

## ABSTRACT

Charles Dickens's *Bleak House*: Benthamite Jurisprudence and the Law, or  
What the Law Is and What the Law Ought to Be

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Dickens's foggy world of the nineteenth-century Chancery Court is famous, and infamous, for keeping its litigants in a constant "state of conglomeration" of never ending legal confusion and costs (*Bleak House* 1873 I: 1: 15), and many readers remember Dickens's indictment of the Law: "The one great principle of the English law is, to make business for itself" (III: 39: 153). Not surprisingly, then, *Bleak House* was popular with its audiences, layperson and legalist alike, for the attack it made on the great social institution called Law, and, also not surprisingly, interest in *Bleak House* remains. I find in *Bleak House* several intriguing areas of the Law, three of which I specifically address in this dissertation because they still resonate: marital relationships, parent-child relationships, and legal advocacy and professionalism. In this study, I analyze *Bleak House* in the context of the then-existing Laws that governed marriage, parenthood, and the legal profession and analyze the novel and the Law in light of the legal philosophy of Jeremy Bentham. My study is similar to Anita L. Allen's analysis of *Jane Eyre* ("The Jurisprudence of *Jane Eyre*") in which she says, "Lawyers can contribute to the study of literature by illuminating the

legal philosophy, that is, the jurisprudence, in works of literary fiction” (180). I agree with Allen’s belief that “Scholars who extract and elaborate the jurisprudential dimension of literature have something important to add to scholarly efforts to understand works of fiction, their authors, and their authors’ intellectual milieus” (181-82). When considering Bentham’s philosophy, readers need to know and understand the Laws that operate in *Bleak House* in order to appreciate Dickens’s efforts to expose and censure the Law. The laws governing marriage, parenting, and the legal profession involve legal fictions that I argue Dickens rightfully uses to demonstrate his concern for a legal system that is tempered by Equity, unlike Bentham’s concern for a legal system that can do without separate Equity jurisdiction, which can more fully provide people with a sense of justice that dispenses with the wastefulness and wantonness of inequity.

Charles Dickens's *Bleak House*: Benthamite Jurisprudence and the Law, or  
What the Law Is and What the Law Ought to Be

by

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A Dissertation

Approved by the Department of English

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Let the ideal woman receive her due share of homage. She must, for she inevitably subdues all hearts; but let your “blue” daughter, your political wife, your artistic sister, and eccentric cousin, pursue their paths unmolested,—you will never make ideals of them; you will only make your home the scene of suppressed energies and useless powers. ~ Leigh-Smith (78)	
So great a favourite is the female sex of the laws of England. ~ Blackstone, <i>Facsimile</i> (I: 15: 433)	
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“I don’t care!” she said. “Now, you are my witness, Miss Summerson, I say I don’t care—but if he was to come to our house with his great shining lumpy forehead, night after night, till he was as old as Methuselah, I wouldn’t have anything to say to him. Such ASSES as he and Ma make of themselves!” “My dear!” I remonstrated, in allusion to the epithet, and the vigorous emphasis Miss Jellyby set upon it. “Your duty as a child”— “O! don’t talk of duty as a child, Miss Summerson; where’s Ma’s duty as a parent?” ~ Dickens, <i>Bleak House</i> 1873 (I: 5: 76)	
English law is jealous for the honour and reputation of the home and the family. [ . . . ] The law, therefore, ardently presumes in favour of marriage and against concubinage, according to the maxim omnia presumuntur pro matrimonio, particularly where the legitimacy of issue is at stake. ~ Hooper (141-42)	

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Almost everybody knows, and a man must be a secretary of state, or at least a cabinet minister, not to know—that in this profession, above all others, success depends upon accident, at least as much as aptitude:—that it has for its proximate cause a certain opinion in the heads of attorneys: and that, if external circumstances, altogether independent of inward endowments, do not concur in the generation of this opinion, a man may unite the rhetoric of a Murray with the logic of a Dunning, and, at the end of a long life, die, like Sergeant Kemble the reporter, without ever having clasped to his panting breast the blessing of a brief.

~ Bentham, *Benthamiana* (149)

A solicitor is a pettifogging sophister, one whom by the same figure that a North Country peddler is a merchant man, you may style a lawyer. [ . . . ] He calls himself Esquire of the Quill, but to see how he tugs at his pen, and belaboureth his half-amazed clyents with a cudgel of cramp words, it would make a dog break his halter.

~ "The Character of a Solicitor in 1675" (219)

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"Mr. Kenge, before I lay this paper on your desk and have done with it, let me tell you how it has come into my hands."  
He did so shortly and distinctly. "It could not, sir" said Mr. Kenge, "have been stated more plainly and to the purpose, if it had been a case at law."—"Did you ever know English law, or equity either, plain and to the purpose?" said my Guardian.—"O fie!" said Mr. Kenge.

~ Dickens, *Bleak House* 1873 (IV: 62: 256)

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For Jim, with love



## CHAPTER ONE

### Dickens's *Bleak House*: Benthamism, The Law, and The Novel

“Strange, indeed! all this wasteful wanton chess-playing is very strange.”

~ Dickens, *Bleak House* (1873 I: 5: 91)

Dickens's foggy world of the nineteenth-century Chancery Court is famous, and infamous, for keeping its litigants in a “state of conglomeration” of never ending legal confusion and costs by “mistily [engaging] in one of the ten thousand stages of an endless cause” (*Bleak House* 1873 I: 1: 15, 13). Many readers, whether they remember all of the novel's characters, remember Dickens's indictment of the Law: “The one great principle of the English law is, to make business for itself” (III: 39: 153). Not surprisingly, then, *Bleak House* was popular with its audiences, layperson and legalist alike, for the attack it made on the great social institution called Law because Dickens's contemporary audience knew of the Chancery abuses, whether firsthand or vicariously, and could appreciate the novel's engagement with the current social ills associated with legal abuses.

Interest in *Bleak House*, however, remains, and rightfully so, even though the Megalosaurus has presumably long since made its way up Holborn-hill; legal reformation, after all, has happened, has it not? Yet I find in *Bleak House* several intriguing areas of the Law, three of which I specifically address in this dissertation because they still resonate: marital relationships, parent-child relationships, and legal advocacy and professionalism. In this study, I follow in the footsteps of many critics of *Bleak House* who have analyzed these and other legal issues, but, in addition to engaging with critics, I analyze *Bleak House*

in the context of the then-existing Laws that governed marriage, parenthood, and the legal profession. In conjunction with my study of the interaction of the novel and the Law, I also analyze the novel and the Law in light of the legal philosophy of Jeremy Bentham. My study, thus, is similar to Anita L. Allen's analysis of *Jane Eyre* ("The Jurisprudence of *Jane Eyre*") in which she says that "[l]awyers can contribute to the study of literature by illuminating the legal philosophy, that is, the jurisprudence, in works of literary fiction" (180), which, for her, was a study of *Jane Eyre* and the jurisprudence of John Austin, a legalist in his own right as well as a Bentham disciple. My methodology differs from Allen's in that my "reading for the jurisprudence" (182) is a study of Bentham's philosophy, the literary text, and the applicable Law, which third element Allen does not deal with in detail. I agree, however, with Allen's belief that "[s]cholars who extract and elaborate the jurisprudential dimension of literature have something important to add to scholarly efforts to understand works of fiction, their authors, and their authors' intellectual milieus" (181-82). To her statement, I would add, when considering Bentham's philosophy, that readers need to know and understand the Laws that operate in *Bleak House* in order to appreciate Dickens's efforts to expose and censure the Law, which concerns the great cause of Jarndyce and Jarndyce.

In *Bleak House*, the "endless cause" (1873 I: 1: 13) in question is the will-construction case of Jarndyce and Jarndyce, a lawsuit that "has stretched forth its unwholesome hand to spoil and corrupt" (I: 1: 16) litigants, lawyers, and the Law for generations. The Jarndyce suit deals with the question of how to administer the trusts created under an ancient will with few remaining Jarndyces to care: "[ . . . ] there are not

three Jarndyces left upon the earth perhaps, since old Tom Jarndyce in despair blew his brains out in a coffee-house in Chancery-lane [ . . . ]” (I: 1: 16). Consequently, the outcome of the litigation directly affects John Jarndyce and his collateral relations, including Richard Carstone and Ada Clare, and indirectly affects Esther Summerson, who, though also a collateral Jarndyce relation, has no (and claims no) legal standing in the suit. The litigation, however, ends not with a bang but a whimper when Grandfather Smallweed discovers a subsequently executed will that clarifies the original Jarndyce’s testamentary intent. Unfortunately, for the litigants, by the time Conversation Kenge prepares to introduce the final will in Court, the litigation has consumed all of the assets of the estate in court costs and legal expenses, and the will is never offered into evidence.

Interestingly, the fictional Jarndyce and Jarndyce suit was not out of the realm of probabilities. Jarndyce and Jarndyce had its own real-life counterpart in the case reported by W. Challinor in his *The Court of Chancery; Its Inherent Defects, As Exhibited in Its System of Procedure and of Fees; with Suggestions for a Remedy* (1849). Challinor’s essay outlines the abuse that his client had been and was continuing to suffer because of the legal system’s inability to resolve litigation that, like the Jarndyce case, had wrapped its “unwholesome hand” (*Bleak House* 1873 I: 1: 16) around his client. Another legal practitioner clamoring for reform included Charles Purton Cooper who, in *A Brief Account of Some of the Most Important Proceedings in Parliament: Relative to the Defects in the Administration of Justice in the Court of Chancery* (1828), joined the legal reformation debate saying that his intention is to set down the Parliament’s attempts to address “[ . . . ] the evils so long felt in the administration of justice in the Court of Chancery” (iii-iv), and in addition, “I have been

induced also to subjoin a sketch of my own notions of the reform which ought to be introduced into those important parts of judicial establishments” (iv).

Perhaps more famously, Jeremy Bentham is one of the earliest critics of the legal system that was then being defended by William Blackstone in his own *Commentaries*, and Bentham’s *Fragment on the Government* is the seminal text that many early reformers and those following in the tradition point to as the touchstone for meaningful legal reformation. In addition to legalists such as Challinor and Cooper and legal philosophers such as Bentham, legal reformists included individuals such as Caroline Norton who sought greater legal rights for mothers. Also, James Mill, a Bentham disciple, sought a meaningful jurisprudence that protected rights by a close analysis of government: “At present our sole endeavour is to ascertain the most effectual means which the governing power of the state can employ for protecting the rights, whatever they are, which it has seen meet to create” (*Essays*, “Jurisprudence” 2: 6). In such a reform-minded climate, with *Bleak House*, Dickens, thus, enters the ongoing debate that these legal philosophers, legal practitioners, aggrieved citizens, and political thinkers were already engaged in regarding the Law and the legal system, especially as the shortcomings of both adversely affected personal fortunes and personal relationships.

At the core of many of the suggestions and criticisms both inside and outside of the legal system, and as especially revealed in *Bleak House*, are Bentham and his critique of the legal and political systems. In his *Theory of Legislation*, Bentham essentially argues that legal reform begins with meaningful legislation predicated on his own theory of utilitarianism. Benthamism itself, however, did not remain unchanged. Austin developed

his own interpretation of Bentham's legal theory, and Dickens had his own unique exposure to Benthamism through his association with such persons as W.J. Fox, editor of the London's *True Sun*. Fox was a "[ . . . ] Benthamite utilitarian whose faith in the necessity for social progress was matched only by his belief in the need for 'general intellectual emancipation'" (Ackroyd 136). Dickens knew of Parliament's political failings through his service as a reporter for the *Mirror of Parliament* (132), which experience resurfaces in his "A Parliamentary Sketch" (133). Dickens was exposed to Bentham's utilitarianism, as were other reform-minded individuals who also saw the need for political, legal, and social change, and "[ . . . ] in any case the nexus of Unitarianism, Benthamite utilitarianism and social reform was one in which Dickens himself largely moved" (394).

The task that Dickens sets for himself in *Bleak House*, however, did not include direct Parliamentary intervention, which would have been more Benthamite than Dickensian. Storytelling was Dickens's forte, and his storytelling was particularly persuasive. Dickens creates a believable world of characters whose lives offer readers insights into various relationships from which readers can readily agree to Dickens's call for reform. Jo's death-bed prayer may be sentimental, but we, after learning of the hardships of his life, can still feel the Sentimental Radical's passion. The larger stories, for there are two and not simply one, are the story of the Jarndyce and Jarndyce lawsuit and the story of the discovery of Lady Dedlock's secret. The story of the lawsuit and the story of Lady Dedlock involve plots of constant confusion and a "state of conglomeration" (*Bleak House* 1873 I: 1: 15) that also involve many of the same characters. Lady Dedlock,

as a young woman and before her marriage to Sir Leicester, had an affair with Captain Hawdon, by whom she had a child out of wedlock. Having told Lady Dedlock that the child died at birth, Lady Dedlock's sister, Miss Barbary, takes the child and disappears. Lady Dedlock only learns of the child's existence twenty years later by which time others have also begun to piece together her life's story. Principally, Mr. Tulkinghorn, Sir Leicester's solicitor, comes to know the story with sufficient detail to pressure Lady Dedlock regarding her marital security and social standing. Prior to revealing her secret, Mr. Tulkinghorn, who also represents Lady Dedlock's interests in the Jarndyce lawsuit, is murdered, and the mystery of his murderer leads to Lady Dedlock's own death. Believing that she will be falsely accused of Mr. Tulkinghorn's murder, she flees her home, fleeing a truth—that she is the mother of Esther Summerson; fleeing a half-truth—that her past did grievously affect but did not destroy Sir Leicester; and fleeing an untruth—that she is Mr. Tulkinghorn's murderer. The story of Lady Dedlock culminates with Esther finding Lady Dedlock's corpse at the gate of the graveyard where Captain Hawdon is buried; by the end of the novel, the story of the lawsuit concludes when Esther and Woodcourt find everyone spilling out of the courthouse and laughing over the demise of the lawsuit.

The *Bleak House* story, consisting of multiple narratives (the deaths, the marriages, and the births) as well as narrators, is as surrounded by and permeated with the Law (and lawyers) as the Chancery Court is with the London fog: "And hard by Temple Bar, in Lincoln's Inn Hall, at the very heart of the fog, sits the Lord High Chancellor in his High Court of Chancery" (1873 I: 1: 12). From the Lord High Chancellor's seat of authority, the Law touches the Jarndyce litigants and the residents of Bleak House, Chesney Wold,

and Tom-All-Along's, perhaps some more than others, but the intrusion is only a matter of degree. The Law and legal fictions taken to task by Dickens's *Bleak House* and studied here are Bentham's legal theory writ large; Dickens exposed the danger of legal fictions and showed how the Law institution was a far cry from the Law ideal. Any concerted effort to effect large-scale reformation is quite an undertaking, but Dickens had an advantage in that, as a respected and popular author, he was a Benthamite legal reformist in the sense that he was the Sentimental Radical capable of urging the need for Equity, a term that Bentham, however, despised almost as much as he despised legal fictions. Bentham found both Equity and legal fictions counterproductive to any meaningful legal reform; by censuring legal fictions, Dickens encouraged Equity. Through such novels as *Bleak House*, Dickens often received credit for spearheading some of the legal reform that occurred during the early nineteenth century, but he was following in the Benthamite tradition of exposing an evil with the intention of eliminating it. For Bentham, the evil is legal fictions, which legal evils are dealt with masterfully by Dickens in *Bleak House*, firstly by exposing them and secondly by censuring them.

Legal fictions, contrary to Bentham's ardent hope for their elimination, still exist, and the most obvious for a contemporary audience are corporations, legal beings that exist because the Law says they do. In 1765, Blackstone called them "artificial persons, who maintain a perpetual succession, and enjoy a kind of legal immortality" (*Facsimile I*: 18: 455).<sup>1</sup> Contemporary audiences are aware of the many other artificial persons that daily transact business; the business world has limited liability partnerships, limited liability companies, and professional corporations, which business entities pay taxes, sue and are

sued, and otherwise contract to perform a myriad of business activities. A sense of the artificial or the fictional arises, likewise, when the Law presumes that a donee accepts the delivery of a gift, that a defendant's general denial extends to the original and any subsequent pleadings of a plaintiff, and that affidavits, unless controverted, speak the truth. Other, perhaps less obvious, legal fictions persist, such as guardianships wherein a guardian stands *in locos parentis*, while others, such as those associated with bastardy, have become, at least legally, obsolete. Contemporary British law and American law, for example, hold that children born within or outside of marriage are legal facts, that is, legal persons, and not legal fictions to be known as legal bastards.

This sense of legal fiction is the sense of the term that I use. Although Lenora Ledwon uses "juridical gaze" in her dissertation chapter analyzing George Eliot's *Felix Holt*, a "juridical gaze" is not, strictly speaking, a legal fiction. "Juridical gaze" does refer to a fiction about the Law, but a contemporary definition of "legal fiction" is that it is an "Assumption of fact made by court as [the] basis for deciding a legal question" (Black 894). A legal fiction is "contrived by law to permit a court to dispose of a matter" (894). This definition, however, is not precisely the legal meaning given to "legal fiction" at the time Dickens wrote *Bleak House*. In his *A Treatise on Presumptions of Law and Fact* (1845), W.M. Best distinguished between irrebuttable presumptions of law, rebuttable presumptions of law, presumptions of fact, and mixed presumptions of law and fact. According to Best's discussion of an irrebuttable presumption of law:

By an arbitrary rule, to preclude a party from adducing evidence which, if received, would compel a decision in his favour, is an act which can only be justified by the clearest expediency and soundest policy; and it must be confessed that there are several presumptions retained in this class which



never ought to have found their way into it, and which, it is to be feared, often operate seriously to the defeat of justice. (35)

Further, “[l]egal fictions are closely allied to irrebuttable presumptions of law” in that “[t]he essential distinction between [legal fictions] and [irrebuttable presumptions of law] consists in this; that the latter are arbitrary inferences, which may or may not be true, whilst in the case of fictions, the falsehood of the fact assumed is understood and avowed” (36). Rebuttable presumptions of law “only hold good until disproved” (39).

Presumptions of fact are those presumptions that “are founded on the customs and habits of society; as, for instance, that a man, to whom several sums of money are owing by another, will take in the debts of longest standing first [ . . . ]” (41).<sup>2</sup> As Best notes, “[u]nfortunately, however, the line of demarcation between these different sorts of presumptions,” which would by his own definition include legal fictions, “has not always been observed with the requisite precision” (46). Not surprisingly, then, the Law also has mixed presumptions, which are those inferences that

[ . . . ] attract, as it were, the observation of the law, and from being constantly recommended by judges, and acted on by juries, become in time as familiar to the courts, and occupy nearly as important a place in the administration of justice, as the presumptions of the law itself. (47)

Victorian Law conferred status—married women’s coverture, illegitimate children’s bastardy, and attorneys’ position as officers of court—that are legal fictions. In the context of Best’s definitions, coverture falsely assumes that a woman united in marriage is “one person in law” (Blackstone, *Facsimile I*: 15: 430), and that “one” is the husband. Bastardy falsely assumes that a child can have no father. Attorneys assume the privileges of their office, but their privileges of status obstruct meaningful oversight of intentional

misconduct in that they are presumed to honor the oath of office. Each legal fiction for Bentham, whether ultimately irrebuttable or rebuttable, is just a “wicked lie” (*Rationale IV*: 8: 18: 300). For Dickens, each legal fiction is simply “every difficulty, every contingency, every masterly fiction, every form of procedure known in that court [ . . . ]” (*Bleak House* 1873 I: 3: 38) designed to widen the gap between what the Law is and what the Law ought to be.

Yet few authors have dealt directly with legal fictions, especially regarding Dickens’s work, and, as Anthony Julius says, “[ . . . ] perhaps only a lawyer can take *Bleak House*’s assault [on the Law] seriously [ . . . ]” (46). But taking Dickens’s assault on the Law seriously and “gauging [the Law’s] strength and provenance” (47) as I do, I seek the connections between the letter of the law and the spirit of the law, between the Law as an institution that is not itself divorced from Equity. One author who has dealt with specific legal fictions in Dickens’s work is Marjorie Stone. In her essay, she uses “legal fiction” in the jurisprudential sense of the term and points out that

[ . . . ] the many allusions to legal fictions in his works from the time of *Pickwick* to the time of *Little Dorrit* remind us that, like many of his contemporaries, he was an enthusiastic and consistent supporter of Benthamism in the field where Bentham scored his greatest triumphs: the field of the law. (126)

She argues that Jeremy Bentham, who believed that legal fictions “are designed to serve the sinister interests of lawyers, judges, and all those who profit from legal procedures, rather than the happiness of the ‘greatest number,’” influenced Dickens’s perception of the effects of legal fictions (130). For Bentham, legal fictions essentially serve three purposes: they allow judges to change the law “covertly”; legal fictions unnecessarily

complicate legal proceedings in order to create a profit for everyone but the client; and legal fictions keep laypeople uninformed about “incomprehensible nonsense” (130-31).

Reformists, such as Jeremy Bentham, had been calling for the abolition of legal fictions, and others had been making slow progress toward judicial reform for many years before *Bleak House*. Interestingly, and perhaps not surprisingly, some *Bleak House* critics dunned Dickens, arguing that the novel argues for judicial reform even after large-scale changes in the system had occurred. As early as 1852, *Bleak House*'s reformist messages were attacked by Lord Denman who said that “[ . . . ] now the reformers appear to have gained their end, and we have great reason to believe that the last head of the infernal hydra is severed from the body; and now first Mr. Dickens takes an active part in promoting Chancery reform” (8). The Chancery system, of course, was not then perfected; for example, the judicature act that reformed the system to unite legal and equitable jurisdiction did not occur until 1873. Legal reform was still necessary, resting as it did on legal fictions that perpetuated distortions in marital, parental, and professional relationships (and undoubtedly others) and called into question the integrity of the laws that govern these relationships. The *Bleak House* lawyer Conversation Kenge proudly states that the Law deals with “every masterly fiction” (1873 I: 3: 38); however, according to Jeremy Bentham, understanding—and eliminating—legal fictions leads to true legal reform.

