth century, but they were at least theoretically available in the other 47 states.¹¹)

The selection of states that abolished the action in the ten years following 1935 itself presents an interesting study. A glance at a map shows that they appear to have little in common: both urban and farm states, with an average per capita income approximating the norm for the period. What is interesting, however, is that the marriage rate in these states before abolition of the action greatly exceeded the contemporary national rate (67 percent of the United States marriages in 1935, with only 47.7 percent of the population). This suggests that the action for damages made people marry who otherwise would not. The scanty legislative history for the statutes abolishing breach of promise indicates that one motivation, and perhaps the primary one, may have been removal of a vestige of women's historic legal inferiority to men

11. In most of the discussion in the text, I have ignored the fact that North Dakota apparently has had a statute abolishing breach of promise since 1877. This may have been because it was one of the original "divorce mill" states, enjoying popularity for dissolution of marriage during the period 1871-99 (Jones: 25 (map), 33 (text)). As with Nevada, there may have been a corresponding rise in the marriage rate during that time. Unfortunately, the best statistical study (U.S. Bureau of the Census, 1968: Table 7, p. 28) does not contain any information about the Dakotas prior to 1890.

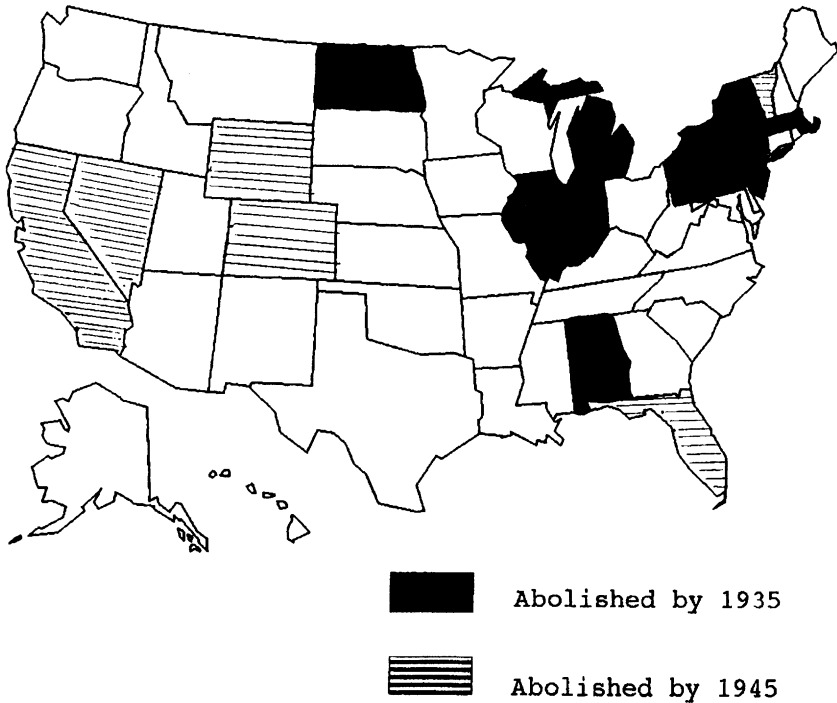


Figure 2. States abolishing breach of promise.

(Feinsinger, 1935a). States especially concerned with gender equality would therefore be expected to be the leaders in this reform, and some were involved at an early stage in the abolition movement. Other states abolishing breach of promise before 1945, including Nevada, Alabama, Florida, and Indiana, had always been important sources for migratory divorcees.

4. EXPLAINING THE CHANGE IN DEMAND

The change in demand for diamonds can be studied empirically by analyzing the various factors that might have led to an increased desire for diamonds and observing what turns out to be the most significant. The dramatic increase in demand could be the result of a dramatic decrease in price. Or DeBeers' national advertising campaign could have caused the surge in popularity of diamonds.¹² This has certainly been the position taken by the industry (Epstein, 1982b). The hypothesis of interest here, the bond or

12. This does not explain the changes before 1939, the year when the Ayers agency assumed the DeBeers account.

pledge hypothesis,¹³ is that the statutory changes abolishing the breach of promise action explain the increase in the demand for diamonds.