To this end—true legal reform—Dickens adapted Benthamism to his own sensibilities in that, according to Kieran Dolin,

[ . . . ] Benthamite radicals were strong in their systematic analysis of social institutions, but lacked a means of recognizing inequality and basic

injustices, while the “sentimental radicals” like Dickens, possessed an awareness and a vocabulary for injustice, but were not systematic or intellectually coherent in their critiques of social institutions. (76)<sup>3</sup>

For Dickens, then, a separate Equity system is always necessary. In contrast, according to Bentham, if the legal system is competently constructed, a separate Equity system should no longer be necessary: “For Bentham the notion of a supplementary equity jurisdiction was irrational, a sign of the absence of a scientific system of legal rules” (79). Referring specifically to his writings, Bentham says,

Equity? what means it? A bettermost, yes, and *that* the very best, sort of justice. But, justice being, the whole together, so good a thing, what must not this very best sort be? Be it what it may, that which, on each occasion, is done by the judge of an equity court, is it not equity? When then, by the charm attached to this fascinating word, to whatsoever he does, not only compliance and acquiescence, but admiration and laud, in the accustomed and requisite quantity, are secured. (*Works* V: 484)

Dickens was, therefore, a radical in the Bentham tradition in that he was a “radical by instinct rather than by ideology” (Ackroyd 137), and, if true, *Bleak House* provides him a platform for advancing legal reformation without abandoning his belief that a sense of Equity was necessary to a fully functioning legal system.

As already noted, the judicial system of Dickens’s day was not yet fully reformed and still susceptible to attack from reformists who desired to make the Law what it ought to be. In *Bleak House*, Dickens’s message regarding true legal reform, in the Bentham tradition coupled with his own sense of Equity, was overshadowed, to no small degree, by Dickens’s other reformist messages concerning poverty, sanitation, religion, and class distinctions, all of which are significant in their own right. These issues come to the fore in the bulk of the criticism on *Bleak House* because they rightfully illustrate the diversity of

human activities and concerns. Of course, in the twenty-first century, none of them has become of any less importance; however, and inescapably, *Bleak House* is still a novel that deals primarily with the English judicial system—and all that that entails—and its impact on the novel’s characters.

And the Law was an appropriate nineteenth-century topic for novelists. It was fascinating for scholar, professional, and layperson alike because of the legal system’s inability (or unwillingness) to provide litigants, if not justice, at least timely resolutions to legal matters. In general, the public’s feeling was that justice delayed is very much justice denied, and a great deal of the denying seemed to have been coming from the Chancery Court. In *Dickens at Work*, John Butt and Kathleen Tillotson say that “[w]hat had directed Dickens’s attention to the Court of Chancery in 1851 was the interest which everyone was taking in chancery that year” (183). In conjunction with the public’s dissatisfaction with the court was the public’s dislike and distrust of those who practiced in the Chancery—the lawyers: “We believe that the time is rapidly approaching when the public necessities and the public will must triumph over the *inertia* of an antiquated jurisprudence and the obstacles raised by personal or professional interest [ . . . ]” (183). These obstacles were the result of Chancery lawyers “[s]hirking and sharking” (*Bleak House* 1873 I: 1: 17). This sentiment resonates today with those outside of the profession: “The public constantly places the profession at the bottom of the popularity barrel, regularly refers to [lawyers] as sharks or in other terms connoting greed and dishonesty, distrusts the legal system, and rarely finds its heroes among the true members of the bar” (Durst 313). It resonates also

with those within the profession, as an American attorney notes in a 2006 American Bar Association article:

We have forgotten that the law is built on justice and the reverse. Here's an example. Last Sunday, I had a dispute with two excellent lawyers on the radio about a soldier who was returning to Iraq for his third term of duty. I claimed that it was unjust and that the rest of the country was shirking its constitutional duty to contribute to the war effort by not instituting some sort of draft. The two attorneys argued that it was the duty of that soldier to return to Iraq for his third term because that is what he signed up for. Perfect legal answer but one that did not address the moral question of justice: what is legal is not always right, and the inability to see this is exactly what is wrong with our legal system today and the reason lawyers are held in such low esteem. (Riga 1039)

Not surprisingly, then, the Law—and lawyers—fascinate and frustrate contemporary scholars, professionals, and laypersons often for the same reasons, sharing as they do the Victorians' interest in *Bleak House's* treatment of the Law.

The Law is, after all, a social institution that appears, often unbidden, in everyone's life at one time or another: “[ . . . ] law touches at some point every conceivable human interest, and that its study is, perhaps above all others, precisely the one which leads straight to the humanities” (Huffcut 54). People get parking tickets. If best-seller lists are to be believed, readers still buy books about lawyers and their clients. Home-rental agents require future residents to sign legally binding contracts. People are often on the fringes of the legal system and acquire their knowledge from a relatively safe distance bearing in mind, as Jeremy Bentham says, that “[i]t is to every man's interest to keep out of lawyers' hands as much as possible; it is to the lawyer's interest to get him in as often, and keep him in as long as possible” (*Political Fallacies* 35), which is a sentiment that is echoed in *Bleak House* when the omniscient narrator warns everyone to “[s]uffer any wrong that

can be done you, rather than come here!” (*Bleak House* 1873 I: 1: 14). The same is true for Dickens’s nineteenth-century audience who enjoyed an opportunity to step inside the legal—the foggy—world of the Law without exhausting their own “finances, patience, courage, [and] hope” (I: 1: 14).

Yet the foggy world of the Chancery Court was not entirely a fictional world. *Bleak House*’s “the man from Shropshire” (*Bleak House* 1873 I: 1: 18) is barrister W. Challinor’s real-life “respectable Farmer in Staffordshire” (5). Nor was the “pleasantly irregular” world of *Bleak House* entirely a literary fiction. *Bleak House*’s Richard Carstone is representative of the real-life failed litigants of the Jennens’ inheritance lawsuit, which alleged heirs, collectively, litigated the issue of their inheritance for approximately 130 years (Polden 2: 364), beginning in 1800. Nor was the damp world of Chesney Wold a complete fabrication. *Bleak House*’s Sir Leicester is a fictional representative of William Blackstone, whom Bentham accused of ancestor-worshipping and who believed the English legal system to be an “admirable system of laws” “built upon the soundest foundations, and approved by the experience of ages” (*Facsimile* I: Intro.: 1: 5). Sir Leicester has his legal counterpart in Conversation Kenge who is also a great admirer of the legal system. Thus, in conjunction with the novel’s literary discourse about the fictional characters’ marrying, parenting, and practicing law, a reality-based legal discourse is also at play that undeniably includes various legal fictions.

The following chapters of my dissertation recount and reconsider Dickens’s effort to engage in the legal reform movement with his attempts to draw the Victorian public’s attention to the misperception of the Law as an idealized Justice-giver. He finds the Law’s

perverted sense of justice in the social institutions of marriage, parenting, and lawyer-client relationships. A great deal of *Bleak House* concerns female-male relationships, and, in the context of legal expectations, *Bleak House* delves deeply into these legal issues as they pertain to certain female characters' relationships with the men in their lives. One such issue concerns the legal condition known as coverture. Mademoiselle Hortense is never covered legally by marriage, and Esther Summerson only becomes so at the end of the novel. In contrast, Lady Dedlock and many of the minor female characters are covered legally in that their existence is governed and defined by their relationships to their husbands or "masters" as the brickmakers' wives call them. Within the fictional world of the novel, the married women are further fictionalized because they are subsumed into the legal beings known as their husbands. The married women are the legal fiction within the literary fiction.

Within the fictionalized worlds of *Bleak House*, *Chesney Wold*, and *Tom-All-Alone's*, the legal fiction of coverture—the condition of being legally “covered” by another—specifically refers to a legal fiction or presumption that:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and *cover*, she performs every thing; and is therefore called in our law-french a *feme-covert*; is said to be *covert-baron*, or under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture*. (Blackstone, *Facsimile I*: 15: 430)

Thus, upon marriage and by Law, a woman's very identity as a person, separate and apart from her husband, is erased. Of significance is the fact that coverture and its associated powers know no social barrier: “The clodhopper exercises, or is to exercise, his share of



the power equally with the highest nobleman” (John Stuart Mill, *Subjection of Women* 225). The letter of the law offers raw power to men, of whatever social standing, even though the spirit of the law ostensibly offers wives the protection of their husbands’ sheltering wings.

In *Bleak House*, Dickens subverts the legal fiction of coverture and occasionally with humor. The Jellybys, for example, are the reverse-image of that legal fiction which says, according to William Blackstone, that “[b]y marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband [ . . . ]” (*Facsimile* I: 15: 430). In the case of the Jellybys, the husband is Mrs.—not Mr.—Jellyby: “[Mr. Jellyby] may be a very superior man; but he is, so to speak, merged—Merged—in the more shining qualities of his wife” (*Bleak House* 1873 I: 4: 58). In contrast, however, Lady Dedlock and the brickmakers’ wives, on opposite ends of the social spectrum, are the very seriously and very legally covered women. To Lady Dedlock, her relationship to her husband is one that entails a commitment to the family name as well as to the man: “Do you know the relief that my disappearance will be? Have you forgotten the stain and blot upon this place, and where it is, and who it is?” (III: 41: 196). To Liz, one of the brickmakers’ wives, her relationship to her husband is strictly one of master-servant or even master-slave: “I’m a-watching for my master. My heart’s in my mouth. If he was to catch me away from home, he’d pretty near murder me.’ ‘Do you mean your husband?’ said [Esther]. ‘Yes, miss, my master’” (I: 8: 164). The comparisons and contrasts between these women, specifically the anguished Lady Dedlock and the downtrodden Liz, offer

insights into Dickens's reformation purpose: to censure the Law for stripping women of their right to a legal voice to protest against inequality.

As close and as personal as a husband and wife's relationship may be, not surprisingly, Dickens expends a great deal of his *Bleak House* energy on the Law's abuse of children. After all, as Blackstone says, "[t]he next, and the most universal relation in nature, is immediately derived from the preceding, being that between parent and child" (*Facsimile I: 16: 434*), so *Bleak House* is peopled by bastards, orphans, and wards, and a large number of them there are. Miss Flite, Ada Clare, and Richard Carstone are wards in the Chancery Court. Phil Squod, Jo, Guster, and the Neckett children are orphans and without guardians; whereas, Bart and Judy Smallweed are orphans who have a guardian, albeit a guardian who is their rather deranged grandfather whose obsession with money borders on the insane. The only person specifically identified as a bastard is Esther Summerson. By the end of the novel, she is truly an orphan, but her bastard status defines a large part of her character.

Collectively, each of these characters—bastards, orphans, and wards—represents the types of parentless persons whom one would expect to live a hard-tack existence in Victorian England. Jo, orphaned, uneducated, and constantly on the edge of starvation, sweeps streets. He lives his life trying to please others but often just has to "move on" because no one wants him. The only "no man," Nemo, who cares for him dies, leaving Jo again to the mercy of others. Jo wants to harm no one and is devastated when he thinks that he caused Esther's deformity by transmitting a communicable disease, probably smallpox, to her. Guster, brought up in an orphanage and subject to epileptic seizures,

keeps house for the Snagsbys. She too is consumed with pleasing her “betters,” but she sympathizes with Jo because of his pitiable state and his loneliness. During his brutally hard life, Phil Squod, physically deformed, takes jobs how and where he can with whomever he can. He, however, is not emotionally deformed. He knows the difference between the spiritually bereft Mr. Tulkinghorn and Grandfather Smallweed and the spiritual worthiness of George, Jo, Woodcourt, and Esther. Jo cannot help being a victim of and a carrier for disease. Guster cannot help being a victim of the physical consequences of her disorder and the social prejudices that it engenders. Phil, like Jo, is off-putting because of his physical appearance. Jo, Guster, and Phil have blighted bodies but pure souls.

The other orphans, the Neckett children, learn (or will learn) a trade early in life in order to support themselves. They will follow in the footsteps of the orphaned Jo, Guster, and Phil insofar as having to become self-sufficient within their legal minority, although they will have the advantage of John Jarndyce assuming some responsibility for providing them with opportunities for succeeding in life. Charley Neckett is a young maid to Esther, but she displays her courage by serving Esther during her grievous illness and displays her compassion by taking pity on Jo. Charley, her brother, and baby sister are not encumbered by disease or deformity of body or spirit. In contrast to them, however, *Bleak House* gives readers the aptly named Smallweeds.

The Smallweeds, Bart and Judy, learn a trade, albeit a dubious one, from their grandfather who teaches them to be members of the “discounting profession,” worshippers before the “old pagan’s God [ . . . ] Compound Interest” (*Bleak House* 1873 II:

21: 105). Bart and Judy are interesting in that they are not necessarily completely unattractive. They do not suffer the physical deformities of Jo, Guster, and Phil, but they are definitely not the cherubic children that the Necketts are. They just are unloved, emotionally stunted children whose status as orphans is essentially irrelevant: being an orphan implies someone is still a child, albeit a parentless one. Bart and Judy seem to have never been children: “Little old men and women there have been, but no child [ . . . ]. Judy never owned a doll, never heard of Cinderella, never played at any game. [ . . . ] And her twin-brother couldn’t wind up a top for his life” (II: 21: 104, 108). The Smallweeds, like the Neckett children, do not have a legally appointed guardian such as Miss Flite, Ada Clare, and Richard Carstone, who are wards of the Chancery Court, which court serves (or served, in the case of Miss Flite) as a surrogate parent for them by governing who oversees the maintenance of their person and property.

But, tellingly, these characters—Jo, Guster, Phil Squod, the Neckett children, the Smallweeds, Miss Flite, Ada Clare, and Richard Carstone—are absolutely deprived of their biological parents within their minority. The same is not true of Esther. Esther Summerson is unique in *Bleak House*. She first believes herself to be an orphan, but she is not. She is physically attractive, intelligent, and caring although Miss Barbary, known first to Esther as her godmother and then as her aunt, contrived for years to make Esther feel worthless and sinful and the source of the blighted happiness of others. Some readers may view Esther’s marriage and motherhood as confirmation that she overcame the stigma of being a bastard. I believe that Dickens, however, leaves open the question of how, if someone is a legal nobody—a bastard—she can ever become a legal somebody when, in

Esther's case, her non-person bastardy status by birth is exchanged for her non-person coverture status by marriage.

Everything that defines marital relationships and parent-child relationships is a product of the Law, yet the Law is not a “thing” that operates by some sort of self-motion device. People make the Law, and people make the Law work. As to who these Law workers are, Dickens provides much to examine regarding legal professional responsibility and legal advocacy, and *Bleak House* provides many legalists to consider. Some are formally admitted to the practice such as Conversation Kenge or are first apprenticed to legal practitioners and later certified such as William Guppy. Admittedly, the novel does not seem like a clarion call for the reform of the legal profession *per se*. The reformist focus seems to be on the legal system's dilatory procedural and substantive rules, particularly of the Chancery Court, where, as H. Gerald Chapin says, the novel “[ . . . ] contains in almost every chapter some reference to that august tribunal, and constitutes one of the most terrific indictments of abuses to be found in the English language” (397).

The Chancery Court's dilatoriness, “august tribunal” though it may be, is readily apparent in the Court's treatment of the unnamed “sallow prisoner.” The “sallow prisoner” is being held in contempt indefinitely because of his inability to explain accounts over which “[ . . . ] it is not pretended that he had ever any knowledge [ . . . ] (*Bleak House* 1873 I: 1: 15), and, further, “[ . . . ] he is not at all likely ever to do” (15). Consequently, as a contemnor who has never had an explanation that would satisfy the court (and is not likely to ever acquire the necessary information to do so), the “sallow prisoner” will never be able to purge himself of contempt. The substantive rule against

contempt works to place the “sallow prisoner” in jail; the procedural rule serves to keep him there. This situation typifies judicial abuses that deserve to be reformed; however, the individuals within that judicial system are also what make the Law work (or not). Chapin suggests that “[ . . . ] an entire article could be written of the courts of Dickens as distinguished from his lawyers” (398). Even *Bleak House*’s Gridley, a victim of the Chancery Court system by virtue of an unresolved legal claim and by virtue of also being found guilty of contempt of court for his outbursts, knows the injustice of the lawyers operating (and hiding) within the system: “The system! I am told, on all hands, it’s the system. I mustn’t look to individuals. It’s the system” (*Bleak House* 1873 I: 15: 309). In this dissertation, I take up Gridley’s challenge to look at the individuals who are making the system operate for personal gain or glory, or as Gridley says, “I will accuse the individual workers of that system [ . . . ]” (310).

A famous worker of the legal system in *Bleak House* is Mr. Tulkinghorn. As Maureen Markey notes, critics, such as Q.D. Leavis, Richard Weisberg, and A.E. Dyson, have vilified Mr. Tulkinghorn, the Dedlocks’ solicitor, and his treatment of others, particularly of Lady Dedlock (731-32). Some critics, such as Daniel H. Lowenstein, however, have defended him. In his essay, Lowenstein argues that the novel condemns dishonesty as “another form of destructive irresponsibility” (1184); consequently, for him “[t]he central example of destructive dishonesty in the novel is Lady Dedlock’s concealment from her husband of both her past love affair and, once she discovers the fact, the existence of her daughter, Esther Summerson” (1184). In Lowenstein’s analysis, Mr. Tulkinghorn, although acting from mixed motives, does well by uncovering Lady

Dedlock's dishonesty and is even comparable, in an ethically responsible sense, to Mrs. Bagnet who discovers the mother-son relationship between George and Mrs. Rouncewell. Directly responding to Lowenstein, Maureen E. Markey utilizes Richard Weisberg's "six remarkably consistent characteristics" of successful literary lawyers and argues that "[ . . . ] although Mr. Tulkinghorn may be considered 'successful' in one sense of the word—he is powerful, he achieves his goals, he makes money—he is an abject failure from an ethical, moral, humanistic, or any other perspective" (691).

Although criticisms such as Lowenstein and Markey's are significant, I find that an analysis of the legal characters' relationships with their clients provides even more insight into Dickens's legal reformation message. Undeniably, Mr. Tulkinghorn is the pivotal legal figure in the novel, but Conversation Kenge's relationship with John Jarndyce and Wholes's relationship with Richard Carstone are also significant. The legal fiction within each of their relationships with their clients, for example, is that an attorney can be both an officer of the court and an advocate for his client,<sup>4</sup> a legal fiction that still exists. As James Lowe discusses in his *Observations on Fees in Courts of Justice* (1822), ancient lawyers were required to take an oath when they were called to the bar, which oath included a pledge to "[ . . . ] delay no man for lucre or malice [ . . . ]" (x). To further the fiction, a lawyer is presumed to honor this pledge:

Where an attorney is charged by affidavit with any fraud or malpractice in his profession, contrary to the obvious rules of justice and common honesty, the court on motion will order him to answer the matters of the affidavit. In general, if he positively deny the malpractices imputed to him, the complaint will be discharged [ . . . ]. (J. Burn 28)

In *Bleak House*, the lawyers resolve any conflict in the oath by ignoring it and satisfying personal interests instead. Mr. Tulkinghorn resolves any conflict by “taking no more responsibility than necessary” (*Bleak House* 1873 I: 2: 28), which gives rise to the question of necessary to whom? Ostensibly, each *Bleak House* legalist performs as he is professionally required; the question becomes whether his performance is how he ought to behave in regard to the Law and to his clients.

Legal professionalism, as well as marital relationships and parent-child relationships, are the substantive issues wherein the various legal fictions of *Bleak House* are exposed, and legal fictions, almost by definition, merge the legal imagination with the literary imagination. Legal fictions, however, by design, are intended to foreclose multiple interpretations; in contrast, literary fictions offer many. Legal fictions seem to provide a sense of concreteness, albeit illusory, predicated on the presumption of what Jeremy Bentham calls the “*wisdom of barbarian ancestors*” (*Political Fallacies* 155), that is, legal fictions are necessary and important because our legal ancestors created them, and, because our legal ancestors were wise, the legal fictions impart legal wisdom. Bentham, of course, disagreed with this sort of ancestor-worship, arguing that legal fictions and fallacies exist “[b]ecause it was the work of our ancestors, of legislators, few of whom could so much as read, and those few having nothing before them that was worth reading” (155). Equally galling to Bentham was the belief that not only does wisdom presumptively attach but also a sense of virtue, the “*virtue of barbarian ancestors*” (156). In *Bleak House*, Dickens echoes the point: “Chancery, which knows no wisdom but in Precedent, is very rich in such Precedents; and why should one be different from ten thousand” (1873 III: 39: 163).



More specifically, the “members of the High Court of Chancery bar” spend their time “tripping one another up on slippery precedents” (I: 1: 13).

Legal precedents, governing Chancery Court decisions as they do, presumptively reflect Equity. Jarndyce and Jarndyce, as a Chancery suit, *ipso facto*, should reflect Equity. But the presumption that legal precedents lead to Equity is invalidated by the reality of the Jarndyce suit. The Jarndyce suit, according to John Jarndyce, is a suit that should be able to answer the question of administration: “In the question how the trusts under that Will are to be administered, the fortune left by the Will is squandered away [ . . . ]” (*Bleak House* 1873 I: 8: 143). The legal issue of administration is what remains rather than, as Kieran Dolin suggests, only the disputed litigation costs: “Dickens begins the action of the novel at a time when the only question in dispute in the legal action is that of costs” (84). The litigated issue of administration results in endless costs, but the core legal matter being litigated is one of administration, and the question of administration never gets resolved because the estate has no more assets to fund further litigation:

The pages of *Bleak House* do not disclose the details of the great case of *Jarndyce v. Jarndyce*, although [ . . . ] surely a few might have been spared to give the reader a definite idea of what the case was about. It does appear, however, that the question of how the trusts under the Jarndyce will were to be administered, and that, while the costs were steadily increasing, the value of the estate was steadily decreasing. (Gest 28)

The novel begins with the Court’s failure to resolve the question of administration, thereby leading those within the legal community to view the suit as a joke: “Jarndyce and Jarndyce has passed into a joke” (1873 I: 1: 16). By the end of the novel, the Court has bankrupted the estate with expenses and costs, causing those both inside and outside of the legal community—the British public—to view the suit as a farce in the grossest measure:

“Still they were all exceedingly amused, and were more like people coming out from a Farce or a Juggler than from a court of Justice” (IV: 65: 289).

If the underlying legal issue, on which everything (and everyone) else turns in *Bleak House*, rests on an ancient Jarndyce will made by an ancient Jarndyce “in an evil hour” (1873 I: 8: 143) and from which document the Chancery Court cannot answer the question of “how,” then the answer is that the Jarndyce suit remains for only one reason. That reason is personal gain: “The one great principle of the English law is, to make business for itself. There is no other principle distinctly, certainly, and consistently maintained through all its narrow turnings” (III: 39: 153). Those “narrow turnings” of the Chancery Court are the precedents that have created such a rigidity in the Law’s application that justice is an unattainable goal: “We may say, then, that defective knowledge has been the cause of most vicious laws, and a deference to what is supposed to be the wisdom of our ancestors, but which is in reality the want of it, absolute folly it may be, is the cause of their perpetuation” (“Mutable Law” 138).