An alternative explanation is that Americans during and after the Depression began to prefer holding their portfolio in tangible assets that would be more secure than paper currency or bank deposits. In particular, it is possible that diamonds served an investment function during the uncertain financial climate of World War II. The thesis that investment patterns changed does not fit the more modern data, however, because the decline of interest in diamond engagement rings began before the relaxation in regulation of financial institutions that has led to Americans holding wealth in more liquid forms. In addition, advertising by the diamond industry should have tempered any trend toward the substantial use of diamonds for investment. One important component of the massive advertising campaign was designed to convince the public that diamonds could not be resold, and the DeBeers cartel has enforced this by threatening to cut off supply to dealers who bought diamonds back from purchasers (Epstein, 1982a: 25).

It is difficult, if not impossible, to get information about engagement ring sales fifty or more years ago, since even the large and well-known New York jewelers did not keep sales records by such categories at that time. A proxy for diamond sales in general, of which engagement rings were by all accounts the largest portion (Koskoff; Epstein, 1982b), can be found by examining the quantity of diamonds imported into the United States. However, even these figures become complicated by the emigration of most diamond cutters from Europe to the United States during the period 1938–40 (Historical Abstracts). Before this time, most diamonds used in engagement rings were cut in Europe and imported as cut diamonds. After this time, the cutting took place in New York, so that uncut diamonds of gem quality made up the majority of imports (Epstein, 1982b). My analysis therefore uses as a dependent variable a composite of figures reflecting cut gem quality diamonds before 1939 and uncut diamonds thereafter.¹⁴ Independent variables to test

13. The utility of a diamond ring as collateral depends upon whether it belongs to the nonbreaching party. Even in Roman law, this was true in the case of engagement rings (*Tulane University*: 501). “The ring is a pledge to bind the contract to marry and it is given on the understanding that the party who breaks the contract must return it” (*Jacobs v. Davis*, [1917] K. B. 532). This conditional gift rule has survived the abolition of the breach of contract to marry in most states. See, e.g., *Bohn v. Lowe*, 146 Mich. App. 325, 379 N. W.2d 485 (1985); *Friedman v. Geller*, 82 Misc. 2d 291, 368 N.Y.S.2d 980 (1975); *Urbanus v. Burns*, 300 Ill. App. 207, 20 N.E.2d 869 (1939); *Gikas v. Nicholis*, 71 A.2d 785 (N.H. 1950); *Paolicic v. Vogtsberger*, 390 Pa. 502, 136 A.2d 127 (1957); *Ruehling v. Hornung*, 98 Pa. Super. 535 (1939). Great Britain reaches a similar result by statute. Law Reform (Miscellaneous Provisions) Act 1970 (c.33) section 3(2).

Of course the reciprocal is true: a breach by the donor (man) would enable the donee (woman) to retain the ring. (*Sloine v. Levine*, 11 N.J. Misc. 899, 168 A. 849 (1933); *Notre Dame Lawyer*: 687).

14. The industry, which has kept detailed records of sales only for the last eight years and has been organized (through the Ayers agency) only since 1938, has no records by state, by

the hypotheses of interest are price (PRICE), advertising (ADSDUMMY),¹⁵ the percentage of population living in states abolishing the action (PERCENT), and investment during World War II (WARDUMMY).¹⁶ I also include as an explanatory variable the population of marriageable age (POP), as that surely will affect demand independent of the various hypotheses. Given the number of endogenous right-hand side variables in this demand equation, a system of equations—with dependent variables demand, price, and percentage of states with statutes abolishing breach of promise actions—was estimated by Three Stage Least Squares (3SLS).

The explanatory variables for the price chosen by DeBeers (PRICE) are the presence of the advertising campaign conducted by DeBeers (ADSDUMMY), per capita income (PCINC), and the stock of “used” diamonds (USEC).¹⁷ The explanatory variables for the third equation, explaining which states abolished the breach of promise action, are the marriage rate (MARRIAGE), per capita income (PCINC), and a time series function (YEAR).

A Box-Cox study (Judge et al.: 555) of these equations revealed that they were not linear. Logarithmic transformations were therefore done on the non-dummy variables, and a 3SLS regression was performed on the transformed equations. The regression results are summarized in Table 1.

The data show that four factors explain much of the increase in the number of diamonds demanded in the period 1935–1960. The most important explanatory variable is the abolition of the breach of promise action. The standardized β coefficient of the bonding hypothesis variable is the largest at 0.52, and it is statistically significant. The population of marriageable age was also significant, with the second largest β coefficient of 0.36. The World War

merchant, or even by type of jewelry for these earlier years. The most reliable data come from *Navigation and Trade*, a journal available in the U.S. Department of Commerce library, and the original source for the Statistical Abstracts. These figures at least separate diamonds suitable for jewelry from those useful only in industry. Not even these figures are available for 1939, 1943, 1945, and 1947.