The Chancery Court’s deference to precedent—what Bentham called the “fallacy of irrevocable laws” (*Political Fallacies* 54)—results in lawsuits that accomplish nothing. They, in the Jarndyce case, do not answer the question of how to administer the terms of the will because neither Law nor Equity can derive justice from precedents that are presumptively irrevocable. Faced with a fact-pattern that does not conform to what has happened before, justice cannot be done: “Equity sends questions to Law, Law sends questions back to Equity; Law finds it can’t do this, Equity finds it can’t do that [ . . . ]”

(*Bleak House* 1873 I: 8: 143). Bentham argues that the confusion arises when legalists assume that “perpetual” is synonymous with “irrevocable”:

It is true that all laws and all political institutions are essentially dispositions for the future. The professed object of all of them is to afford a steady and permanent security to the interests of mankind. In this sense, all of them may be said to be framed with a view to perpetuity. But perpetual is not synonymous with irrevocable; and the principle on which all laws ought to be, and the greater part of them have been established is that of *defeasible perpetuity*: a perpetuity defeasible only by a change in the circumstances and reasons upon which the law is founded. (*Political Fallacies* 66)

Thus, in *Bleak House*, the Chancery Court is hamstrung because it cannot look beyond precedents in order to see the people behind the legal dilemma. In the Jarndyce suit, the dilemma is what to do about the fact that the Law, in the body of the Lord High Chancellor, cannot ascertain (or is willing to ascertain) the testator’s intent:

[The judge’s] ideas of equity must yield to his logical deductions from settled and existing law. When some of his premises are not matters of law but of fact, then the fresh difficulty of ascertaining truth arises to perplex him. His ignorance of fact he exchanges for presumptions of law [that is, legal fictions] or nice balancing of evidence. In balancing evidence, he is doing his best; but in creating presumptions of law he is sometimes furnishing excuses to ignorance [ . . . ]. (“Mutable Law” 139)

The Lord High Chancellor arguably “is doing his best” (marginally competent though that “best” may be) when dealing with new facts, but his “best” cannot be construed as adequate in the search for justice when he ignores such relevant information as that a party to the suit is dead (*Bleak House* 1873 I: 1: 18-19).

*Bleak House* goes to great pains to give its readers a clear sense of how detrimental legal fictions can be and often are and how they impact society. Esther Summerson wrongly believes herself to be an orphan under the care and custody of Miss Barbary,

whose own identity is deliberately confused to mislead Esther. Esther, after Miss Barbary's death, also wrongly believes herself an orphan without a guardian until John Jarndyce becomes her *de facto* guardian: "Miss Summerson really is my ward [ . . . ]. I am responsible to no Lord Chancellor in her case" (*Bleak House* 1873 II: 18: 59). As Esther was not yet twenty-one and without any putative relatives, Jarndyce assumes parental duties only to the extent of the relationship he and Esther define for themselves. Esther is never made his legal ward though she calls him "Guardian." Once Esther learns of her true parentage from Lady Dedlock, Esther realizes that she never has been orphaned. She is a legal bastard who, only after Lady Dedlock dies, becomes a legal orphan. These are the facts of her life, yet the legal fiction of her bastardy is irrevocable. She was a legal bastard at birth; she is a legal bastard even after marriage. However, her legal status does not accurately reflect how society—at least the more open-hearted and clear-headed members of society—feel about the issue of bastardy. The question then arises: if the laws of bastardy do not reflect society's feelings and goals for its citizens, why are they not reformed?

Laws that are at odds with social beliefs, customs, and goals create a disconnection. The disconnection exacerbates social problems when principles of Equity do not mitigate the harshness of the Law. This sort of disconnection between the Law and the people whom the Law is meant to serve is where Bentham's sense of legal reformation and Dickens's Sentimental Radicalism become more apparent in *Bleak House*, which novel has legally created bastards, though such a situation of being the child of no one is biologically impossible. Contrary to Victorian law that says "[ . . . ] a bastard is the *son of nobody*"

(Bentham, *Fragment 69*<sup>5</sup>, fn), infants are the products of mothers and fathers.<sup>6</sup> The novel has legally married couples, half of whom—the female half—instantly become legal non-persons. It has legal professionals who are presumed to conform their conduct to an oath of office predicated on a split loyalty: an officer of the court and a litigant’s advocate. These legal fictions—bastardy, coverture, and legal oath of office, among others in the novel—that Dickens exposes and censures in *Bleak House* offer readers the chance to review whether (or if) Benthamite legal reformation has any real application for the Sentimental Radical:

Caprice, fashion, ignorance, and expediency, which dictate laws through monarchs, mobs, and houses of Parliament, and even through judges, are the changeful creations of the changing ages, and almost as mutable as the dresses and faces of fleeting generations; but Justice sits afar, unchangeable, dimly seen, and often wrongly seen, through the earthly mists and vapors that rise to veil its throne from imperfect human sight [ . . . ]. (“Mutable Law” 138)

Gridley shouts indiscriminately for justice. Miss Flite waits patiently on justice. Richard Carstone puts his shoulder weakly to the wheel in order to find justice. But none of them is creating justice. No earthly mists or vapors are being lifted. If the only question is “what is doing” (*Bleak House* 1873 III: 39: 156), then the answer is that the Chancery Court (and, by extension, the Chancery lawyers) is “mak[ing] business for itself” (153). If the question is why “the mere truth won’t do” (IV: 52: 62), then I suggest that answers may be found in the novel’s legal fictions. They bridge Dickens’s concern for a legal system that is tempered by Equity and Bentham’s concern for a codified legal system that dispenses with a separate Equity jurisdiction, thereby synthesizing various truths into a

more complete sense of justice that dispenses with the wastefulness and wantonness of  
inequity.

## Notes

<sup>1</sup>I have substituted an “s” for the printer’s long “s” for those that appear in my quotations from Blackstone’s *Commentaries on the Laws of England (A Facsimile of the First Edition of 1765-1769)* and other texts cited in this dissertation.

<sup>2</sup>Although not directly relevant for my present discussion, I would like to point out that Best subdivides presumptions of fact into those that are “slight,” which are those presumptions that “excite suspicion, or produce an impression in favour of the truth of the facts they indicate, do not, when *taken singly*, either amount to proof, or shift the burden of proof” (45) and those that are “strong,” which are those presumptions that “shift the burden of proof, even though the evidence to rebut them involve the proof of a negative” (46). Thus, to use Best’s examples, “stolen property found in the possession of the supposed criminal a very long time after the theft” would give rise to a slight presumption of guilt (45), while a recent possession would give rise to a strong presumption of guilt (46). In *Bleak House*, Jo, by virtue of his appearance as a beggar-boy, is presumed by the constable to have stolen the two half-crowns that he finds on Jo (1873 II: 19: 75-76).

<sup>3</sup>Dolin is summarizing Patrick Brantlinger’s argument in his *The Spirit of Reform*.

<sup>4</sup>The Law provides for the creation of attorneys and solicitors, and, as J. Hooper Dawson discusses in his *A Practical Treatise on the Law Relative to Attornies, Solicitors, and Their Agents* (1830), attorneys and solicitors become officers of the courts in like manner. Mr. Tulkinghorn is an attorney who is also a solicitor in the Court of Chancery as those terms are discussed in John Sidney Smith’s *A Treatise on the Practice of the Court of Chancery* (I: 2: 23: 528-32). Solicitors in courts of equity perform much of the business previously performed by the clerks, which duties Robert Maugham describes as part of the client-advocacy process (7: 354). Thus, I use the word *attorney* or the word *lawyer* to refer to all of the *Bleak House* legalists in their Law-created status as officers of the court and in their professional capacity as advocates.

<sup>5</sup>In the original text, the pagination is incorrect. Page 69 is marked as page 96, but I use the correct page number instead.

<sup>6</sup>I am speaking strictly about Victorian sensibilities and science. Twenty-first century scientific and medical capabilities are outside the scope of this dissertation.

## CHAPTER TWO

### Dickens's *Bleak House*: The "Nature of the Circumstances" in Victorian Marital Contracts

Let the ideal woman receive her due share of homage. She must, for she inevitably subdues all hearts; but let your "blue" daughter, your political wife, your artistic sister, and eccentric cousin, pursue their paths unmolested, —you will never make ideals of them; you will only make your home the scene of suppressed energies and useless powers.

~ Leigh-Smith (78)

So great a favourite is the female sex of the laws of England.

~ Blackstone, *Facsimile* (I: 15: 433)

Charles Dickens's *Bleak House* is not peopled by characters representative of perfection. On the contrary, some are decidedly imperfect. The only idealized woman is the "ideal young lady" (1873 III: 34: 49) who is the object of the tune that Phil Squod is "softly whistling, in quick-march time, and in drum-and-fife manner" (47). An ancient songster invented the "ideal young lady" as someone to whom soldiers could believe that they may (though very unlikely) someday return. She is the fiction within the fiction, and the song of her love story seems even more unlikely to hearken back a lover. Her story, after all, is being whistled by Phil whose appearance does not give rise to an impression of the "romantic side of familiar things" (x). Rather, "[o]n the speckled side of his face he has no eyebrow, and on the other side he has a bushy black one, which want of uniformity gives him a very singular and rather sinister appearance" (II: 21: 127), so his whistling is just that—whistling for an idealized young woman, whistling for someone who cannot be.

But a Victorian expectation of female perfection was not unusual or out of context, and, to a large extent, this idealized status of women is reflected in the *Bleak*



*House* characters who pay homage to the beauty of one great Lady in particular. She has beauty. She is fashionable. She is no Phil Squod. Those who serve this Lady believe that homage is her due, and she behaves as if it is: “Let the ideal woman receive her due share of homage” (Leigh-Smith 78). And Lady Dedlock—Honoraria Dedlock—receives honor from her husband, from his relatives, and from the fashionable society of the world of *Bleak House*.

Lady Dedlock acquired her station in life, her elevated station in life, by marrying above her own social class, which feat was predicated on her “beauty, pride, ambition, insolent resolve” (*Bleak House* 1873 I: 2: 23). She, however, found in Sir Leicester someone who did something special: “Indeed, he married her for love” (23). No matter how vacuous Sir Leicester may seem on other issues, such as his interest in maintaining the political status quo and in admiring those “slow, expensive, British, constitutional kind[s] of thing[s]” (27), love, which in his case is love that is coupled with a courtly attitude toward Lady Dedlock, trumps any other socially acceptable reason for not marrying someone outside of his own class. Their union is unique for Sir Leicester’s “romantic side” of a familiar thing, that is, a socially unequal marriage based on his love for his Lady.

As a marriage between socially unequal partners, the Dedlock marriage is also unique in other respects. Lady Dedlock came with no property except her expectation as one of the Jarndyce litigants. The Law, especially as it deals with the Jarndyce case, figures prominently in that Lady Dedlock should inherit something from the estate’s assets, and her interests are part of Mr. Tulkinghorn’s legal responsibilities. The Jarndyce suit is

being, and has been, litigated in the Chancery Court, part of the legal system is the obvious focus of the novel especially in its handling of the Jarndyce suit. Although specific positive Laws that govern the interpretation or construction of the Jarndyce will are not given, the Court concerns itself greatly with determining what Law governs by consulting legal precedents: “Chancery, which knows no wisdom but in precedent, is very rich in such Precedents; and why should one be different from ten thousand?” (*Bleak House* 1873 III: 39: 163).

Yet unlike the Chancery Court, which Court relies on precedents, Lady Dedlock has no known predecessors: “A whisper still goes about, that she had not even family [ . . . ]” (*Bleak House* 1873 I: 1: 23). The Chancery Court cannot construct or interpret a testator’s intent; likewise, no one constructs or interprets Lady Dedlock. She has no familial relations to guide her legal prospects, and, until the Chancery Court determines what those interests may be, Lady Dedlock’s legal expectation remains unresolved. Neither she nor any of the Jarndyce relations receives closure on this issue, but she has found security in Sir Leicester’s courtly love of her. She is the junction point where this idealized love meets the Law, deepening, and calling into question, the legal fiction—the legal coverture—that already surrounds their marriage.

And the point of Law is the Jarndyce and Jarndyce suit, an ancient suit based on an ancient name, which appears regularly for years and without resolution in the Court of Chancery. Even at the end of the novel, the Chancery Court fails to resolve the Jarndyce litigants’ interests. When the Cause, as the Jarndyce suit becomes known (*Bleak House* 1873 IV: 65: 287), comes on for what turns out to be its final hearing, Conversation

Kenge never gets to present the newly discovered Jarndyce will: “We have been checked—brought up suddenly, I would say—upon the—shall I term it threshold” (290). His statement to Esther Summerson and Allan Woodcourt explains what they have just seen when they finally arrive at the Chancery Court. Everyone is still spilling out of the courthouse “exceedingly amused, and were more like people coming out from a Farce or a Juggler than from a court of Justice” (289). The joke—“Jarndyce and Jarndyce has passed into a joke” (I: 1: 16)—reaches its punch line. The estate is bankrupted before the subsequent will could be offered into evidence: “Is this Will considered a genuine document, sir?” said Allan; ‘will you tell us that?’ ‘Most certainly, if I could,’ said Mr. Kenge; ‘but we have not gone into that, we have not gone into that’” (IV: 65: 290).

I do not find Kieran Dolin and D.A. Miller entirely persuasive on the issue of what the litigation is about; they, in my opinion, miss the depth of the tragedy of the “joke.” They each suggest that the lawsuit simply and abruptly stops because the litigation costs have exceeded the value of the estate (Dolin 84; Miller, *The Novel* 90-91). Dolin’s suggestion is slightly off-point because he erroneously believes that the only issue being litigated is the issue of costs (84). Miller gives a fuller account of the legal standing of the suit in that he points out that “[i]t is never known, for instance, whether the new will is a genuine document, and the project of finding out has been ‘checked—brought up suddenly’ [ . . . ]” (91). As a preliminary issue, the genuineness of the new will could have led to an answer of the testator’s intent, which, in turn, could have answered the question of how to administer the estate. Conversation Kenge believes the will to be legally sufficient and, thus, admissible—“Here it is, a perfect instrument!” (*Bleak House* 1873 IV:

62: 257)—and capable of advancing Richard Carstone and Ada Clare’s interests (257), but the substantive legal issue being litigated is the testamentary intent: “It’s about a Will, and the trusts under a Will [ . . . ]”; “In the question how the trusts under that Will are to be administered, the fortune left by the Will is squandered away [ . . . ]” (I: 8: 142-43).

This legal question of how to administer the estate’s trusts is not dealt with in isolation. Because other hearings related to the estate are being held concurrently, court costs and attorneys’ fees accrue as the underlying case languishes and as collateral issues are resolved. For example, hearings are held to grant guardianship of Ada Clare and Richard Carstone to John Jarndyce and to review Richard’s application for the funds necessary to pursue his adventures in the medical profession, the legal profession, and the military, which funds are being held by an unnamed receiver who has gotten wealthy from his appointment (*Bleak House* 1873 I: 1: 17). The irony is that the receiver can calculate the income and expenditures of the estate, but the Court cannot calculate the testamentary intent even with the new will. Insofar as the Law is concerned, the new will, though physically present, does not legally exist. The new will has not been admitted into evidence; consequently, legally speaking, it does not exist and serves to explain nothing.

Prior to her death and the Cause’s final hearing, though, Dickens has revealed that Lady Dedlock is one of several people linked by consanguinity to the Jarndyce suit, which suit continues in litigation because the Court has not yet interpreted the original will that was made “in an evil hour” (*Bleak House* 1873 I: 8: 143). Lady Dedlock, née Honoria Barbary, is related distantly to the case by being a blood-relative of Richard Carstone (I: 9: 168), who is a cousin of John Jarndyce, one of the few remaining Jarndyces: “[ . . . ] there

are not three Jarndyces left upon the earth perhaps, since old Tom Jarndyce in despair blew his brains out in a coffee-house in Chancery-lane [ . . . ]” (I: 1: 16).

But having a contingent interest in a lawsuit is an interest in an unrealized legal expectation, which is incredibly difficult to live on. Lady Dedlock, prior to her marriage, lived, most likely, by her wits, getting through life much as Sir Leicester’s cousin Volumnia—his “eccentric cousin” (Leigh-Smith 78)—and his other cousins do:

So they visit their richer cousins, and get into debt when they can, and live but shabbily when they can’t, and find—the women no husbands, and the men no wives—and ride in borrowed carriages, and sit at feasts that are never of their own making, and so go through high life. (*Bleak House* 1873 II: 28: 249)

Though a military man, the novel does not lead to any conclusions about whether or to what degree Captain Hawdon could have provided for Lady Dedlock, and, after that failed relationship, Lady Dedlock was in no better condition than any other Jarndyce relation. Lady Dedlock, though, may have been able to meet Sir Leicester when she visited her richer cousin John Jarndyce. In any event, she is considerably younger than Sir Leicester who is at least sixty-eight years old, making Lady Dedlock forty-eight or so when the novel begins (I: 2: 22). They married, then, when she was approximately twenty-eight years old, which marriage would have given her the financial security that she lacked because, without any other visible means of support, skills, or parents, she and her older sister, like any other female orphans who are quickly becoming spinsters, would have struggled.

Ending this struggle with the Dedlocks’ marriage, Lady Dedlock has, by virtue of her social position, access to wealth. Access, however, is indirect, and access is not the legal equivalent of ownership. Without her own tangible personal property or real

property and without a partition granting her a direct share of the Dedlock estate as her sole and separate property, she acquired no legal interest—no ownership interest—in Sir Leicester’s estate simply upon marriage beyond her dower, which is a legal interest in Sir Leicester’s real property upon their marriage:

By the intermarriage the wife becomes intitled [sic] to an estate for life, upon surviving her husband, in a third part of all such estates of inheritance of which he was solely seised during the coverture, and to which any issue she might have had might by possibility have been heir. (Roper I: 9: 331)

Further, anything she actually realized through the Jarndyce lawsuit would become Sir Leicester’s property because, also by virtue of her marriage, Lady Dedlock relinquished any ownership rights she may have in the Jarndyce estate, assuming that she were to ever realize profit by the suit. She may be a litigant, but she will not be an owner because a husband had complete ownership and control over his wife’s property to the exclusion of any ownership rights she may have, whether such property was acquired before or after the marriage (Blackstone, *Commentaries* 1892 ed.: 507). This situation that was not remedied until decades later with the legislative changes such as the Married Women’s Property Act of 1870 and the Married Women’s Property Act of 1882 (Jenks, *A Short History* 312-14) . Because of the legal coverture, she, like all nineteenth-century Englishwomen, loses even the expectation of a separate inheritance, although ironically she is presumably the Law’s “great favourite.”

The legal view of the Victorian marital relationship, specifically coverture, was echoed and reaffirmed in Victorian society, which perpetuated the fiction that married

women were the legal equivalent of children (Hill 108-09; Shanley 10-11) and in need of supervision, governance, and protection:

That Providence designed women for a state of dependence, and consequently of submission, I cannot doubt, when I consider their timidity of temper, their tenderness of make, the many comforts and even necessaries of life which they are unable to procure without our aid, their evident want of our protection upon a thousand occasions, their incessant study, at every age, in every state, by every means, to engage our attention, and insure our regards. (Fordyce 40)

Coverture, the legal fiction that women's separate identity is held in abeyance during marriage, coupled with society's perception of the correctness of this situation, spawned many other related legal fictions that called into question how well the nineteenth-century British system of laws really held women in high esteem. For example, a woman—unlike “prisoners, captives, and the like”—is absolutely precluded from devising any interests she may have in lands or chattels (Blackstone, *Facsimile II*: 32: 497-99). Lady Dedlock, if she realizes anything from her expectancy in the Jarndyce suit, cannot devise or bequeath it to anyone. Sir Leicester would assume ownership rights in the property, or, more precisely, he would be appointed trustee of her property: “[ . . . ] a *feme covert* could have no separate property without trustees. [ . . . ] the Court of Chancery will make the husband a trustee for his wife, when there is a devise to her for her separate use without trustees” (Clancy 21). As a widow, Mrs. Rouncewell, unlike Lady Dedlock, is quite free to make any sort of gift, devise, or bequest that she wants, including one that recognizes and provides for George Rouncewell, “her beloved son George” (*Bleak House* 1873 IV: 55: 125) who has been essentially a ne'er-do-well all of his life. Widows are relieved of their coverture. Husbands are enriched by it. Yet the Law presumes justice toward married women while

simultaneously recognizing their ownership interests in separate property and abrogating their control, specifically testamentary control, over these interests to their husbands.<sup>1</sup>

And the legal presumption worked its way further into the marital relationship not only by regulating married women's ability to give, devise, and bequeath property, but also by governing and defining other rights (or lack of rights). These laws were not necessarily respecters of class. Caroline Norton, wife of George Norton, sought legal redress in the early 1830s when she was not allowed access to her children after her husband absconded with them. She opens her *English Laws for Women in the Nineteenth Century* (1854) saying, "It won't do to have TRUTH and JUSTICE on our side; We must have Law and Lawyers" (1). Norton's declaration is only a slight restatement of Mrs. Bagnet's statement in *Bleak House* to Mrs. Rouncewell. Significantly, Norton shifted the statement's focus from "he" to "our" and "We," thereby emphasizing that everyone is involved in the issues of truth, justice, and the Law, and, like Dickens, Norton did not mean this statement as a compliment to the Law or to lawyers.

Norton explicitly intended her 1854 tract to cause legal reform: "I write in the hope that the law may be amended; and that those who are at present so ill-provided as to have only 'Truth and Justice' on their side, may hereafter have the benefit of 'Law and Lawyers' (1). She had been lobbying for law reform regarding mother-child relationships for nearly two decades; she had published *The Separation of Mother and Child* in 1838. She again was urging reform in her *English Laws*; however, she did not advocate for equality between the sexes but rather for the same legal protection "as is accorded to servants, to apprentices, to the sailor on the high seas, to all whom the law admits to be in a



subordinate and helpless position” (2). Mary Lyndon Shanley articulates Norton’s position as a demand for “recognition of her independent legal personality not as a right, but as a remedy against a husband who had violated his obligation of support” (33). Likewise, *Bleak House*, while not overtly advocating for equality between the sexes, certainly deals with some of the harsh issues regarding the injustice that Victorian society and the Law practiced upon women—the “favourite” of British law—by not giving them the same legal protection as servants, apprentices, and sailors on the high seas. In *Bleak House*, brickmakers physically abuse their wives; their wives tolerate unquestioningly the marital bindings that have turned into marital beatings. Instances of such abuse are not uncommon and are known by Woodcourt, *Bleak House*’s kind-hearted but financially disadvantaged doctor, who has seen similar instances in his medical practice: “And I am sorry to say I have known them cruel to their wives too” (1873 III: 46: 268).