15. A dummy variable was included to represent the presence or absence of advertising because expenditures for the DeBeers campaign are not available.

16. Because World War II might have made importation difficult or increased the desire to hold diamonds for investment purposes, a dummy variable for war/no war was put into the regression equation. Ruling out a more general investment hypothesis involves substantial data collection problems. One problem, again, is that the jewelry industry has no figures on jewelry sales during this period, and in any event, does not keep data for diamonds as opposed to other jewelry sold. Both gold and silver might have been used for secure investment as well as diamonds, but both are produced to some extent in the United States, so that import data do not account for the whole supply. Further, both precious metals are used industrially as well as for investment purposes. Government import figures separate gem-quality from industrial-type diamonds.

17. Since diamonds are a durable good, the stock of diamonds already sold should have an effect on price (Bulow). Although DeBeers' campaign was in part designed to convince the public that “diamonds were forever” and not to be resold, the stock of diamonds in the United States was also included as a variable.

Table 1. Regression Analysis (3SLS)

Variable	Coefficient	St. Error	T-Ratio	β
PRICE ^a				
ADSDUMMY	0.35772	0.11383	3.1425	0.53298
LOGPCINC	0.59504	0.12517	4.7538	1.2019
LOGUSEC	-0.19363	0.63622E-01	-3.0434	-0.85784
LOGCOMPOSIT ^b				
WARDUMMY	-0.87820	0.24987	-3.5146	-0.32495
ADSDUMMY	-0.19739	0.60364	-0.32699	-0.095013
LOGPERCENT	0.33977	0.11866	2.8635	0.51525
LOGPOP	2.4111	0.87293	2.7621	0.36042
LOGPRICE	0.86328	0.71901	1.2007	0.27891
LPERCENT ^c				
LOGMARR	4.3610	1.0878	4.0089	0.45748
LOGPCINC	0.076996	0.90321	-0.085247	-0.033133
LOG YEAR	218.43	103.23	2.1160	0.83156

Note: System $R^2 = 0.9797$; $\chi^2 - 116.91$ with 11 D.F.

^a $f(\text{ADSDUMMY}, \text{LOGPCINC}, \text{LOGUSEC})$

^b $f(\text{WARDUMMY}, \text{ADSDUMMY}, \text{LOGPERCENT}, \text{LOGPOP}, \text{LOGPRICE})$

^c $f(\text{LOGMARR}, \text{LOGPCINC}, \text{LOGYEAR})$

II dummy was almost as important as marriageable population ($\beta = 0.33$) and was also significant, although it is negatively related to diamond demand. This suggests that the hardships and absences of the war had a greater effect on demand than the desire to purchase diamonds as investment instruments. Although there is a fourth variable with a sizable β coefficient, price ($\beta = 0.28$), it is not statistically significant.¹⁸ These results support the hypothesis that abolition of the breach of promise action created a need for a bonding device, a need fulfilled by the diamond engagement ring.

5. MODERN DEMAND FOR DIAMOND ENGAGEMENT RINGS

Another way of testing the hypothesis that diamond engagement rings serve as pledges is to see what happened to the demand for rings when social mores changed so that sexual intimacy was no longer confined to marriage and engagement.¹⁹ Although from 1965 to 1980 real per capita income con-

18. The insignificance of the estimated coefficient shows that nothing can be assumed from the addition of price to the equation. To the extent that the positive sign means anything, it is suggestive of a series of positive supply points or the outward movement of the demand curve. As Table 1 indicates, the price of diamonds set by DeBeers was largely a function of its advertising campaign (raising the price), per capita income, showing that prices could be raised as people had more to spend on "luxury" goods, and the increasing stock of diamonds (negatively related).

The final endogenous variable, the abolition of the breach of promise action, was positively related to a state's high marriage rate and to the time trend variable.