The Law ignores the brickmakers’ wives’ physical suffering even though they, supposedly, are entitled to the protection of their husbands by virtue of their state of coverture. Instead, they need protection from their husbands who engage in the belief that “The husband also (by the old law) might give his wife moderate correction” (Blackstone, *Facsimile* I: 15: 432), while ignoring the admonition that “[t]his power of correction was confined within reasonable bounds; and the husband was prohibited to use any violence to his wife [ . . . ]” (432). This sort of abuse suffered by women was still prevalent in 1869 and was again highlighted by John Stuart Mill who said,

And how many thousands are there among the lowest classes in every country, who [ . . . ] indulge the utmost habitual excesses of bodily violence towards the unhappy wife, who alone, at least of grown persons, can neither repel nor escape from their brutality; and towards whom the excess

of dependence inspires their mean and savage natures, not with a generous forbearance, and a point of honour to behave well to one whose lot in life is trusted entirely to their kindness, but on the contrary with a notion that the law has delivered her to them as their thing, to be used at their pleasure, and that they are not expected to practise the consideration towards her which is required from them towards everybody else.  
(*Subjection of Women* 269-70)

Evidence of such unchecked brutality appears in the physical signs upon the brickmakers' wives' bodies: Jenny is "a woman with a black eye, nursing a poor little gasping baby by the fire" (*Bleak House* 1873 I: 8: 158), and Liz has "[a] bad bruise, and the skin sadly broken" (III: 46: 268). Further evidence appears in Liz's hesitancy to speak to Esther about having seen Lady Dedlock without first gaining permission from her husband:

I thought she would have spoken to me privately, if she had dared. She was still in this attitude of uncertainty, when her husband, who was eating with a lump of bread and fat in one hand, and his clasp-knife in the other, struck the handle of his knife violently on the table, and told her with an oath to mind *her* business at any rate, and sit down. (IV: 57: 165)

As physically and emotionally dysfunctional as the brickmakers' wives relationships with their husbands are, they are, at least in one respect, valuable because they suggest a disconnection between what the Law is and what the Law should be. The legal fiction is that, upon marriage, a wife's legal identity is subsumed by the husband's, and she is, therefore, protected by him. The common law says that a husband could not use violence against his wife. The brickmakers' wives are clear evidence that this standard of conduct promulgated by the common law is routinely violated and is in conflict with a policy of protection—the protective wing or cover by the *baron* of his *feme-covert*—that is the core of the legal fiction of coverture.

In this respect, Dickens's sketch of spousal abuse, a social ill in need of reformation, is not susceptible to the sort of criticism that was leveled by some critics who argued that his reformist messages were outdated. For example, Walter Bagehot specifically charged Dickens with continuing to indulge in excessive sentimentality by harping on social evils that, according to Bagehot, had long passed:

There was most adequate reason for the sentiment in its origin, and it had a great task to perform in ameliorating harsh customs and repealing dreadful penalties; but it has continued to repine at such evils long after they ceased to exist [ . . . ]. (158-59)

The situation of the brickmakers' wives alone, as evidenced by the numbers of abused Victorian women still suffering long after the novel's publication, certainly is sufficient to undercut Bagehot's theory that Victorian society and its legal system had taken care of the issue of spousal abuse. Not all social evils were resolved; not all social evils, if resolved, were incapable of returning: "[Dickens's] great achievement was not to be a pioneer in an age of indifference but to prevent the newly-awakened conscience from falling back into a complacent belief that all was now well" (R. Chapman 115).

Although I feel that Bagehot is misguided when he argues that Dickens's *Bleak House* is no longer representative of the then-existing status of Victorian society, he does raise an interesting point with his next argument:

It is painful to pass from these happy instances of well-used power to the glaring abuses of the same faculty in Mr. Dickens's later books. He began by describing really removable evils in a style which would induce all persons, however insensible, to remove them if they could; he has ended by describing the natural evils and inevitable pains of the state of being, in such a manner as must tend to excite discontent and repining. The result is aggravated, because Mr. Dickens never ceases to hint that these evils are removable, though he does not say by what means. Nothing is easier than to show the evils of anything. (160)

On the issue of spousal abuse, I concur in that *Bleak House* offers little, if any, direct solution. Spousal abuse, however, is not a “natural” evil, but, unless brickmakers and other spouse-beaters (whether those of the nineteenth century or the twenty-first) read *Bleak House* and have their consciences sufficiently pricked, their behavior admittedly and most likely remains unchanged. Neither the brickmakers nor the brickmakers’ wives in *Bleak House*, after all, appreciably alter their behavior or circumstances as a consequence of encountering Mrs. Pardiggle and her “great show of moral determination” (1873 I: 8: 158), Esther Summerson and her softer and kinder ministrations, or Woodcourt and his “skilful and accustomed hand” (III: 46: 268) that is his healing gift.

Bagehot’s argument that Dickens fails as a writer because his novels do not offer his readers solutions is relevant to a discussion of *Bleak House* because his point says a great deal about the limitations of what the Law can and cannot do. Although I do not agree with his general premise that Dickens is a failed writer (the continued critical interest in Dickens, his life, and his work alone refutes this assertion), I believe that Bagehot did not assess fully *Bleak House*’s value as an attack on women’s legal position in Victorian society. This reformist message tends to get lost in the many other social debates in *Bleak House*, including those involving the Poor Laws. Bagehot’s criticism is that Dickens describes legal ills rather than prescribes legal solutions: is Dickens telling his audience what the Law is rather than what the Law ought to be? Is Dickens only what Bentham calls an expositor rather than a censor?

According to Bentham:

There are two characters, one or other of which every man who finds anything to say on the subject of Law, may be said to take upon him;—that

of the *Expositor*, and that of the *Censor*. To the province of the *Expositor* it belongs to explain to us what, as he supposes, the Law is: to that of the *Censor*, to observe to us what he thinks it *ought to be*. The former, therefore, is principally occupied in stating, or in enquiring after *facts*: the latter, in discussing *reasons*. The *Expositor*, keeping within his sphere, has no concern with any other faculties of the mind than the *apprehension*, the *memory*, and the *judgment*: the latter, in virtue of those sentiments of pleasure or displeasure which he finds occasion to annex to the objects under his review, holds some intercourse with the *affections*. That which is Law, is, in different countries, widely different: while that which *ought to be*, is in all countries to a great degree the same. The *Expositor*, therefore, is always the citizen of this or that particular country: the *Censor* is, or ought to be the citizen of the world. (*Fragment xii-xiii*)

Specific areas within *Bleak House* illustrate how *Bleak House* follows in the Benthamite tradition of legal censuring and not just legal exposition and, surprisingly, offers its audience proposals—not, however, absolutes—about how to move the Law toward what it ought to be. Lady Dedlock is the center of this discussion in that her legal coverture status can be compared to and contrasted with other characters in the novel. Lady Dedlock’s character, though not necessarily a prototypical “Victorian Every Woman,” is of sufficient universality, having as she does the legal status of *feme-covert*, both to expose and to censure the Law.

In addition to Lady Dedlock, *Bleak House* gives its readers a variety of *feme-covert* and *feme-sole* characters. Although the novel offers Mrs. Jellyby and Mrs. Pardiggle to its readers, it offers little direct insight into Mr. Jellyby and Mr. Pardiggle, relying, instead, on Esther Summerson to provide some of her opinions regarding these relationships. Mrs. Rouncewell and Mrs. Woodcourt are widows, so the strength of their marital relationships is unknown, illustrating, instead, how they deal with their widowhoods. Caddy Jellyby, Mrs. Snagsby, Mrs. Bagnet, and Mrs. Badger offer fuller sketches of marriage to the extent

that their husbands are distinguishable (unlike Mr. Jellyby and Mr. Pardiggle) and engage with their wives. Caddy and Prince defer to the point of blindness to the demands of Prince's father, Mr. Turveydrop. Mr. Snagsby lives in a constant state of anxiety lest he incite Mrs. Snagsby to a jealous rage because of how she perceives his relationships to other people. Mr. Bagnet, well aware of Mrs. Bagnet's fine qualities and proud of them, nevertheless, believes that "[d]iscipline must be maintained" by which he means that he willingly, and knowingly, engages in the farce that he is his wife's superior. Mr. Badger lives, again willingly but, in his case, apparently unknowingly, in constant danger of becoming Mr. Swosser-Dingo-Badger, consumed as he is by Mrs. Badger's two previous husbands: "Captain Swosser, of the Royal Navy, who was Mrs. Badger's first husband, was a very distinguished officer indeed. The name of Professor Dingo, my immediate predecessor, is one of European reputation" (*Bleak House* 1873 I: 13: 251). The unmarried women, Esther Summerson, Hortense, Ada Clare, and Rosa, have love interests but are (or remain), for most of the novel's action, *feme-sole*. Thus, broadly speaking, the novel includes women with non-husbands, women with dead husbands, women with flawed husbands, and women with no husbands.

Indeed, Lady Dedlock is, to lesser and greater degrees, each of these women at different points in her life. Just as Esther could look at Lady Dedlock and see a face "[ . . . ] like a broken glass to me, in which I saw scraps of old remembrances [ . . . ]" (*Bleak House* 1873 II: 18: 51-52), Lady Dedlock's character is a broken glass that variously reflects analogous passions, thoughts, and actions of other women. Insofar as the novel's characters seem to understand Lady Dedlock, she appears as the self-absorbed goddess that

she is described to be: “Lady Dedlock is always the same exhausted deity, surrounded by worshippers, and terribly liable to be bored to death, even while presiding at her own shrine” (I: 12: 241). No sense of reality, of course, exists in such a description of Lady Dedlock. The third-person narrator admits as much: “She supposes herself to be an inscrutable Being, quite out of the reach and ken of ordinary mortals—seeing herself in her glass, where indeed she looks so” (I: 2: 25-26). She comes to rely on the reflection of herself as the reality of her life.

Of course, looks can be deceiving, especially if the looks under consideration are one’s own, but Lady Dedlock is assisted in her self-perception or self-deception by those around her. Even Lady Dedlock does not live in isolation. She needs other people. Consequently, others come to know her—and to know about her character—well enough to understand that she is as fallible as anyone else:

Yet, every dim little star revolving about her, from her maid to the manager of the Italian Opera, knows her weaknesses, prejudices, follies, haughtinesses, and caprices; and lives upon as accurate a calculation and as nice a measure of her moral nature, as her dressmaker takes of her physical proportions. (*Bleak House* 1873 I: 2: 26)

Thus, Lady Dedlock is not an ideal woman but a woman, nonetheless, being honored by Sir Leicester who does not fully understand her and by those on the periphery of her world who flatter for their own sakes.

And if Lady Dedlock is not an ideal woman, what does she contribute to Dickens’s reformist message? Gerald Hurst argues that Dickens’s work

[ . . . ] contributed in some measure at least to mould the minds of the men who mattered. [ . . . Its] version, however extravagant, of the abuses of Chancery was sufficiently biting to stir even the complacency of vested interests, and for this reason deserves a place among those classical works

of fiction [ . . . ] which have helped practically to make a better England.  
(113)

In this “better England” resided the Ideal Woman who was the ideal helpmate to her husband, a fiction that thwarted legal and social reform in that reformation of the non-existent is impossible: how can what is presumed to be perfect be reformed? An Ideal Woman, or Coventry Patmore’s “Angel in the House,” is a non-existent element, a fiction, and the presence of a fiction within a marital relationship (which already contains the legal fiction of coverture) leaves the participants constantly groping for ways to equalize the disparity between their roles.

The Victorians’ Ideal Woman, a social construct, and coverture, a legal fiction, perpetuated myths about women and marriage that subjected women to inequities that served neither society nor the Law. Importantly, I do not believe that *Bleak House*’s reformist message regarding the legal inequities and inequalities in Victorian marriages, which formed the basis of much of what has become known as the Woman Question, was an attack on marriage as a social structure. None of the married *Bleak House* women, for example, wants to be single. Even the brickmakers’ wives have no intention of leaving their abusive husbands; the novel does not advocate the obliteration of the concept of marriage. The ideal of marriage is upheld in characters such as the Bagnets who have a genuine fondness for each other and for their children. In *Bleak House*, Dickens advocates for the reformation of the institution—not the ideal—of marriage that had become perverted by the Law as its own social institution.

The difference between the ideal of marriage and the institution of marriage is similar to the paradox that Kieran Dolin argues for in his “Reformist Critique in the Mid-



Victorian ‘Legal Novel’—*Bleak House*.” Dolin argues that *Bleak House* was a “[ . . . ] critical intervention in debates about social organization, rather than as a linguistic, revolutionist or pessimistic attack on all social structures” (78) in that the novel sets up for its readers the paradox that its characters find in the Chancery Court: Equity versus Iniquity. For Dolin, “[t]he result of the conjunction is to create two senses of equity, the ideal and institutional” in which case “[t]he former [Equity] signifies justice and mercy [ . . . ]. The latter signifies the Court of Chancery, established to give effect to the ideal, but by Dickens’s day a by-word for injustice [ . . . ]” (78). In *Bleak House*, I suggest marriage contains these two senses of Equity, yet I want specifically to push the definition of *iniquity* to its Latin origins: uneven or unequal in addition to unjust (OED).

A marital relationship can be uneven or unequal without necessarily being unjust.

Esther Summerson witnesses such a union:

The bridegroom, to whom the pen was handed first, made a rude cross for his mark; the bride, who came next, did the same. Now, I had known the bride when I was last there, not only as the prettiest girl in the place, but as having quite distinguished herself in the school; and I could not help looking at her with some surprise. She came aside and whispered to me, while tears of honest love and admiration stood in her bright eyes, “He’s a dear good fellow, miss; but he can’t write yet—he’s going to learn of me—and I wouldn’t shame him for the world!” (*Bleak House* 1873 III: 36: 96)

The inequality present in this bride’s situation—she being better educated than her husband—will, according to the bride’s belief, become a situation of equality once she teaches her groom how to write. The question of whether the bride’s faith is justified, however, is not answered.

A similar situation is the marriage of Caddy Jellyby and Prince Turveydrop except in one important respect. With the unnamed bride and groom’s relationship, the bride

protects the groom by hiding his lack of education from public disclosure, assuming, as she does, that she can equalize the inequality later. Readers are left to wonder about what happens if the groom does not learn to write; will he begin to see the inequality as an injustice? With Caddy and Prince's relationship, they are not embarrassed by the other's lack of education, and both are willing to make public their desire to change. Each of them recognizes the other's shortcomings without any diminution in their feelings. Caddy has writing skills that Prince cannot (or, at least, has not yet) mastered: "Caddy told me that her lover's education had been so neglected, that it was not always easy to read his notes," which he was "anxious" about (*Bleak House* 1873 I: 14: 282). Caddy considers herself to be unrefined—"unpolite and inky"—and sees the importance and joy of learning about Prince's world of music and dance: "Who would have thought, then, of my ever teaching people to dance, of all other possibilities and impossibilities!" (III: 38: 141). With the Turveydrops, the young couple is making a joint effort to make the uneven even. Yet, uneven as their marriage may be in some areas, it encourages readers to believe that their marriage can remain untouched by the iniquity—the legal injustice—that has touched the life of Lady Dedlock, joined as they are by their professional life with the dancing school and by their private life with the baby and Mr. Turveydrop.

But, unlike the bride who shielded her groom from shame and the Prince Turveydrops who consciously choose to make up for each other's shortcomings, shame falls as incessantly on Lady Dedlock as the rains fall on Chesney Wold as a result of her own iniquity or unrighteous conduct. Or does it? Once her husband's solicitor, Mr. Tulkinghorn, threatens to reveal the fact of her illegitimate child, Lady Dedlock refers to

the shame—“my impending shame” (*Bleak House* 1873 III: 48: 312)—in the sense of losing her reputation once Mr. Tulkinghorn reveals “the secret” (312). Mr. Tulkinghorn undoubtedly seeks to reveal information that would tend to “exclude [Lady Dedlock] from society” (Blackstone, *Facsimile* III: 8: 124), which action gives rise to the legal tort of defamation. For him to shame—and to defame legally—Lady Dedlock’s reputation, however, is without legal redress. Once her reputation is called into question, Lady Dedlock cannot realistically recall her former unblemished social status. The truth is a legal defense to a charge of defamation, and the facts in Mr. Tulkinghorn’s possession are the truth about what she did as a young woman: “Also if the defendant be able to justify, and prove the words to be true, no action will lie, even though special damage hath ensued: for then it is no slander or false tale” (125). Lady Dedlock has no means to make the unjust just, to make the unequal equal, or to make the uneven even.

Yet, at the end of the novel, Lady Dedlock’s reputation is secure, due in large part to the care and dedication given by Sir Leicester to preserve it. Over the years, rumors surface that he pays others, likely the Chadbands and the Smallweeds, hush-money: “The story goes, that Sir Leicester paid some who could have spoken out, to hold their peace [ . . . ]” (*Bleak House* 1873 IV: 66: 297). In addition, Mr. Tulkinghorn is killed by Hortense before he can make good on his threat to reveal the secret to Sir Leicester and, perhaps, to others when he chooses. Hortense, Mr. Tulkinghorn’s murderer, is arrested, and presumably hanged (or deported and then hanged) before she creates further mischief. Guppy is sufficiently redeemed as a credible character so that his promise not to disclose

the secret is believable. Thus, no defamation occurs, even though readers routinely assume that Lady Dedlock experiences a “downfall.”<sup>2</sup>

Although Mr. Tulkinghorn is not successful in finalizing what he hopes to be Lady Dedlock’s ruination, he actively engages in achieving that aim, yet Daniel H. Lowenstein seeks to justify Mr. Tulkinghorn’s actions toward Lady Dedlock by arguing that Lady Dedlock has been the irresponsible party by “ignoring, concealing, or distorting the truth” (1184). She, according to Lowenstein, has engaged in “destructive dishonesty” (1184), and Mr. Tulkinghorn intends to serve the Law by forcing her hand because she is being unfair to Sir Leicester, having tainted the Dedlock lineage by bringing illegitimacy into the family. Lowenstein’s argument is predicated on the assumption that Lady Dedlock’s secret—that she loved a man before Sir Leicester by whom she had a child out of wedlock—creates a marital relationship that is insupportable, that is, uneven, unequal, and unjust: “At all times until her death, Lady Dedlock has it within her power to escape from Tulkinghorn’s oppression by doing what she has needed to do all along. By failing to do so, she destroys herself, her husband, and their marriage” (1187). Lowenstein summarizes his argument by saying that “[w]e do know that she married him and has lived within her marriage under ‘false pretences,’ to invoke again the narrator’s phrase” (1203).

That sort of logic from Lowenstein, however, seems to assume, speaking legalistically, facts not in evidence. Where is the falsity? Where is the pretense? The Dedlocks’ marriage is not any more unequal, uneven, or unjust than any of the other characters’ marriages. Lady Dedlock, at least to some extent, treats Sir Leicester as Mrs. Jellyby and Mrs. Pardiggle treat theirs. These two women, Mrs. Jellyby and Mrs. Pardiggle,

by force of character alone, exclude their husbands from their “missions,” from their lives’ passions. Mrs. Jellyby and Mrs. Pardiggle consistently and systematically exclude Mr. Jellyby and Mr. Pardiggle, whom I have previously referred to as non-husbands, from their lives. The men periodically appear to serve as little more than social escorts, which, to a degree, is Sir Leicester’s spousal function. Sir Leicester squires his Lady to London and Chesney Wold whenever she wants and entertains her to the best of his ability, which, given his wealth and social connections, is considerable. Lowenstein, by ignoring similar behavior in the Jellyby and the Pardiggle relationships, engages in his own unnecessary gamesmanship, seeking as he does to censure Lady Dedlock in his own unequal and uneven manner.

Likewise, Lowenstein suggests that Lady Dedlock keeps her secret “[ . . . ] so that she can continue to benefit from her husband’s wealth and social position” (1204). Undoubtedly, Lady Dedlock has the power of privilege and enjoys the security that privilege brings. She also is as aware of, or sensitive to, social status and class distinctions as Mrs. Woodcourt, who believes that she deserves honor and respect because of her lineage, and Mrs. Rouncewell, who believes that she was born to honor and respect those who are her social superiors. In this regard, Lady Dedlock and Sir Leicester enjoy their reputations, hers in the world of fashion and his in the world of the aristocrat. These behaviors do not indicate falsity or pretense: pretentiousness, perhaps, but not pretense.

A counter-argument may be that Mrs. Jellyby and Mrs. Pardiggle have no great secrets to hide and that their exclusionary tactics are designed to focus themselves on their missions rather than being distracted by their husbands’ needs. Setting aside the evidence

that each husband has numerous children, they each could be deprived of the emotional connection with their wives. Although no direct evidence of Mr. Pardiggle's opinion about his marriage is given, Mr. Jellyby, in speaking with Caddy before her marriage to Prince, says that "he hoped we might get on better than he and Ma had got on" (*Bleak House* 1873 II: 30: 285) and that "he is very unfortunate in being Ma's husband" (286). In contrast, Sir Leicester is absolutely besotted by Lady Dedlock. Even Mr. Tulkinghorn is aware that Sir Leicester's "reliance upon [Lady Dedlock] is implicit" (III: 41: 198). For her part, Lady Dedlock, who may not have the passion for Sir Leicester that she had for Captain Hawdon, nonetheless cares for him, offering as she does to make any sort of writing that Mr. Tulkinghorn requires in order to spare him from hurt: "Is there any claim that I can release, or any charge or trouble that I can spare my husband in obtaining his release, by certifying to the exactness of your discovery?" (194). She explicitly tells Mr. Tulkinghorn that he can do no more to harm her: "I neither wish to spare myself, nor to be spared. You can do nothing worse to me than you have done" (195), which statement focuses the reader on Lady Dedlock's attitude toward others and not strictly on herself. These other persons who would be directly impacted by a public disclosure of Lady Dedlock's secret are Esther Summerson and Sir Leicester, and she has already told Esther (III: 36: 98-104) and seeks to shield Sir Leicester. Granted, Sir Leicester does not share all of his wife's emotions and passions, past or present, but he has not been excluded entirely from her person.

The underlying premise in Lowenstein's argument seems to be that without complete honesty on all issues, past and present, a marriage *ipso facto* fails. In this regard,

however, *Bleak House* offers other marriages to consider. The Snagsbys' marriage is in danger of failing because, in contrast to the Dedlocks' marriage, no secret exists. On the contrary, Mrs. Snagsby worries herself and her husband to distraction because Jo is not Mr. Snagsby's illegitimate child. The Turveydrops' marriage will likely succeed in spite of the fact that neither Caddy nor Prince knows the secret that is living in their midst: Mr. Turveydrop the elder is a thoughtless moocher. The Bagnets refuse to recognize the secret that Mr. Bagnet's insistence on maintaining discipline (who is really disciplining whom, after all) is just a bit of silliness that married people engage in to smooth out the marital unevenness. Mr. Bagnet's favorite expression is "Old Girl [ . . . ] give him my opinion. You know it. Tell him what it is" (*Bleak House* 1873 II: 27: 245), and Mrs. Bagnet's participation in the game is analogous to the bride signing her name with a cross rather than writing her name. Each is pretending certain aspects of their lives are as they are not in order to avoid shaming someone else. The novel even suggests that a secret exists between the Badgers:

"It is singular that the Professor was the Antipodes of Captain Swosser, and that Mr. Badger is not in the least like either!" [ . . . ] Mrs. Badger signified to us that she had never madly loved but once; and that the object of that wild affection, never to be recalled in its fresh enthusiasm, was Captain Swosser. (I: 13: 255)

How much of Mrs. Badger's true feelings are hidden from Mr. Badger? Even the true feelings that Ada Clare has about Richard Carstone she keeps from him. Their marriage, the union of two young people who are physically beautiful though financially troubled, is based on what Lowenstein would call false pretenses. Ada married Richard hoping that she could alter his obsession with the Jarndyce case: "When we were married, I had some

little hope that I might be able to convince him of his mistake [ . . . ]” (IV: 60: 230). She continues the deception: “I want him, when he comes home, to find no trouble in my face. I want him, when he looks at me, to see what he loved in me. I married him to do this, and this supports me” (231). The perfectly truth-based marriage is as difficult to find as the Ideal Woman: “He that is without sin among you, let him first cast a stone at her!” (I: 3: 36).

Most readers would attach no guilt to any of these minor characters’ false pretenses, yet Equity, that is, justice, in the Dedlock marriage cannot be obtained, according to Lowenstein, because “Lady Dedlock’s real guilt is her unwillingness to tell the truth to her husband” (1204). What, in my opinion, Lowenstein is really arguing is that Lady Dedlock’s “guilt” is her unwillingness to tell her husband the facts about her relationship with Captain Hawdon, which is not necessarily synonymous with telling him the truth. If the insistence remains on the facts, however, I would point out that Lady Dedlock is not unwilling. As I have previously noted, she says, “Is there any claim that I can release, or any charge or trouble that I can spare my husband in obtaining *his* release, by certifying to the exactness of your discovery?” (*Bleak House* 1873 III: 41: 194), a statement which, in addition to affirming her affection for Sir Leicester, also demonstrates her willingness to deal with the facts of her past.

Ironically, someone can be told the facts about the situation without ever learning the truth of the situation. Sir Leicester finds himself in this situation after Lady Dedlock leaves him. Through Inspector Bucket and from Lady Dedlock’s letter, Sir Leicester gets part of the way toward her facts and her truth. He learns about the circumstances that



will soon give rise to her alleged loss of reputation and those that will soon give rise to a suspicion of murder. He now knows facts; she passionately loved a man before their marriage by whom she gave birth to a child that she believed was stillborn and is now fleeing everything connected with that possible discovery: “The [*Expositor*], therefore, is principally occupied in stating, or in enquiring after *facts*” (Bentham, *Fragment viii*). Even after learning the facts, Sir Leicester offers her his “[f]ull forgiveness” (*Bleak House* 1873 IV: 56: 145), but he cannot fully understand why she has fled.

Sir Leicester gets to this “why” by analogy. In his conversation with George Rouncewell about why George abandoned his family and lost himself in the military, Sir Leicester learns why someone would feel so compelled to run away from those he loves, how someone can feel such a failure that running away seems the only answer: ““Why did you wish for secrecy?”” (*Bleak House* 1873 IV: 58: 186). Lowenstein says that “[b]ecause of Lady Dedlock’s suffering and repentance and because few of us who read *Bleak House* can satisfy the condition laid down by Jesus in the passage quoted by Esther, we are not inclined to cast stones at Lady Dedlock for her sexual misconduct” (1194). Lowenstein, who argues for a reading of Lady Dedlock that seemingly contradicts this statement, actually (though, perhaps, inadvertently) gets to the point. Contemporary readers are to learn not to judge people so harshly, just as Dickens’s audience was supposed to have understood the novel’s meaning on this issue. Lady Dedlock would have felt the pressure from “[ . . . ] having violated the conventional moral code that condemned fornication and stigmatized mothers of illegitimate children” (1191), but Victorian society’s view had

not yet changed and was still able to exert a tremendous amount of pressure. Thus, Lady Dedlock's desire to run away is as understandable as George's.

In this regard, George's answer to Sir Leicester is based on his belief that he is "not much to boast of" (*Bleak House* 1873 IV: 58: 186) and on his desire to "remain unknown in general" (186) because people, in general, are going to believe whatever they choose to believe about him. Recognizing that people in general and his cousin Volumnia in particular will believe whatever they choose to believe about Lady Dedlock, Sir Leicester makes his formal declaration about his feelings for Lady Dedlock:

"Therefore I desire to say, and to call you all to witness—beginning Volumnia, with yourself, most solemnly—that I am on unaltered terms with Lady Dedlock. That I assert no cause whatever of complaint against her. That I have ever had the strongest affection for her, and that I retain it undiminished. Say this to herself, and to every one. If you ever say less than this, you will be guilty of deliberate falsehood to me." (188-89)

Sir Leicester puts his and Lady Dedlock's relationship back into perspective—he seeks marital justness, equality, and evenness—by pointing out that any "slight misunderstanding" they may have had regarding the terms of their marriage is just that—the terms of their marriage: "[ . . . ] there was a misunderstanding of certain circumstances important only to ourselves [ . . . ]" (188).

Facts and truth: facts and misunderstandings—how and to what degree do facts bear any meaningful relationship to justice? George Rouncewell in his pragmatic, straightforward perception of the world and how it operates believes that the "mere truth" (*Bleak House* 1873 IV: 52: 62) will have to do even though the facts of his actions are carrying him as rapidly to a murder conviction as if he had confessed. He believes, quite simply but quite erroneously, that all he has to do is tell his story to the authorities

and the truth will out: “If they can’t make me innocent out of the whole truth, they are not likely to do it out of anything less, or anything else” (65). Mrs. Bagnet in her own pragmatic, straightforward perception of the world and how it operates does not believe that the truth is sufficient: “You won’t be got off this way, and you won’t be got off that way—what do you mean by such picking and choosing? It’s stuff and nonsense, George” (67). She knows that a separate, more powerful institution is at work that crushes participants who come with Carstone-like ignorance and obedience to find justice and Equity in the Law.

Lady Dedlock is neither ignorant nor obedient, but she is one of those members of Victorian society who is being crushed, but the question becomes by whom and for what purpose. On a personal level regarding the issue of her motherhood, she has felt deeply the loss of her child and has done so for years as evidenced by her being put out of humor at the sight of the estate-keeper’s young daughter at play:

[ . . . ] looking out in the early twilight from her boudoir at a keeper's lodge, and seeing the light of a fire upon the latticed panes, and smoke rising from the chimney, and a child, chased by a woman, running out into the rain to meet the shining figure of a wrapped-up man coming through the gate [ . . . ]. (*Bleak House* 1873 I: 2: 21-22)

Her child, Esther now grown, is the same one whom she believed dead, a fiction created by Miss Barbary, a strong, moral voice for those in Victorian society who condemned unilaterally, completely, and without regard to the nature of an individual’s circumstances. The consequences of Miss Barbary’s actions cannot be undone by Lady Dedlock any more than she can undo the fact of Esther’s birth.

Regarding her motherhood, from a legal perspective, Lady Dedlock deeply feels the wrong that she has done Esther: “Oh, my child, my child, I am your wicked and unhappy mother! Oh, try to forgive me!” (*Bleak House* 1873 III: 36: 99). This woman Esther, now and always a bastard, is the same one to whom no family name can attach because she is a fiction created by the Law. Lady Dedlock cannot undo the consequences of the Law’s actions upon Esther: “Once a bastard always a bastard, and, we may add, nothing but a bastard” (Hooper 152).

In conjunction with the personal and legal issues regarding Lady Dedlock’s motherhood are the corresponding personal and legal issues regarding her marriage. From a personal perspective, Lady Dedlock deeply feels the anguish that the discovery of her secret will cause Sir Leicester: “I have a husband, wretched and dishonoring creature that I am” (*Bleak House* 1873 III: 36: 100). Her secret, “*the secret*,” is the same one that she believed died, again, a fiction created by Miss Barbary when she absconded with the baby and which secret can now be undone by Mr. Tulkinghorn. From a legal perspective, she deeply feels the impossibility of remaining within the legal fiction of her *feme-covert*, when, in speaking to Tulkinghorn, she asks, “Is there any claim that I can release, or any charge or trouble that I can spare my husband in obtaining *his* release, by certifying to the exactness of your discovery?” (III: 41: 194). The discovery of Lady Dedlock’s secret undoubtedly can and will impact her personally and legally. The question shifts from discovery of “*the secret*”—Tulkinghorn has discovered it—to publication of “*the secret*,” which is what Lady Dedlock wants to know from Tulkinghorn. How far will he go in publishing her secret?

If revealed, “*the secret*” of Lady Dedlock is a moral transgression against Victorian society’s view of the Ideal Woman. If revealed, “*the secret*” is a legal transgression of the prohibition against lewdness, punishable by the Ecclesiastical Law for a term of imprisonment (R. Burn I: 405). If revealed, “*the secret*” hurts the two living persons whom Lady Dedlock cares about the most: Esther, the legal and personal embodiment of her maternal status, and Sir Leicester, the legal and personal embodiment of her marital status.

Neither overtly nor covertly can Lady Dedlock provide for her daughter because, as I have previously discussed regarding the issue of coverture, she has no control over her own inheritance (assuming she does inherit from the Jarndyce suit) and cannot reasonably depend on Sir Leicester’s generosity towards them both once he learns of Esther’s existence. Consequently, she leaves them both with an explanation and an apology and takes nothing with her but the clothes on her back when she leaves Sir Leicester. As a legal non-person, a *feme-covert* without a separate partition of property, she would likely be a thief if she did.<sup>3</sup> Of course, not until near the end of *Bleak House* does the narrator make clear that Sir Leicester would never exercise his prerogative and hound Lady Dedlock to recover both his public and private honor. Prior to his stroke, he is in equal parts consumed with family duty, political tradition, and Lady Dedlock. After his stroke, honor becomes irrelevant; Honoria does not.

“Indeed, he married her for love” (*Bleak House* 1873 I: 2: 23), but what has Sir Leicester’s love done? It is the Equity factor, the equalizing and evening substance that lends justice to their marriage, but, unfortunately, Lady Dedlock dies before she realizes

the depth and breadth of that love, leaving as she does suddenly in the heart of a bitterly cold winter. Before dealing specifically with the issue of Equity, two events that precede Lady Dedlock's departure need to be addressed, both of which bear on Lady Dedlock's state of mind and, subsequently, bear on issues of Equity. First, Mrs. Rouncewell comes to see her with a plea regarding her son George and the letter from Hortense. Second, Guppy comes to see her to warn her about the Chadbands and the Smallweeds.

In his article, Lowenstein discusses Mrs. Rouncewell's visit in terms of its tendency to show Lady Dedlock's moral irresponsibility, his argument resting on her not coming forward as a person with a motive to kill Mr. Tulkinghorn. His argument fails in at least one respect: he fails to account for his own argument that truth is of paramount interest to those who desire to behave in a morally responsible manner. Believing that Lady Dedlock should come forward and reveal that she had a motive for killing Mr. Tulkinghorn, Lowenstein disregards what is said to (and asked of) Lady Dedlock. Mrs. Rouncewell, who has come to Lady Dedlock because she has received a letter accusing Lady Dedlock of Mr. Tulkinghorn's murder, says that "[ . . . ] I have come here to make so bold as to beg and pray you not to be scornful of us, if you can do us any right or justice at this fearful time!" (*Bleak House* 1873 IV: 55: 133), to which Lady Dedlock truthfully replies, "I know of nothing I can do. I know of nothing I reserve, that can affect your son" (133). Mrs. Rouncewell herself says that she does not believe the statements against Lady Dedlock to be true: "[ . . . ] I don't believe what's written in it, I know it can't be true, I am sure and certain it is not true" (132).<sup>4</sup> Mrs. Rouncewell has conflicting emotions based on her deep-seated belief in the social superiority of the Dedlock family and a mother's

faith in her son. Lady Dedlock, on the other hand, reasonably believes that George could really be the murderer, in which case justice is being served. She, after all, knows that she did not do the crime. Further, if she interferes, she may actually pervert the course of justice by wrongfully intervening to aid Mrs. Rouncewell's attempt to free her son, so she responds accurately and truthfully when she says she knows of nothing that will aid George.

The conversation with Mrs. Rouncewell passes, leaving Lady Dedlock to read the accusatory letter alone, and, still, she takes no action regarding her own situation, that is, her premarital affair and motherhood. Although Lady Dedlock may have entertained the desire to flee after speaking with Mrs. Rouncewell, only after she speaks with Guppy does everything about her mental state change. After learning that the Chadbands and the Smallweeds have been to see Sir Leicester, Lady Dedlock writes him a letter (*Bleak House* 1873 IV: 55: 139-40), which he reads after his stroke (IV: 56: 144), that serves two purposes. First, she complies with Mrs. Rouncewell's wish that she state her movements on the night that Tulkinghorn is killed, and, second, she claims her feelings of unworthiness and shame.<sup>5</sup> After Guppy departs, she thinks,

So! All is broken down. Her name is in these many mouths, her husband knows his wrongs, her shame will be published—may be spreading while she thinks about it,—and in addition to the thunderbolt so long foreseen by her, so unforeseen by him, she is denounced by an invisible accuser as the murderess of her enemy. (IV: 55: 138)

Although Sir Leicester has paid (and will pay) to keep “*the secret*” a well-kept secret, Lady Dedlock does not know that. What she is certain of, however, is that she can and will be tried as Mr. Tulkinghorn's murderer and everything about her, Esther, and Captain

Hawdon will become public knowledge: “The complication of her shame, her dread, remorse, and misery, overwhelms her at its height; and even her strength of self-reliance is overturned and whirled away, like a leaf before a mighty wind” (139).

Lady Dedlock’s state of mind—“[t]he horror that is upon her is unutterable” (*Bleak House* 1873 IV: 5: 138)—forces her to face two possible legal consequences: a legal trial for murder and a social trial for Esther’s bastardy. The Law has proscribed certain acts such as those involving Lady Dedlock. In her case, a possible legal trial for felonious homicide, the killing of one human being by another human being without legal excuse or justification (Blackstone, *Facsimile* IV: 14: 188-89), for example, involves a penal statute for willful murder designed, as Bentham would say, to remedy “the evil of the offence” (*Theory of Legislation* I: 10: 66) in that the convicted murderer is executed (Blackstone, *Facsimile* IV: 14: 202). As to any issues for which she could suffer as a consequence of her sexual relationship with Captain Hawdon (for example, fornication, bastardry,<sup>6</sup> and hiding the birth of a child<sup>7</sup>), her actions could give rise to legal censuring based on penal statutes for which the Law governs punishment. Whether, if Lady Dedlock had remained at Chesney Wold, that is, legally (and, therefore, socially) within her coverture, she could have proved her innocence on the first issue of Mr. Tulkinghorn’s murder or her ability to rise above the fallout from the second issue of her relationship with Captain Hawdon is speculative. However, after the depth of Sir Leicester’s genuine love for Lady Dedlock is revealed, readers can reasonably assume that, if he had been given the opportunity, he would have moved heaven and earth to protect her. He still has the political, social, and legal means to achieve both ends. Lady Dedlock, however, decides irrevocably to leave her home and



to become literally what the Law of coverture has named her: no one. Through coverture, she is a legal non-person. Through flight, she will become a literal non-person.

*Bleak House* does not deal explicitly with legal analyses of penal codes though Mr. Tulkinghorn's murder undeniably is a criminal matter. Instead, the novel is a larger study of the punitive aspects of those issues found in the courts of Equity and in those areas of the Law reserved for the ecclesiastical courts in which courts readers typically would not expect to find the Law concerning itself so closely with punishing people. People, layperson and expert alike, expect penal codes to be punitive, yet the novel encourages everyone to think of all aspects of the Law as punitive in greater or lesser degrees as it affects various *Bleak House* characters, which, in this case, involves women who have been disabled by coverture. Not surprisingly, of course, everything about the Law is penal to Bentham. For example, contracts are punitive in nature. Any bargained-for exchange requires that each party relinquish something that he owns (or a liberty that he enjoys) for something that the other party owns (or enjoys). And that is precisely what many Victorian theorists, philosophers, and commentators call marriage: a legally binding contract<sup>8</sup>:

Our law considers marriage in no other light than as a civil contract. The holiness of the matrimonial state is left entirely to the ecclesiastical law: the temporal courts not having jurisdiction to consider unlawful marriages as a sin, but merely as a civil inconvenience. (Blackstone, *Facsimile I*: 15: 421)  
Marriage is a contract still more important, as the happiness of one's whole life may depend on it. (Kames 148)  
To constitute such a contract there must be an agreement between a man and a woman, by which they mutually promise to marry one another. (Crofts 15)

If marriage is a contract, it should be subject to and reflective of then-existing contract law, or so one would be led to believe. Unfortunately, for nineteenth-century women, nothing in regard to marriage was that straightforward, and a revision of this view of marriage did not occur until decades later:

Inasmuch as such a union must, according to English Law, be entirely spontaneous on both sides, it is often described as a 'contract,' i.e. an agreement enforceable by law. But this practice has its dangers; for it leads inevitably to the assumption, that marriage is a contract having the same qualities as ordinary contracts in English Law—a most profound error. (Jenks, *Book of English Law* 273-74)

Thus, for nineteenth-century Law, the marital contract was a legal fiction that, like the Chancery Court, seemed designed to create more confusion than stability.

Confusion arose, at least in large measure, because the marital contract was predicated on a sense of property conveyances in addition to contractual obligations. Yet, although marriage law, property law, and contract law ostensibly are civil in nature, according to Bentham, no meaningful distinction between civil law and penal law exists:

We come now to speak of what is called civil law or jurisprudence on the one hand and penal law or jurisprudence on the other: or more properly to the art of legislation in civil matters on the one hand, and the art of legislation in penal matters on the other. Between these two branches which are so often set in opposition to one another where then lies the distinction? Nowhere. They are inextricably interwoven. What individual law is civil and not penal? There is no such thing. What law is penal and not civil? There is no such thing. In every law must be comprised two things: 1. a specification of the cases in which punishment is to attach; 2. a specification of the punishment itself: without punishment, no such thing as law: without a motive no such thing as action. (*Limits of Jurisprudence* 53)

In order to convey property, a man exchanges money, goods, or services, for another's property. In order to enter a contract, each party agrees to exchange something of value

for something that the other party owns. In either case, the relinquishment of a right or liberty is punitive to Bentham. Marriage seems to be a conglomeration, or, as Jarndyce would say, a “Wiglomeration” (*Bleak House* 1873 I: 8: 146) of these ideas:

The matrimonial contract, whatever covenants may be annexed to it, is at any rate a conveyance, if it were only in virtue of the [ . . . ] powers it conveys to the husband commonly over the property of the wife and necessarily over her person. The power of conveying these powers belongs to the several parties whose concurrence collectively or disjunctively is necessary and sufficient to the validity of the marriage: such as the parties, the parents or guardians, the priest or magistrate who performs the ceremony, the magistrate who grants the license, and so on. (Bentham, *Limits of Jurisprudence* 171)

These seemingly disjunctive legal ideas—sanctity of marriage, contractual obligations, and property conveyances—are why contemporary readers may feel uncomfortable with Jarndyce’s conveying or giving Esther to Woodcourt: “‘Allan,’ said my Guardian, ‘take from me, a willing gift, the best wife that ever a man had’” (*Bleak House* 1873 IV: 64: 279). The “[ . . . ] legalized union of two persons of different sexes, at the time of the marriage unmarried, with the object of setting up together a permanent and exclusive domestic life of the completest intimacy, spiritual and physical” (Jenks, *Book of English Law* 273) is surrounded by the property-like conveying of Esther, willing though she may be to be conveyed.

Nevertheless, the Law creates certain expectations of equality and security in marital relationships, which, if unmet, diminish the parties’ confidence in marriage as a viable social institution. Caddy Turveydrop lives with the belief that she entered into a marital relationship that disadvantages Prince; she thinks that she is unworthy of him because she was “so unpolite and inky” (*Bleak House* 1873 III: 38: 141) and had no wifely

skills to offer. From her perspective, her “contract” is arguably not a fairly bargained for exchange, and she works desperately to make up for the perceived inequities. Likewise, the brickmakers’ wives who bear the outward “signs and tokens” (II: 25: 200) of relationships that are physically uneven, unequal, and certainly inequitable call into question the Law’s ability to enforce marital security and safety. Even if a marriage’s “[ . . . ] terms and consequences cannot be modified by the agreement of the parties, however clearly stated before the entry into the union [ . . . ]” (Jenks, *Book of English Law* 274), the brickmakers’ wives have had to modify their relationships in order to accommodate abusive husbands, and Caddy, with a mother who is not interested in anything closer than Borrioboola-Gha, modifies herself in order to better accommodate what she believes is a good wife.

Bentham points out how the Law’s lack of clarity leads to misunderstandings and confusion:

Suppose the law to say—‘let no man steal anything, knowing that he has no title to it’: the words ‘knowing that he has no title to it’ are expressive of a circumstance; but of a circumstance which is not specificant: a man can not [sic] steal anything without knowing that he has no title to it: since if this consciousness be wanting, the taking is not what is meant by stealing. (*Limits of Jurisprudence* 127)

The Law tells men, such as the brickmakers, that they cannot abuse their wives: “[ . . . ] this power of correction was confined within reasonable bounds [ . . . ]” (Blackstone, *Facsimile I*: 15: 432). Noticeably, “reasonable” is not clearly defined, but the Law rests upon the fiction that wives depend on the sheltering wings of their husbands: “[ . . . ] under whose wing, protection, and *cover*, she performs every thing [ . . . ]” (430). However, “[ . . . ] the courts of law will still permit a husband to restrain a wife of her liberty, in case

of gross misbehaviour” (433). The Law first says that a woman, by marrying, loses her separate legal identity, so she must be held “under the protection and influence of her husband” (430); the Law then further fictionalizes the relationship by asserting that she, after becoming a legal non-person, has, by some legal miracle, some further liberty that can be restrained by the person into whose existence she has been subsumed.