19. This is not to say that there is no current relationship between permission for sexual

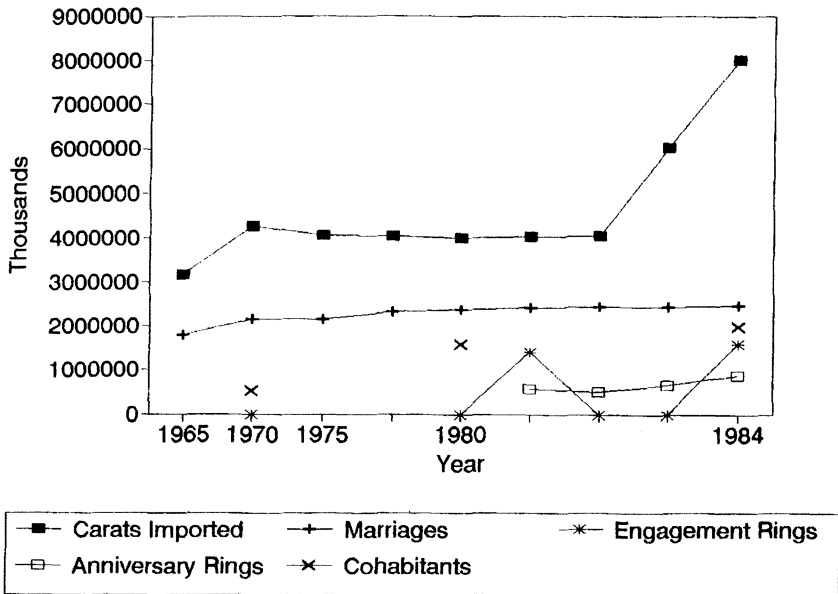


Figure 3. Modern trends.

tinued to increase, the demand for engagement rings leveled off and actually decreased for this more recent period, when cohabitation of nonmarried couples was no longer a curiosity (Koskoff: 273-74, 277).

There has been a recent decline in the number of marriages as more women enter the job market and more couples postpone marriage until education is complete and careers established (England and Farkas). However, since sexual activity by women is not so completely confined to marriage, the current need for a bonding device before consent to intercourse is greatly diminished. DeBeers has had to reach a new market: diamond ads of the late 1980s no longer show engagement rings, but rather diamond-studded wedding bands, anniversary rings, and other diamond jewelry. Ayers' statistics show that since 1980, and unlike the earlier period, engagement rings have never exceeded 20 percent of diamond jewelry sales (Ayers Research: 6-7).²⁰ Although diamond sales in general increased, the demand for

intercourse and the wearing of the engagement ring. Interestingly, Ayers, the public relations firm for the DeBeers organization, notes that the element of "surprise, even if it is feigned, plays the same role of accommodating dissonance in accepting a diamond gift as it does in prim sexual seductions: it permits the woman to pretend that she has not actively participated in the decision" (Epstein, 1982b: 138). A recent *Life* magazine ad for DeBeers is suggestively captioned "Want to Turn on the Heat?" (February, 1989).

20. Unfortunately, because no statistics were kept in the earlier period, one must rely on

engagement rings has changed, for the wearing of a diamond symbolic of engagement is no longer a prerequisite to premarital intimacy and because the cost to a woman of a broken engagement is no longer as significant.

6. CONCLUSION

Students of economics are told that demand curves shift outward because of changes in demographics or, less frequently, tastes. Becker and Stigler argued that, in fact, tastes are relatively constant: that any widespread human behavior can be explained by utility maximization (76). They illustrated their theory by discussing such "tastes" as those for addiction, custom and tradition, and advertising. Although they presented a sophisticated mathematical model, they did not attempt to test their hypotheses empirically. This is an empirical study that proves them as well as Kronman right: looking at one such change in tastes with a less than obvious economic explanation, I have found some evidence that engagement rings were part of an extralegal contract guarantee, so that the "ring is a pledge to bind the contract to marry and it is given on the understanding that the party who breaks the contract must return it" (*Jacobs v. Davis*, [1917] 2 K.B. 532).

The change in demand for diamond engagement rings may therefore be explained by an increase in need for such a bond because of the abolition of a cause of action for breach of marriage promise. My guess, having apparently found a reason for the change in demand for diamond engagement rings, is that many other mysterious demand changes could be accounted for as well, given some thought as to what the commodity might mean to consumers and some exploration of the legal or other changes of the time during which the demand change occurred.

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qualitative evidence that engagement rings constituted the bulk of the diamond trade. Certainly the secondary sources believe that this is so (Epstein, 1982b; Koskoff, 1981). Further, the massive advertising directed at the market for diamond engagement rings suggests their importance to the industry.

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