If the Law tells people that they cannot modify the terms and conditions of their marriage, resting as the Law does upon the fiction that marital contracts are not only irrevocable by the vast majority of people but also unalterable even though inequity is clearly present, then the Turveydrops and the brickmakers’ wives of the world are grievously disadvantaged indeed. Of course, this sort of legal logic is counterintuitive to anyone who has ever been married; people, being human, will change their minds, their expectations, and their beliefs, rightly or wrongly, over time. The Law, in this connection, also conflicts with the underlying legal presumption that the parties enter marriage willingly and with a full understanding of their “reciprocal duties” (Blackstone, *Facsimile I*: 15: 421) as husbands and wives: marriage is “[ . . . ] entered into freely and voluntarily by parties who have full knowledge of what they are doing” (Jenks, *Book of English Law* 274). This presumption defies reason. Even basic contract law provides for the possibility of mistake when a party holds a “[ . . . ] a misapprehension of material fact” (401).

Mistakes: they are frequently made, often forgiven, and sometimes entail legal consequences. The legal terms and conditions of Lady Dedlock’s marriage have been discussed, and they too reflect the traps and hazards of a Blackstone-like belief in the immutability of the Law: “We may say, then, that defective knowledge has been the cause

of most vicious laws, and a deference to what is supposed to be the wisdom of our ancestors, but which is in reality the want of it, absolute folly it may be, is the cause of their perpetuation” (“Mutable Law” 138). Discounting, or failing to take into account at all, the changeability of people defeats the purpose of the Law and exacerbates already defective case law and statutes. *Bleak House* readers probably have mixed feelings about whether the Law or society in general is morally responsible for punishing unwed mothers and, by extension, their illegitimate children. However, the novel, though it may start with Lady Dedlock, does not end there. The novel carries forward the questions of how to change the Law in order to better reflect Equity.

Bentham despised the idea of Equity. He firmly believed that, if legislation were carefully drafted, society could be improved:

It is with government as with medicine; its only business is, the choice of evils. Every law is an evil, for every law is an infraction of liberty. Government, I repeat it, has but the choice of evils. In making that choice, what ought to be the object of the legislator? He ought to be certain of two things: 1st, that in every case the acts which he undertakes to prevent are really evils; and 2d, that these evils are greater than those which he employs to prevent them. (*Theory of Legislation* I: 10: 66)

Also, through a system of codification, Bentham believed that the Law would be so clearly delineated that the idea of Equity would be superfluous. Yet even he could not entirely dispense with the notion, and virtually buried in his *Theory of Legislation* is the following claim:

As to other circumstances of which the examination must be absolutely left to the judge, as the *more or less* of derangement of mind, the *more or less* of strength, the *more or less* of fortune, the legislator, who cannot decide upon individual cases, will direct the tribunals by general rules, and will leave them a certain latitude in order that they may proportion their judgment to the particular nature of the circumstances. (I: 9: 3: 64)

The “*more or less*” and the “nature of the circumstances”: these are words of Equity, and, as Equity figures, Esther Summerson and John Jarndyce try to soften the inequities that they find. They are left with another legal inequity at the end of the novel for which I can find no previous critical analysis: Ada Clare. Bentham’s Radicalism may have led him to expose and censure laws that he found to be unclear, but Dickens’s Sentimental Radicalism led him to create a character, Ada Clare, who carries forward his ideas about Equity.

From an analysis of the existing law and the description of their relationship, I believe that Ada Clare never legally married Richard Carstone; thus, like Esther, Ada’s child is illegitimate. Their alleged marriage is void *ab initio*. English marriages were traditionally preceded by various formalities: “Lastly, the parties must not only be willing, and able, to contract, but actually must contract themselves in due form of law, to make it a good civil marriage” (Blackstone, *Facsimile I*: 15: 427). Ada and Richard keep their alleged marriage secret: “And I noticed as I kissed my dear, that she lay with one hand under her pillow so that it was hidden” (*Bleak House* 1873 IV: 50: 40). Their marriage remains a secret for some time before Ada tells Esther that “[w]e have been married above two months” (IV: 51: 50). Ada and Richard chose to marry secretly and, thereby, failed to comply with the legal requirement of notice, which non-compliance carries its own legal consequences: “It must also be preceded by publication of banns [ . . . ]” (Blackstone, *Facsimile I*: 15: 427).

During the 1700s, English marriages were created by one of three methods: “[ . . . ] first, by public solemnization in facie ecclesiæ; the second, by clandestine celebration;

and the third, by mere consent of parties” (Macqueen, *A Practical Treatise* 1-2). Because of various public policy considerations, the government passed a bill greatly revising marriage laws:

Towards the middle of the last century clandestine and consensual marriages had together brought matters to such a pass that the Government resolved to interpose. In 1753 a Bill was prepared by Lord Chancellor Hardwicke, and, notwithstanding a most violent opposition, it passed into law, under the auspices of a powerful administration. (8)

Consensual marriages were voidable at the option of the parties rather than void *ab initio* (9). The Law as enacted by Hardwicke’s Marriage Act took away “the means of compelling celebration” (9), but the marriage could rise to the level of those made by “public solemnization in facie ecclesiae” through the method described in Hardwicke’s Marriage Act. Clandestine marriages were now clearly null and void (9). These marriages were those that were “clerically but covertly celebrated” (9). Apparently, people frequently arranged clandestine marriages in “[ . . . ] a private house, or in a tavern; very often in a prison; and not rarely, when it suited the impulses of parties, in a brothel” (2), and, just as frequently, services were performed by “[t]he individuals who thus brought disgrace on their sacred calling enjoyed, in some instances, pecuniary prosperity” (3). Most importantly, to now have a legally valid marriage, the Act “[ . . . ] rendered two things absolutely indispensable which were before only recommended; namely, in the absence of license, the proclamation of banns; and in the case of minors, the consent of guardians” (11), which is what Caddy and Prince do when they seek their parents’ permission. The government again revised the marriage law in 1823. The public thought that the Law was too harsh, so “[ . . . ] the penalty of nullity was confined to the case of persons *willfully*



consenting to the celebration of marriage before publication of banns [ . . . ]” (12), or, as Thomas Poynter puts the situation: the “wilful contravention” of the statute renders “the contract null and void altogether” (6: 30).

These laws are the relevant laws that would have been in effect during the time of the action in *Bleak House* when Ada and Richard secretly marry. Undeniably, they did not comply with the statute requiring that banns be published or else Esther and Jarndyce would have known of the impending event. Given the sketch of Ada’s character, she would not have merely consented to a marital arrangement. She and Richard would have more likely had a clandestine marriage by one of those “individuals who thus brought disgrace on their sacred calling” (Macqueen, *A Practical Treatise* 3). By receiving marriage rites by this sort of minister, Ada and Richard would be “[ . . . ] joined in holy matrimony by outcasts, who, though base and profligate, were nevertheless, by virtue of their ordination, indelibly sacerdotal” (3). Legally, though, by “*willfully consenting* to the celebration of marriage before publication of banns” (12), she and Richard have no legal marriage: no legal marriage results in illegitimate children. After all, one of the most well-known legal maxims says that “[i]t is a well known maxim, that ignorance of law will not furnish an excuse for any person, either for a breach, or an omission of duty; *ignorantia legis neminem excusat*; and this maxim is equally as much respected in Equity as in law” (Story I: 5: 121).

Vholes, Richard’s vampire-like lawyer, calls Ada and Richard’s presumed marriage “ill-advised” (*Bleak House* 1873 IV: 60: 225) in his conversation with Esther. Considering how much more money he is receiving by virtue of Ada’s money that she has now given

Richard—“[t]hat the money Ada brought [Richard] was melting away with the candles I used to see burning after dark in Mr. Vholes’ office, I knew very well” (221)—Vholes’ comment is interesting. He should have every reason to be happy with the infusion of cash, yet his characterization of the marriage gets progressively more ominous. He first calls the marriage “ill-advised” (225), then “very ill-advised” (226), and finally “exceedingly ill-advised” (227). I believe that he sees the marriage for what it is, illegal and void, and that the situation may cause him his own difficulties because he is Richard’s legal advisor: “I owe the opinion, not only to Mr. C’s connections, against whom I should naturally wish to protect myself, but also to my own reputation—dear to myself, as a professional man aiming to keep respectable [ . . . ]” (226).

But Ada and Richard’s relationship, though arguably illegal and void, differs significantly from Lady Dedlock and Captain Hawdon’s. Lady Dedlock and Captain Hawdon ostensibly never tried to legalize their relationship even though Lady Dedlock became pregnant. No Equity figure was available to help them. Dickens’s Esther and Jarndyce, however, are available to make sure that Ada’s life does not turn out to be another tragedy. They can see the “nature of the circumstances” and the “*more or less*” that even Bentham could not deny exists. They can censure the state of the Law by exercising, as Bentham would say, “a certain latitude” (*Theory of Legislation* I: 9: 3: 64) in their treatment of Ada and her child. Jarndyce was capable of changing others’ attitudes; he did it with Mrs. Woodcourt by teaching her how to love and accept Esther by relying on personality rather than pedigree. Benthamite Radicalism and Dickensian Sentimental Radicalism are both necessary to fully censure the Law’s ideal of women, which ideal had

become translated into the oppressive institution of marital coverture. Otherwise, not trying leaves society with the Lady Dedlocks who die believing that they, as wives, can be irrevocably shamed, both legally and personally, by the “Master” Tulkinghorns.

Otherwise, not trying leaves society with the Lizes and Jennys who die a little every day believing that they, as wives, are irrevocably bound, both legally and personally, to their “masters.” Otherwise, not trying to censure the Law’s fiction of the *feme-covert* perpetuates each of the legal fictions that surround the marriage contract and the legal fiction that people can be the children of Nemo: “That image is shattered, and that idol is laid low”

(*Bleak House* 1873 III: 39: 166).

## Notes

<sup>1</sup>In the second part of the first volume of his *A Treatise of Testaments and Last Wills*, Henry Swinburne lists the types of persons who are legally incapable of creating testamentary documents. These persons, in addition to married women, include “mad folks and lunatic persons,” idiots, drunkards, those who are both deaf and dumb, traitors, felons, usurers, “him that killeth himself wittingly and knowingly,” and outlaws (152-53). The types of persons precluded from executing testamentary documents all presume a lack of legal capacity predicated on either mental incapacity, physical incapacity, or a breach of social order by the alleged testator or testatrix, which puts married women in interesting company.

<sup>2</sup>The anonymous author of “Review of *Bleak House Complete*” (1853) finds the ending implausible, saying that “[ . . . ] such a catastrophe [surrounding Lady Dedlock’s death] could not really have been hushed up in the manner hinted at in his closing chapters” (53). However, Dickens has already forewarned his readers of how effective money, power, and authority can be in such matters: Tulkinghorn was able to steer Nemo’s inquest to his advantage, and Bucket is described as a detective perfectly willing and able to bribe, cajole, and strong-arm witnesses, suspects, and bystanders alike. The process for a coroner’s inquest can be found in Joseph Chitty’s *A Summary of the Office and Duties of Constables*.

<sup>3</sup>Arguably, Lady Dedlock may still be so regarding the watch, which she gives to the brickmaker in exchange for a place to rest and for Jenny’s help:

[ . . . ] but there is another kind of property which a married woman may possess, not the result of any settlement or contract, but the spontaneous produce of the liberality of the husband or of a stranger, viz. jewellery [sic] and other ornaments of the person given before or during the marriage; and her right to retain gifts of this nature is sometimes disputed [ . . . ]. (Clancy 34-35)

<sup>4</sup>Dickens may have intended some word-play at this point with the phrase “sure and certain,” being reminiscent of the “sure and certain hope of the Resurrection” phrase, which is included in the Order for the burial of the dead (*The Book of Common Prayer* 333) and which is contrary to its use here to affirm a negative. Stephen A. Gill discusses other Biblical and *Common Prayer* allusions used by Dickens in *Bleak House*.

<sup>5</sup>Again, Lady Dedlock reveals the truth to Sir Leicester contrary to Lowenstein’s argument that she is morally irresponsible. Lowenstein seems to depend on verbal exchanges, rather than written ones, to demonstrate someone’s sincerity and honesty.

<sup>6</sup>According to Blackstone,

[ . . . ] we must take notice of the temporal punishment for having *bastard children*, considered in a criminal light; for with regard to the maintenance of such illegitimate offspring, which is a civil concern, we have formerly spoken at large. By the statute 18 Eliz. c.3. two justices may take order for the punishment of the mother and reputed father [ . . . ]. (*Commentaries* 15<sup>th</sup> ed. IV: 4: 65)

<sup>7</sup>According to Crofts, “[w]here a woman has been delivered of a child, it is by statute a misdemeanour for any person, by secret disposition of the dead body of the child, to endeavour to conceal its birth, whether the child died before, at, or after its birth” (60). Of course, Esther did not die at birth, but Lady Dedlock believed that she did. Her action (or, as some legalists could argue, her complicity) in allowing Miss Barbary to take the “corpse” away could be used as evidence of her state of mind (guilt over the sexual relationship and resulting pregnancy) as a motive to kill Tulkinghorn.

<sup>8</sup>Apparently, even the promise to marry carried contractual obligations: “A contract to marry is, according to English Law, a binding contract; and an action can be brought for breach of it” (Crofts 15). In addition, I am omitting any religious debate regarding marriage as being outside the scope and purpose of this dissertation. Those desiring further information regarding the Church’s position may want to consult Richard Burn’s *Ecclesiastical Law: With Notes and References by Simon Fraser*.

## CHAPTER THREE

### Dickens's *Bleak House*: Bastards, Orphans, and Wards

"I don't care!" she said. "Now, you are my witness, Miss Summerson, I say I don't care—but if he was to come to our house with his great shining lumpy forehead, night after night, till he was as old as Methuselah, I wouldn't have anything to say to him. Such ASSES as he and Ma make of themselves!"

"My dear!" I remonstrated, in allusion to the epithet, and the vigorous emphasis Miss Jellyby set upon it. "Your duty as a child"—

"O! don't talk of duty as a child, Miss Summerson; where's Ma's duty as a parent?"

~ Dickens, *Bleak House* 1873 (I: 5: 76)

English law is jealous for the honour and reputation of the home and the family. [. . .] The law, therefore, ardently presumes in favour of marriage and against concubinage, according to the maxim omnia presumuntur pro matrimonio, particularly where the legitimacy of issue is at stake.

~ Hooper (141-42)

Duty—child—parent: the question of "where's Ma's duty as a parent" resonates throughout Charles Dickens's *Bleak House* in its characters' search for meaning for the words *duty*, *child*, and *parent*. In the Jellyby household, few, if any besides Caddy Jellyby, have an inkling of the importance (or meaning) of these words or of the need to question their existence. Mrs. Jellyby consistently and constantly dictates words to Caddy, but not these words, at least not in the context of any personal meaning. Mrs. Jellyby—parent and mother—lives instead (and some would say exclusively) to expedite the correspondence to, from, and about her missionary efforts on behalf of Borrioboola-Gha: "We hope by this time next year to have from a hundred and fifty to two hundred healthy families cultivating coffee and educating the natives of Borrioboola-Gha, on the left bank of the Niger" (*Bleak House* 1873 I: 4: 62). The lives of her own children, including Caddy, are,

unbeknownst to her, writ large in the outward damage to their bodies as a consequence of Mrs. Jellyby's neglect: "The children tumbled about, and notched memoranda of their accidents in their legs, which were perfect little calendars of distress [ . . . ]" (I: 5: 92). No "correspondence" exists between what can be read on the bodies of her children and in Mrs. Jellyby's role as their parent.

For her part, Caddy Jellyby "[ . . . ] was fast relapsing into the inky condition in which we had found her" (*Bleak House* 1873 I: 5: 92) where words are very functional but not very sentimental. The word that Caddy uses to refer to her mother is *Ma*, and, as assuredly as Mrs. Jellyby is Caddy's *Ma*, Mrs. Jellyby is also a wife, and, as a wife, she is a legal parent. After all, "[t]he [British] Common Law [ . . . ] adopted as a fundamental principle, the maxim of civilians, that *marriage is the proof of paternity*" (Nicolas 1), and as Blackstone, the great jurist claims, "[t]he next, and the most universal relation in nature, is immediately derived from the [marriage relation], being that of parent and child" (*Facsimile* I: 16: 434). But Caddy knows quite well that her mother is failing her as a parent, that she is rebelling against her mother's failure, and that both are not fulfilling their duties toward each other, leaving Caddy yearning for a more attentive and sympathetic mother and a more ideal family.

Caddy's feelings of abandonment, indeed the feelings of any child reared in such circumstances, are understandable, and, in *Bleak House*, many types of parents, children, and the duties of these parent-child relationships form many types of families that seemingly defy a universal definition of an ideal Victorian family unit. As Catherine Waters argues in the introduction to her *Dickens and the Politics of the Family*, much

nineteenth-century political and philosophical discussion concerned defining what a family even is, and, according to her argument, the Victorian family was constructed according to class and gender (16). For Waters, Dickens's fictions contribute to the defining (and redefining) of family by creating a paradox between the idea of family as representative of domestic perfection and as representative of a fractured element of Victorian society:

The conceptualisation of the family for which Dickens was celebrated in his own day is the ideal of domesticity depicted in set-pieces like the description of the Cratchits' Christmas dinner. To be sure, more often than not his fiction delineates families made memorable by their grotesque failure to exemplify the domestic ideal. However, this ideal is almost everywhere implied as the standard against which the families portrayed in the novels are evaluated, and herein lies the explanation for the paradox involved in the apparent disjunction between Dickens's reputation as the celebrant of domestic bliss and his fictional interest in fractured families. (27)

To this discussion, Esther Summerson adds another dimension. She is the legal dimension that further complicates the paradoxical situation of the ideal of the family and the legal institution of family: she is a legal non-person and, without family or identity, tries "[ . . . ] to do some good to some one, and win some love if I could [ . . . ]" (*Bleak House* 1873 I: 3: 45).

Esther shares Caddy's sense of abandonment in that, as a child, she believes herself an orphan and, many years later, becomes so. Also, Esther's sense of self shifts many times during her life because, after enduring a loveless childhood spent with her godmother,<sup>1</sup> she is educated and trained to assume the responsibilities placed upon her due to her wardship through John Jarndyce. He assumes responsibility for her care and custody because he chooses to, and they form a relationship not predicated on either one's



legal responsibilities or duties to each other. From her position of wardship, Esther learns of her illegitimacy, yet by the novel's end she has become both the wife of a doctor, which husband knowingly and willingly ignores the issue of her birth circumstances, and the mother of three girls. Esther, though she shares Caddy's confusion about how to achieve adulthood without maternal support, is unique for her own socially unequal marriage, based as it is on Allan Woodcourt's pedigreed past and her legally constructed non-past.

Throughout her childhood and early adulthood, Esther never knows a natural relationship with a mother or a father, although she knows that parents and children owe each other more than a place to live. The circumstances surrounding Esther's abandonment arose because her birth mother, Lady Dedlock, never wed Captain Hawdon, Esther's birth father. Shortly after Esther's birth, Lady Dedlock believed that Esther was dead, a belief that Miss Barbary, Lady Dedlock's sister and acting midwife, encouraged by not correcting. Having lied by omission, Miss Barbary left with the infant Esther, never contacting Lady Dedlock again and inflicting a deep shame on Esther for having been born: "What did I do to her? How did I lose her? Why am I so different from other children, and why is it my fault, dear godmother?" (*Bleak House* 1873 I: 3: 33).

Through the course of *Bleak House*, however, the explanations of Esther's, Lady Dedlock's, and Captain Hawdon's lives become clearer, and readers learn of their relationship. Captain Hawdon, though, dies without ever knowing that Esther exists, and Lady Dedlock dies after privately acknowledging Esther but without publicly establishing their blood relation. If, as Lisa Zunshine argues, the eighteenth century engaged in a growing literary trend concerned with the "[ . . . ] reimagining of bastardy" in that "[l]ost

male children were allowed to stay illegitimate” and females “[ . . . ] suffer the threat of illegitimacy throughout the story, only to discover at the end that their parents were married at the time of their conception” (“Bastard Daughters” 510-11), then the nineteenth-century *Bleak House* does not follow or continue in this tradition. Esther is once and forever a female bastard, a child of No One. She is what the Law calls a “natural” child, a legal euphemism for bastard, and is, by Law, a legal fiction who is not a child but rather “a nameless piece of babyhood” (Hooper 122).

The issue of Esther being “a nameless piece of babyhood” is set against the issue of her many names, and many critics have remarked upon the innumerable names that Esther is called in *Bleak House*: “Hence perhaps this easy, uncomplaining acceptance of all the names and nicknames—Summerson, Fitz-Jarndyce, Dame Durden, Dame Trot, Mother Hubbard—that are given her as if she were a ‘bad boy’ or someone in a nursery rhyme” (Sadrin 65-66). Of this situation, Esther herself says that “[t]his was the beginning of my being called Old Woman, and Little Old Woman, and Cobweb, and Mrs. Shipton, and Mother Hubbard, and Dame Durden, and so many names of that sort, that my own name soon became quite lost among them” (*Bleak House* 1873 I: 8: 146). Esther’s identity, though she is named many things, is tantamount to namelessness: “[ . . . ] but in so far as they obscure or ignore her given names, they tacitly deprive Esther of a measure of identity and reduce her to the relative anonymity of a housekeeper” (Axton 550). Miss Barbary, Esther’s godmother and biological aunt, chooses to dissociate Esther as completely as she can from any direct reference to Lady Dedlock, who, at Esther’s birth, retained the name Barbary. To call Esther by a “Barbary” surname, of course, would point to an obvious

biological relationship between Esther and Miss Barbary, a relationship Miss Barbary went to great lengths to obliterate. By refusing to recognize, much less celebrate, Esther's birthday, Miss Barbary further reinforces the legal fiction that Esther's illegitimacy precludes, somehow, the biological fact that Esther has a mother and a father: "You are different from other children, Esther, because you were not born, like them, in common sinfulness and wrath" (*Bleak House* 1873 I: 3: 34). This legal and social obliteration of the fact of Esther's lineage reinforces her peculiar legal status in that, as a legal non-person who is not on equal legal footing with any of the other major *Bleak House* characters, Esther has no expectation as a potential Jarndyce litigant. Even though her mother, Lady Dedlock, is a collateral Jarndyce relation who has an interest in the Jarndyce litigation, Esther has no cognizable claim. No legal identity is the equivalent of being legally nameless. Nevertheless, Esther has to have a surname of some sort, and, apparently without formal baptism or registration, Miss Barbary gives Esther the surname "Summerson"; a bastard, after all, "[ . . . ] has no right to the surname either of its father or its mother" (Hooper 122) but must be called something. Esther, therefore, acquires a name by reputation: "[ . . . ] a bastard can acquire a surname only by reputation [ . . . ]" (123).

Interestingly, no *Bleak House* character consistently calls Esther by her reputed name except Caddy Jellyby, originally referring to her as "Miss Summerson" and, once they become friends, as "Esther." Though meant as terms of endearment, the pet names used by Ada Clare, Richard Carstone, and John Jarndyce imply disapprobation. Ada, Richard, and Jarndyce are, presumably, the persons closest to anyone who can be

considered as Esther's family, but they choose to call her pet names (Dame Durden, Dame Trot, and Mother Hubbard). As William Axton argues, these names associate Esther with a loss of identity and create an association between Esther and "[ . . . ] witches, hags, spinsters, widows, and comic old dames [ . . . ]" (550). Esther is left with a sense of "[ . . . ] being tainted by the circumstances of her birth, she is so repugnant to others that she will never 'win some love' to herself,' that she is doomed to live out her life as a dame, an old maid, a housekeeper" (551).

Being lost in a sea of names, Esther, like her father Nemo who is presumed literally lost at sea, struggles to clarify who she is and to whom. Yet insofar as who she is—who the Law says she really is—only Miss Flite puts her finger on the issue of Esther's legal being and the question of names and naming. In addition to Caddy, who calls Esther by her reputed name, and the Jarndyce household who use tags for Esther, Miss Flite calls Esther "Fitz-Jarndyce," the word *Fitz*, thereby, signifying illegitimacy (OED). Miss Flite, for whatever reason and no matter how unknowingly, has most clearly identified who Esther is, at least in a legal context: an illegitimate Jarndyce relation.

Esther's immediate relation, though, is Miss Barbary who has assumed the care, custody, and control of Esther's person and has admonished Esther to live a life marked by "[s]ubmission, self-denial, diligent work [ . . . ]" (*Bleak House* 1873 I: 3: 34). After experiencing the kindness of the Misses Donnys and the other boarders at Greenleaf, Esther gets to, quite literally, turn over a new leaf. While among people who show her kindness and are actually happy to share her birthday, Esther re-forms her own opinion of Miss Barbary's instruction and determines that she should, instead, live a life in which she

is “[ . . . ] industrious, contented, and true-hearted [ . . . ]” (45), from which desire she acquires some skills and training of young girls. This opportunity arises because, after Miss Barbary’s death and her anonymous plea to John Jarndyce to assume responsibility for Esther, Esther and her education are given over to Jarndyce in his capacity as guardian. Consequently, after several years’ training and as still a young woman, Esther leaves to become Jarndyce’s housekeeper.

From her association with Jarndyce, Esther first meets the Jellybys, the Pardiggles, and the brickmakers and their wives and learns even more about children, parents, and the duties between them. Before too long, Esther sees enough of their households to form her own opinion about such parents and to conclude that

It struck me that if Mrs. Jellyby had discharged her own natural duties and obligations, before she swept the horizon with a telescope in search of others, she would have taken the best precautions against becoming absurd; but I need scarcely observe that I kept this to myself. (*Bleak House* 1873 III: 38: 138)

Critics have commented on the types of philanthropists that Mrs. Jellyby and Mrs. Pardiggle represent, which philanthropy is at odds with their parenting: “Mrs. Pardiggle and Mrs. Jellyby in particular represent the clearest instances of misplaced priorities and malign neglect, as they exploit and ignore their many children in favor of ‘causes’ [ . . . ]” (Dever 43). Of these women, for example, Edgar Johnson says,

Mrs. Jellyby, never seeing anything nearer than Africa, Mrs. Pardiggle, forcing her children to contribute their allowances to the Tockahoopo Indians, are themselves; but they are also the types of a philanthropy that will do nothing to diminish the profitable exploitation of England’s poor. (II: 8: 2: 769)

Failed, or at least inappropriate, parenting then is not a question of bastardy; legitimate children can have lousy parents, too.

Not concerned, at least not consciously, about questions of legitimacy, Esther sees what she calls “natural” duties and obligations between parents and children without having had her own direct relationship with a mother or father. She acquires her understanding by observing others’ interactions and from her relationship with her childhood doll. Carolyn M. Dever argues that Esther’s doll serves as a mother-substitute and that by talking to the doll Esther “constitutes herself” (48). Although this argument has merit, the doll may also be a surrogate “Esther” in that Esther is its surrogate mother, and, when Esther has to leave Miss Barbary’s house, she buries the doll, the dead infant “Esther.” Then, when Ada is placed in her care, Esther has a new duty as surrogate mother. From her new “child” Ada, Esther constructs a family with herself as mother figure, including Jarndyce (father) and Richard (brother).

The difficulty is that Esther’s Jarndyce “family” is as artificial as the legal fiction of bastardy, and the Victorian definition of *family* is not that much more concrete. In *Bleak House*, the definition or idea of family shifts several times. The first instance concerns the novel’s use of the word *race* as used in the story of Sir Morbury Dedlock and his Lady Dedlock, as recounted by Mrs. Rouncewell. Their story occurs some time during the English civil wars. Animosity grew between these ancient Dedlocks after one of Sir Morbury’s kinsmen killed Lady Dedlock’s brother in battle: “After her favorite brother, a young gentleman, was killed in the civil wars (by Sir Morbury’s near kinsman), her feeling was so violent that she hated the race into which she had married” (*Bleak House* 1873 I: 7:

135). In the context in which the word is used by Mrs. Rouncewell, the word *race* refers to “the ‘patronymic’ or ‘family name’” (Flandrin 12).

Within this ancient Dedlock family and with its time-honored family name—its race—the ancient Dedlocks have a failed marriage because, in addition to being “[ . . . ] not well suited to each other in age or character [ . . . ]” (*Bleak House* 1873 I: 7: 135), the original Lady Dedlock breached her duties to honor and obey both the King and her husband by attempting to thwart the actions of both regarding Sir Morbury’s obligations to ride to the King’s defense. She, consequently, is lamed instead of the horse, limping and cursing the Dedlocks until her death. The original Lady Dedlock hated everyone named Dedlock, whether living within the walls of Chesney Wold or elsewhere; thus, the novel uses the word *race* to refer to all of the Dedlocks who bear that name as a result of a common male ancestor (OED), which, for this Lady Dedlock, was anyone related to her husband. In this sense, whether persons are members of a family or race does not require that they all be co-tenants or co-residents of a particular household so long as there is a common male ancestor.

The definition of family based on consanguinity without necessarily including co-residency shifts in a second instance with Sir Leicester and Mrs. Woodcourt in the novel’s use of the word *lineage*. Sir Leicester and Mrs. Woodcourt count those as family who are related on either the paternal or the maternal side, so long as the relationships are traceable to a common ancestor. Mrs. Woodcourt, Allan Woodcourt’s mother, is consumed with the “lineage of Morgan ap Kerrig” (*Bleak House* 1873 II: 30: 279). Because Allan does not bear a “Morgan” or “ap Kerrig” surname, his relationship to the ancient

Welshman must have been derived, at some point in the family tree, through a maternal ancestor. But, for Mrs. Woodcourt, the lineage is strongly indicative of her family's importance, representing, at least to her, her son's relationship to an ancient Welsh nobleman (if not Welsh royalty): "So, Miss Summerson,' she would say to me with stately triumph, 'this, you see, is the fortune inherited by my son. Wherever my son goes, he can claim kindred with Ap Kerrig. He may not have money, but he always has what is much better—family, my dear'" (279). Mrs. Woodcourt's preoccupation with her son's Welsh pedigree is consonant with James Finlayson's study of the history of surnames in which he points out that

The Messrs Burke in their Encyclopedia of Armory of the British Empire thus testify to the transmission of Welsh pedigrees; they say—'their chroniclers and bards flourished from the remotest times as genealogists and heralds, and the collections and pedigrees of those patriarchal poets are still regarded as the foundation of Cambrian family history.' (12)

Like Mrs. Woodcourt's Morgan ap Kerrig, Sir Leicester seems to be the male relative to whom all of his collateral relations claim kinship: "Sir Leicester's cousins, in the remotest degree, are so many Murders in the respect that they 'will out'" (*Bleak House* 1873 II: 28: 248-49). His cousin Volumnia Dedlock can trace her lineage also on her mother's side: "[ . . . ] having the honor to be a poor relation, by the mother's side, to another great family" (249). In both circumstances, paternal and maternal lineage gives the holder social standing. For Mrs. Woodcourt, a famous bloodline means a social standing that can be used to bargain for an advantageous marriage for her son: "My son is one of the last representatives of two old families. With the blessing of Heaven he will set them up again, and unite them with another old family" (II: 30: 280). For Sir



Leicester, a traditional lineage is evidence of his wealth and generosity: “Sir Leicester, like a glorious spider, stretches his threads of relationship. [ . . . And] he stays out the visit of several such cousins at Chesney Wold, with the constancy of a martyr” (II: 28: 249). For both, “[a] family name is an inseparably invested property” (Finlayson 28) indicative of one’s position in society, that is, of one’s status.

Regarding the changing definition of *family*, especially regarding the issue of status, Catherine Waters argues that

The transformation of the old world into the new—famously characterized by Sir Henry Maine in 1861 as a ‘movement *from Status to Contract*’—is suggested in the novel [*Little Dorrit*] by the deployment of shifting definitions of the family which political theorists such as Sir Robert Filmer and his major opponent, John Locke, had used to explain the origins of civil society. (*Dickens and the Politics of the Family* 90)

I believe that Waters has overstated Maine’s point, and, in the 1907 edition of Sir Henry Sumner Maine’s *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*, Sir Frederick Pollock, himself a legalist, in his notes to Maine’s text explains Maine’s position on this issue:

The law of persons may be and has been cut short; but, so long as we recognise any differences at all among persons, we cannot allow their existence and nature to be treated merely as matter of bargain. Status may yield ground to Contract, but cannot itself be reduced to Contract. (184)

Moreover, “Maine guarded his position, however, to a considerable extent in the final words of this chapter, for he seems not to include Marriage—at all events marriage among Western nations, which is preceded by and results from agreement of the parties—under the head of Status” (184). If marriage is removed from Maine’s statement regarding the changes from status to contracts,<sup>2</sup> then Waters overreaches Maine’s discussion of the

family. Maine did not argue that contract law could, or should, be used to explain marital or familial relationships: “As regards the actual definitions of different personal conditions, and the more personal relations incidental to them, it does not seem that a movement from Status to Contract can be asserted with any generality” (183).

Though I agree with Pollock, and by extension Maine, that the Victorian legal concept of family is not predicated on contracts but instead remains associated with the concept of status, I note that Maine offers an alternative explanation: “The Individual is steadily substituted for the Family, as the unit of which civil laws take account” (172). Thus, considered individually, a man holds a certain social status, which, as Pollock explains, is another way of referring to the “[ . . . ] sum total of a man’s personal rights and duties [ . . . ]” (184-85). Or, as Bentham would characterize his status, the man holds the “[ . . . ] rights and obligations which the law attaches to the different conditions which compose the domestic or private condition” (*Works* I: 3: 343). In this sense, Bentham identified four domestic or private conditions: master and servant, guardian and ward, parent and child, and husband and wife (343). A father, then, could be a master, a guardian, a parent, and a husband, each individual condition depending on his status, that is, the rights and obligations that he holds in relation to his servant, his ward, his child, and his wife.

Difficulties in determining rights and obligations, of course, immediately arise when considering, for example, James Mill’s definition of *family*: “The Group, which consists of a Father, Mother, and Children, is called a Family” (*Analysis* II: 21: 1: 2: 176). Mill discusses *family* in the context of his analysis of those remote causes that give

individuals pain and pleasure, which is a philosophic shift from Bentham's discussion of pain and pleasure. Bentham's analysis is based on his thoughts about human nature in general rather than Mill's, which is based on his thoughts about an individual's perception of pain and pleasure and how they diminish or increase each person's own sense of wellbeing and concern for others:

Now, as our complex Idea of Mankind, is made up of the aggregate of the ideas of Individuals, including the interesting trains called Love of their Pleasures, Hatred of their Pains; love of their Kindness, Aversion to their Unkindness; the generation of the affection, called Love of Mankind, is, for our present purpose, sufficiently shewn. (190)

Insofar as Mill offers some understanding of the family as being composed of three particular types of persons—father, mother, and children—and, coupled with the Law's new focus on the individual within society, his analysis serves neither the family institution nor the legal institution very well. The words *father*, *mother*, and *children* are not defined to include (or exclude) particular types of persons or to delineate each one's rights and obligations to each other. Mill's definition does, however, reinforce the domestic ideal, which, in *Bleak House*, is represented by the Bagnet family.

Mr. Bagnet spends a great deal of his time teaching his son music and how to participate in the business, and he takes pride in his son's accomplishments: "Got an engagement at the Theayter, with his father, to play the fife in a military piece" (*Bleak House* 1873 II: 27: 241). They engage in their business of music outside of the home, returning to a home without servants or apprentices, composing as they do a "conjugal family" (Mintz 14; Flandrin 66) of parents and children. And Mr. Bagnet's pride in his

son's accomplishments is coupled with his interest in and attention to his son's growth into manhood:

On young Woolwich's last birthday, Mr. Bagnet certainly did, after observing on his growth and general advancement, proceed, in a moment of profound reflection on the changes wrought by time, to examine him in the catechism; accomplishing with extreme accuracy the questions number one and two, What is your name? and Who gave you that name? [ . . . ].  
(*Bleak House* 1873 IV: 49: 8)

Mr. Bagnet sees his Woolwich as Mill describes father-son relations: "The father regards the son somewhat in the light of another self, a great proportion of the effects, of whose acts, whether good or evil, will redound to himself" (II: 21: 1: 2: 178).

Mrs. Bagnet shares the same interest and warmth in Woolwich and their daughters, with whom she spends time teaching how to cook and clean. When the children help prepare her birthday meal—" [ . . . ] the greatest holiday and reddest-letter day in Mr. Bagnet's calendar" (*Bleak House* 1873 IV: 49: 8), Mrs. Bagnet cheerfully retains her appointed position as the birthday-girl. The sight of their efforts, however, causes her some concern. Woolrich nearly burns the fowls, and the girls nearly cause the collapse of the kitchen during the cleaning-up process: "[ . . . ] Mrs. Bagnet, with her wholesome brown fingers itching to prevent what she sees going wrong, sits in her gown of ceremony, an honoured guest" (9). Mrs. Bagnet, as well as Mr. Bagnet, allows the children to learn to do by doing even though she "imperils her digestion fearfully" (12) with a meal that was prepared more with love than skill.

However, in addition to the reciprocal responsibilities and love between the Bagnets, what is significant about Mr. Bagnet's treatment of Woolrich—and leads to my suggestion of a third definition of family—are Mr. Bagnet's questions. His first question is

“what is your name?” Through his name, Woolwich has a claim to race. Mr. Bagnet’s second question is “[w]ho gave you that name?” By remembering who gave him his name, Woolwich knows his lineage. The Bagnets and their children are representatives of the domestic ideal, or, as James Mill says, “[t]he happiness of the Domestic affections is open to all” (*Analysis* II: 21: 1: 2: 185). The Bagnets preserve traditional concerns about the history of family, and the history of their family affirms their identity as a specific social and legal unit composed of particular categories of individuals. Yet, without altering this third definition of family, they add a dimension that highlights another aspect of the word *family*. They are, as George Rouncewell says, “[f]amily people” (*Bleak House* 1873 II: 27: 241): “By the beginning of the nineteenth century, however, the middle-class family was thought of in a new way—as isolated from larger kinship structures and the world of work” (Mintz 14).

When George visits the Bagnets, he surveys each of them in turn, saying,

“And Mat blows away at his bassoon, and you’re respectable civilians one and all,” says Mr. George. “Family people. Children growing up. Mat’s old mother in Scotland,<sup>3</sup> and your old father somewhere else, corresponded with; and helped a little; and—well, well!” (*Bleak House* 1873 II: 27: 241)

The Bagnets do not abandon their parents. They live apart from them, “isolated from larger kinship structures” (Mintz 14), but the Bagnets retain their bonds of affection through correspondence and fulfill their duties by helping their parents. The Bagnets are, indeed, “[f]amily people” because they care about and, to the extent that they are able, care for those to whom they are related. They, unlike the Snagsbys, have a home that is separate and apart from anything associated with professional work. They, unlike

Skimpole and Grandfather Smallweed, for example, remain connected to their “extended kin group,” that is, their surviving parents, because of their “voluntary consent” (Mintz 14), or, to put the matter simply, because they want to and not because they are so egocentric that they, like Skimpole, use their children as “playthings” (*Bleak House* 1873 III: 43: 225) to entertain themselves or because they are so materialistic that they, like Grandfather Smallweed, use their children to advance a purely economic agenda.

Not surprisingly, Harold Skimpole and Grandfather Smallweed are not representative of the domestic ideal, particularly in regard to their ability (or lack thereof) to rear children. Of Skimpole, Esther notes that his “[ . . . ] daughters had grown up as they could, and had had just as little haphazard instruction as qualified them to be their father’s playthings in his idlest hours” (*Bleak House* 1873 III: 43: 224-25), which “instruction” is quite similar to that received by the Jellyby children. Of Grandfather Smallweed, the third-person narrator notes that his grandchildren are instructed only to the extent that they perpetuate the family’s interest in loaning money at usurious rates, which narrow-minded view of humanity is likely the result of Grandfather Smallweed being “an example of the failure of education” (II: 21: 105). The Bagnets are, in contrast, representative of the domestic ideal, and, as the domestic ideal, then, the Bagnets are a “[ . . . ] standard against which the families portrayed in the novels are evaluated [ . . . ]” (Waters, *Dickens and the Politics of the Family* 27). By comparison, Skimpole, though he shares a household with both his conjugal and extended family members, believes they owe him a duty of support and entertainment for which he does not provide them with any meaningful reciprocal duty. His daughters’ responsibility to him is to keep him

entertained and to ask nothing (nor expect anything) in return; they are the backdrop against which he plays the child. Grandfather Smallweed houses his grandchildren for one express purpose. They are to serve him in the family tradition: “[ . . . ] the house of Smallweed, always early to go out and late to marry, has strengthened itself in its practical character, has discarded all amusements, discountenanced all story-books, fairy-tales, fictions, and fables, and banished all levities whatsoever” (*Bleak House* 1873 II: 21: 106) as he had housed their father and mother, both of whom predeceased him. Each of them, Skimpole and Smallweed, is unconcerned about Equity in any sense of the word. Their perception of family, unlike the Bagnets, is a question of how their own needs are served first, foremost, and exclusively.

Most readers easily and readily see Dickens’s domestic (or family) ideal compared to the family as institution as revealed in the many *Bleak House* characters, and the Bagnets are the clearest (if not the only) *Bleak House* example of Dickens bringing together both the ideal and the institution and demonstrating the balance, or Equity, that is possible. As the family’s father, for example, then, Mr. Bagnet holds a domestic or private condition based on his natural relationship to Mrs. Bagnet and their children:

By relations purely natural, I mean those which may be said to subsist between certain other persons in virtue of the concern which they themselves, or certain other persons, have had in the process which is necessary to the continuance of the species. (Bentham, *Introduction to the Principles* 256)

He simultaneously holds a legal relationship toward Mrs. Bagnet and their children because “[a] man’s condition or station in life is constituted by the legal relation he bears

to the persons who are about him; that is, [ . . . ] by *duties*, which, by being imposed on one side, give birth to *rights* or *powers* on the other” (255).

Similar to the legal relationship that arises from persons’ natural relationship to each other, a person may acquire a guardianship of either a closely related or a distantly related kinsman (or kinswoman), and the discussion of the definition of *family* does not change substantively. If legally appointed, the guardian acts as a parent, with all of the rights and duties of a parent, and the ward is treated legally as the guardian’s child, with all of the rights and duties of a child. They retain the “natural” relation to each other onto which the legal fiction of a direct parent-child relationship has been imposed, or, as Bentham would say, they have an existing and natural relationship that is either immediate (that is, grandfather to grandson) or remote onto which a “legal relation” is “superadded” (*Introduction to the Principles* 255-56), such as John Jarndyce’s legal guardianship over his distant kinsman Richard Carstone and his distant kinswoman Ada Clare. Even those who have been partially orphaned retain family-status because the surviving parent, as a “natural guardian” (Bird 75), retains the rights and duties of their existing and natural parent-child relationship.<sup>4</sup> In this regard, then, Rosa who, though her mother is still alive, is a family member of her mother’s household until she is placed in Lady Dedlock’s care, yet her mother retains her parental rights and duties.<sup>5</sup>

Because *Bleak House* gives its readers a vast number and types of guardianships, whether based on direct parent-child relations (for example, the Woodcourts, Guppy and his mother, the Bagnets, the brickmakers, the Pardiggles, and the Jellybys) or on indirect court-appointed relations (for example, the guardianships for Richard and Ada), Dickens



creates a kaleidoscopic view of families. Everywhere Dickens gives readers a wide variety of parent-child relations. Catherine Waters, also looking beyond the supposedly typical Victorian family in Dickens's work, argues that Dickens's

[ . . . ] novels can be assigned a more active role in the discursive construction of the family [ . . . ]. His fiction exploits the shifts in meaning given to the notion of the family in the nineteenth century—away from an earlier emphasis upon lineage and blood toward a new ideal of domesticity seen as 'right' for everyone [ . . . ]. ("Gender" 122)

Waters argues that "[ . . . ] class and gender differences were implicated in the affirmation of the values of the middle-class family" (122), and, to this end, she points out that Dickens idealized the family, specifically the middle-class family, by emphasizing the importance of the "Angel in the House" and how such an idealized mother maintains separate spheres (122). Her argument, however, is not so complete as to explain the Bagnets' role in *Bleak House*.

The Bagnets, the domestic ideal, sustain the ties to their history by reaffirming their race and lineage and have assumed a broader sense of responsibility to their extended family and a loving attention to the development of all of their children. The Bagnets, however, do not support an Angel-in-the-House view of their family relationship. They do not recognize separate spheres wherein "[ . . . ] women were responsible for creating and maintaining the home, while men were associated with the working world of industry and commerce" (Waters, "Gender" 122). Mr. Bagnet shared in the cooking of Mrs. Bagnet's birthday meal. Mrs. Bagnet is quite capable of taking care of herself and taking direct action when necessary as she proved when she set off to find George Rouncewell's mother. As a mother and wife, Mrs. Bagnet is a strong character. As a

father and husband, Mr. Bagnet is perfectly comfortable sharing parental and marital rights and duties. Against their domestic ideal, readers can judge the success or failure of others such as the Pardiggles, the Jellybys, the Turveydrops, and the brickmakers.

Rather than now shifting the notion of *family* in order to define it anew in each of the conjugal units of Pardiggles, Jellybys, Turveydrops, and brickmakers, instead, after setting forth the Bagnets as representative of the definition of *family*, Dickens positions the Bagnets as the standard against which other parent-child relations can be judged. The Bagnets are the ideal and that those who fall outside of those parameters are exceptions to the definition rather than new definitions and can be discussed in terms of how they fall short of the standard. Also, if readers understand the Bagnets as the ideal, then they also better understand those characters who are without any direct link to any person, whether biological or legal. The *Bleak House* characters who are without family account for what Bentham called the “nature of the circumstances” (*Theory of Legislation* I: 9: 3: 64), by which Bentham argued, perhaps inadvertently, for the existence of the need for Equity after all:

As to other circumstances of which the examination must be absolutely left to the judge, as the *more or less* of derangement of mind, the *more or less* of strength, the *more or less* of fortune, the legislator, who cannot decide upon individual cases, will direct the tribunals by general laws, and will leave them a certain latitude in order that they may proportion their judgment to the particular nature of the circumstances. (64)

And the “nature of the circumstances” is that not every child can be so easily pigeonholed into a legal template that purports to define clearly the reciprocal rights and duties of parents and children. Children sometimes outlive one or both parents; they become partial or full orphans. Children sometimes are born to parents who, for whatever reason,

do not legally marry each other; they become bastards. In both cases, their care, custody, and control is governed haphazardly by the Poor Laws, which legislative attempts failed to account for, much less remedy, the nature of the circumstances giving rise to those without parents, to those without families.

Unless an orphan under the age of majority had property, the Chancery Court's only interest in the orphan-infant<sup>6</sup> was whether appointing a guardian was necessary to grant permission for the orphan-infant's marriage (Turner 394; J. Browne 419).

Otherwise, the three broad categories of orphan-infants in *Bleak House* are representative of many of the orphans' situations: those who are chargeable to the parish and placed in orphanages; those who are supported informally by friends or family; and those who are left to "move on." First is Guster, the Snagsbys' maid, who never knew her parents and has been apprenticed as a domestic helper to their household. Guster has no last name, and some wonder if "Guster" is not short for Augusta:

[Her name Guster] is, however, the possession, and the only possession, except fifty shillings per annum and a very small box indifferently filled with clothing, of a lean young woman from a workhouse (by some supposed to have been christened Augusta) [ . . . ]. (*Bleak House* 1873 I: 10: 189)

As an orphan-infant and parish dependent, she had been "[ . . . ] farmed or contracted for, during her growing time, by an amiable benefactor of his species resident at Tooting [ . . . ]" (189-90). A physically unattractive woman who "[ . . . ] 'has fits'—which the parish can't account for" (190), Guster is, nonetheless, grateful for her position with the Snagsbys, which she believes is a dream come true: "The Law-stationer's establishment is, in Guster's eyes, a Temple of plenty and splendor" (190). Likewise, when Phil Squod was eight, the

parish allowed him to be apprenticed to a tinker (II: 26: 215), so he too joined a stranger's household. When the tinker died and Phil failed to carry on the business, he found a home to his liking when he took up residence with George Rouncewell.

My second example of orphan-infants who are supported informally by friends and family is found in several characters who meet with varying degrees of success. The Neckett children are helped by Esther and Jarndyce and ultimately succeed in becoming respectable and responsible members of society. Charley begins as Esther's maid and, by the end of the novel, is married to a successful miller. Her brother Tom "[ . . . ] is apprenticed to the miller [ . . . ]" (*Bleak House* 1873 IV: 67: 304), and her sister becomes Esther's new maid in Charley's stead. In contrast, the Smallweeds, Bart and Judy, continue to live with their grandparents who are acting as guardians and will not so much mature as age into the next generation of Compound-Interest worshippers.

Jo, the orphaned street-sweeper, is never officially cared for by the parish as Guster and Phil or informally cared for by friends and family as the Neckett children and the Smallweeds. He is uniquely placed in *Bleak House* as an example of an orphan-infant who is constantly "moved on" by people and circumstances. He is chronically malnourished and, in addition to living rough, susceptible to disease. He is never educated or apprenticed and begs for a living. At Jo's death-bed, Woodcourt tries to get Jo to say the Lord's Prayer. Never knowing "nothink," Jo can only repeat some of the words before dying.

Dickens undeniably portrayed the death of Jo in a very sentimental manner. The death of a young boy, starved, diseased, and uncared for is not meant to be anything but

sentimental. Dickens, after all, was urging reform. Walter Bagehot once argued that Dickens's excessive sentimentality is unnecessary: "There was most adequate reason for the sentiment in its origin, and it had a great task to perform in ameliorating harsh customs and repealing dreadful penalties; but it has continued to repine at such evils long after they ceased to exist [ . . . ]" (158-59). I find Bagehot's remark interesting when considering these *Bleak House* orphan-infants collectively and Jo's condition in particular. No legal mechanism existed to place an orphan-infant in a parent-child relationship through a legal adoption even though the "English law is jealous for the honour and reputation of the home and the family" (Hooper 141). This disconnection between legal reality and social need was not remedied until 1926 when England passed legislation formalizing the process whereby minors could be legally adopted (Dey, par. 5; Jenks, *Book of English Law* 294-95). The Sentimental Radical, thus, had much to complain about regarding the treatment of orphans for whom, even if an adoptive-father or adoptive-mother is willing, the Law provided no mechanism for the fictive assumption of parent-child rights and duties.

Duty. Child. Parent. The Law recognizes legitimate children born to parents whose union has been sanctioned according to a legally recognized process whereby the male becomes a husband and the female becomes a wife. Honor and reputation rests upon a person's ability to trace a bloodline. The Law of inheritance of property reinforces this important social institution called "family." Children without parents could retain parent-child relationships with those people willing to become guardians. If a guardian is legally appointed, these children are wards, a legal fiction that serves to equalize the

imbalance that results from a minor having no surviving parent. The institution of family is preserved. Children without parents who could not obtain parent-child relationships through guardianships but who could be charged to parishes only had the government standing *in loco parentis*, which is tantamount to making everyone responsible without making anyone accountable: “The universe,’ [Jarndyce] observed, ‘makes rather an indifferent parent, I am afraid’” (*Bleak House* 1873 I: 6: 110). Children, due to the “nature of the circumstances” of their births, can be the children of Nemo.

One such child of no one is Esther Summerson. She is illegitimate. She has no claim to a bloodline. She has no claim to a race. From her perspective, as someone without a lineage, Mrs. Woodcourt’s preoccupation with her son’s ancestry must seem strange if not completely irrelevant: “I had my doubts of their caring so very much for Morgan ap Kerrig, in India and China; but of course I never expressed them” (*Bleak House* 1873 II: 30: 279). Esther does not learn about her bastardy until she is an adult, so much of her youth is spent in wondering about her parents, particularly her mother, and feeling the shame inflicted on her by her godmother/aunt. Not surprisingly, after she is apprenticed to Bleak House where she is to be the housekeeper, Esther is grateful to Jarndyce who defines their relationship in guardianship terms: “‘Miss Summerson really is my ward,’ said Mr. Jarndyce. ‘I am responsible to no Lord Chancellor in her case’” (II: 18: 59). But even this attempt at a definition does not satisfy Esther’s need for belonging to a family. Jarndyce is not her (nor anyone else’s) biological or adoptive father, though Esther wonders whether he might be: “[ . . . ] even as to the possibility of his being my father—though that idle dream was quite gone now” (I: 6: 122). Richard is “like a brother”

(I: 9: 169), but he is not a brother either in law or fact. The most that Esther can consider is that, after learning of her relationship to Lady Dedlock, she is a distant kinswoman of Jarndyce and, by extension, distantly related also to Richard and Ada. But the Law precludes illegitimate persons from having either lineal or collateral family relations, which disconnection between the Law's fiction and the reality of human relationships only unnecessarily complicates Esther's life by confusing her sense of self and her place in the Jarndyce household.

And Esther's sense of self is already confused enough. She lived as a child with a woman with whom she believed she had no blood relation and whom she called her godmother. When she was fourteen, she learned that Miss Barbary was her biological aunt. She is sent away to boarding school from which she becomes Jarndyce's housekeeper. During the course of her young womanhood, she learns that she had had a mother and father, neither of whom got to know her as a child. She also learns of her bastardy, a legal status which trumps any other characterization of her minority and which survives into her adulthood.

A child's legal status and identity as a bastard was of such social importance that the Law's view of illegitimacy undeniably impacted Victorians' view of family. The Law, at various times in the early nineteenth century, defined the relationship of parents and their illegitimate children essentially in terms of what they did not owe to each other rather than what they did owe to each other. This defining process was predicated on the historical fiction that "[h]e is the heir of no one, a stranger in the blood, in the sense that no inheritable blood either of father or mother flows in his veins" (Hooper 25). The Law

consistently affirmed that “[i]n equity equally as at law a bastard infant was deemed *filius nullius*, and no right of guardianship in father or mother was admitted [ . . . ]. The guardianship was in the Crown as *parens patræ*” (127).

Everything about Esther, however, confounds these sorts of legal presumptions about what the Law says it is trying to do by artificially denying the biological fact of parenthood and making the Crown her guardian. Until she is an adult, Esther does not know who her parents are; consequently, the Chancery Court could not appoint Lady Dedlock, Captain Hawdon, or even a third-party as guardian: “The Chancellor exercised a purely discretionary power guided by the welfare of the child. He was not obliged to appoint the mother or putative father, but could if he chose pass them over in favour of a stranger [ . . . ]” (Hooper 127). Without Captain Hawdon being named as the father, none of his property could be attached by the parish pursuant to the Poor Laws to pay for Esther’s support and education (*Compendium* 46). A shift in the government’s role as *parens patræ* occurred as a result of subsequent Poor Laws, placing the care, custody, and financial responsibility for illegitimate children on the natural parents, more particularly on the natural mothers, but, again, that only works when at least one of the parents is known:

[ . . . ] the Courts of Law and Equity more than two centuries later, grudgingly and by slow degrees [conceded] to the parents the corresponding rights of custody, and culminated in the complete establishment of their legal liability of maintenance under the Poor Law Acts of 1834 and 1844 [ . . . ]. (Hooper 102)

By defining the word *child* to specifically exclude illegitimate children (Hooper 108, 110), the Poor Laws perpetuated (and gave legitimacy to) the fiction of the “stranger



in blood” (111), and readers do not have to read far to see the irony between being named a bastard and what the Law calls the “advantage” to this situation:

In statutes conferring rights on children the exclusion of bastards from the category of “children” obviously operated to their detriment and placed them at a disadvantage as compared with lawful issue. On the other hand, since the rule was applied impartially without regard to its effects, it enured to the bastard’s advantage when applied to statutes imposing duties of an onerous kind, and so relieved an illegitimate child of the duty cast on children by the poor law statutes of maintaining their parents. (101-02)

Such an “advantage,” that illegitimate children were not legally obligated to support their parents financially, of course, is illusory because it ignores all of the years of likely deprivation and shame that undoubtedly occurred during the children’s minority. If feelings of affection have been broken during youth, why would the illegitimate child care that the Law says he does not have to support his parent once he gains his majority?

The Poor Laws codified the Law’s position on the issue of bastards and how to fund their support; essentially, the question, not surprisingly, is a question of money, and the money in question had previously been funded through local parishes. With the Poor Laws,

The Legislature had, indeed, been unsparing in its severity on the woman, and we might have attributed this harshness to a zeal for morality, were it not that its penalties were inflicted, not for the sin of *having a bastard child*, but for *having a bastard child which may be chargeable to the parish*. (Head 5)<sup>7</sup>

Although the Law intended to promote a public policy of “[ . . . ] discouraging vice and indemnifying the parish against the cost of maintenance” (Hooper 103), the Poor Laws placed an onerous burden on mothers to prove paternity in order to receive financial support from putative fathers. This shift in a mother’s burden of proof reflects a growing trend for the Law to become more punitive in its treatment of both unwed mothers and

their children. From a social perspective, Miss Barbary's opinion of Esther is, thus, fairly representative of many people's opinion about bastardy: "Your mother, Esther, is your disgrace, and you were hers" (*Bleak House* 1873 I: 3: 33). From a legal perspective, some legalists thought that the Law should have gone even further by precluding anyone from attempting to prove his legitimacy by penalizing those who cannot affirmatively prove legitimacy by risking being negatively proved a bastard: "The great and serious defect of this Act is its want of a clause authorizing suits of bastardy" (Macqueen, *A Practical Treatise* 356). Such social pressures, by reinforcing the public perception of illegitimacy as evidence of vice, which pressures were coupled with the legal consequences of being a bastard, may have achieved the government's stated policy of discouraging vice and reducing the government's financial obligations. According to Joan Perkin, one of the consequences of the Poor Laws of 1834 and specifically of 1844 was a decline in the number of illegitimate children near the end of the century: "The long-term effect was to discourage motherhood outside marriage, and in the 1840s the illegitimacy ratios began to decline" (161). But, as Sir Edmund Head pointed out in his report that was published contemporaneously with the Poor Laws, "The Poor Law Amendment Act may surely be allowed to claim some credit for having diminished that open mockery of religion and law, which was implied in a marriage brought about by calculating vice in the one party, and the fear of gaol in the other" (15).

The association between bastardy as a vice and the punitive measures taken to insure parents' financial obligations is so inextricably linked, however, that Victorian legalists, if not politicians, philanthropists, and ordinary citizens, would have certainly

wondered how much of an anti-vice policy—a jealously “for the honour and reputation of the home and family” (Hooper 141)—would have been of true concern when drafting legislation that specifically curtailed the rights of illegitimate children. Again and again, however, readers return to Esther’s situation, which simply is not addressed by the institution of family or the ideal of family. Insofar as Esther knows, no one exists to whom the parish could look for her maintenance and support. Insofar as Esther knows, she has no mother or father who could assume the position of her natural guardian; she has no one willing to come forward and petition the Court to be her legal guardian. Esther’s story occurs during a time when even persons considered to be forward-thinking simply omit illegitimate children from any meaningful social context, which simply thwarts legal reformation. James Mill says that “[i]n the great majority of cases of [illegitimate children], no affection exists. The parent may feel the obligation of maintaining the child, because public opinion, or perhaps the law, requires it: but this is the extent of the bond” (*Analysis II: 21: 1: 2: 180-81*).

*Bleak House* reaffirms the fact that social pressures and legal obligations are not “the extent of the bond” between parents and their illegitimate children. Legitimate children, orphans, and wards have hope. They can be part of a family (or family-like situation) with some expectation, some hope, that their physical needs will be provided for, that a parent-figure will assume responsibility for their clothing, sustenance, and shelter. Arguments regarding parental quality or care-giving skills aside,<sup>8</sup> each of the *Bleak House* legitimate children, orphans, and wards receives at least that much: the exceptions

are Jo, possibly legitimate but without hope, and Esther, definitely illegitimate but with hope.

*Bleak House* never clearly states that Jo is legitimate. The novel says that he never knew his parents and has no one to care for him now, which may be because of his being an orphan, a bastard, or first a bastard and then an orphan. If an orphan, he is not cared for by a parish like Guster and Phil were. If a bastard, he does not know enough about his past to figure that out for himself. Yet “[a]gainst the ever-present image of Esther’s security we measure the depth of Jo’s deprivation [ . . . ]” (Frazee 232). Only from a relative place of security, however, could Esther ever have come to an understanding of the rights and duties between parents and children, and, I argue, Esther’s place in society was not once and for always so secure as Frazee suggests. As Mrs. Chadband described Esther’s relationship with Miss Barbary, Esther and Miss Barbary dealt with each other strictly on a master-servant basis: “There was no Miss-ing of the girl in my time. It was Esther. ‘Esther, do this! Esther, do that!’ and she was made to do it” (*Bleak House* 1873 II: 19: 79). Nor was Esther’s sense of self so secure that she was able to overcome the sense of shame and abandonment that she feels; it is never far from her: “Lastly, it was no one, and I was no one” (I: 4: 73).

Jo gives readers a sense of the physical deprivation and suffering that results from parental abandonment. Esther gives readers a sense of the emotional deprivation and suffering that results from parental abandonment. Contrary to Frazee’s assertion that “[ . . . ] Esther is not suffering as a consequence of having been (only technically) abandoned” (231), *Bleak House* provides several pieces of evidence regarding the issue of suffering. As a

child, Esther is ashamed without really knowing why. As a young woman, she experiences the sense of being “no one.” If, as Waters argues, Dickens concerns himself greatly with the Victorian fractured family and if, as Maine argues, the Law begins to concern itself greatly with the Individual rather than the Family, then Esther is the fractured Individual who spends her life trying to construct a family or, as she says, to “win some love if I could” (*Bleak House* 1873 I: 3: 45). She moves from “no one” to recognizing bits and pieces of herself in Miss Barbary and Lady Dedlock. She loses the sense of belongingness that she had with Lady Dedlock when both the physical resemblance is lost through disease and the physical closeness is lost through Lady Dedlock’s death. I argue that Esther never recovers a sense of self. Her old face never returns completely even though Woodcourt tells her that she is more beautiful to him than she ever was before. Instead, Esther slips from one legal state of nothingness—bastardy—into another legal state of nothingness—coverture, and she is constantly surprised that others hold her in high regard, which she attributes to her status as Woodcourt’s wife rather than to any personal value she may have. No measure seems to give Esther a true sense of security in the value of her self. Even by the novel’s end, Esther is asking Woodcourt about her looks, which seems to be a vain query about whether he still finds her physically attractive and which is certainly one interpretation. In my judgment, however, her question is still about family. Without her “old looks,” Esther has no link to her past. She no longer looks like Lady Dedlock, Miss Barbary, or Captain Hawdon. Her physical appearance was the only link that Esther had to her fractured family. She lost her looks; she lost her link to her past.

The question for Esther (and *Bleak House* readers) is if and to what degree her sense of No One will continue?

I believe that, as far as the question of deprivation resulting from her illegitimacy concerns Esther, the novel leaves Esther incomplete; her shame and suffering has been too long and too profound to be fully remedied no matter how supportive Woodcourt is. Jo's suffering, by whatever means he was abandoned, ended with his death; Esther's is likely to continue indefinitely. If Jo and Esther were the only two to consider on the issue of parental abandonment and illegitimacy, however, *Bleak House* would be a very bleak novel indeed. As I explained in my previous chapter, though, Ada Clare's own child by Richard is, in my opinion, also illegitimate. Ada's child offers *Bleak House* readers hope for social and legal reformation, and Dickens was certainly offering his readers hope for removing the stigma of bastardy. Whom, after all, is the Law really trying to punish by creating a class of children who have no parents and are without rights and duties of their own to the care and custody of a responsible parent?

Duty. Child. Parent. Jeremy Bentham had many words at his disposal to criticize the Law; the Law, after all, is charged with conferring rights and creating obligations. Much of the Law, however, deals imprecisely with those persons and policies that it is supposed to support, and Bentham cared little for imprecise legal terms:

Power, right, prohibition, duty, obligation, burthen, immunity, exemption, privilege, property, security, liberty—all these with a multitude of others that might be named are so many fictitious entities which the law upon one occasion or another is spoken of in common speech as creating or disposing of. (*Limits of Jurisprudence* I: 9: 2: 57)

But even Bentham, legal reformist though he was, failed to censure fully the Law on the issue of bastardy. Believing that all laws are essentially criminal or punitive in nature as he did, I found few direct references by Bentham on the issue of bastardy and no direct condemnation or support of it as a form of punishment. In his discussion of the “Division of Offences” to which legal sanctions should apply, he says, “[ . . . ] it is certain every one must have had a father and a mother [ . . . ]” (*Introduction to the Principles* 277). From this basic fact of humankind, Bentham derives eighteen types of possible offences against the filial condition, ranging from “Wrongful abdication of filiation” to “Breach of duty to parents” and to “Bribery in prejudice of parental guardianship” (277-78). Noticeably, each of the enumerated offenses is couched in terms of the impact on the parent and not in terms of the child.

Bentham, however, in his *An Introduction to the Principles of Morals and Legislation* was not concerned specifically with the issue of illegitimacy. He was concerned with constructing a legal methodology whereby legislators could correctly and consistently enact meaningful legislation. From his “Practical Application of this Theory” (*Theory of Legislation*), his first question can be restated as: what is the evil that the Poor Laws are trying to address regarding bastards? The Law says that it wants to eradicate sexual irresponsibility and to preserve the honor and reputation of the family. Moving beyond Bentham’s first step in applying his theory is difficult because, as he says,

We cannot calculate the motion of a vessel without knowing the circumstances which influence her sailing, such as the force of the wind, the resistance of the water, the model of the hull, the weight of the lading, &c. In like manner we cannot operate with any certainty upon a question of legislation, without considering all the circumstances which affect the sensibility. (I: 9: 3: 60)

And, according to Bentham, fifteen primary circumstances exist that affect sensibility (49-55), and nine secondary circumstances exist (55-60). Bentham lists “Pecuniary circumstances” as one of the primary circumstances that affect sensibility (54). *Bleak House* is an indictment, start to finish, of the Law’s inability or unwillingness to assess fully the pecuniary circumstances of those persons it is attempting to legislate against with the Poor Laws, the legal No Ones of society. Though Bentham railed against the concept of Equity, he returns to it time and time again because, as he undeniably states, lawmakers—legislators and judges alike—unquestionably and rightfully consider the “*more or less*” of life:

As to other circumstances of which the examination must be absolutely left to the judge, as the *more or less* of derangement of mind, the *more or less* of strength, the *more or less* of fortune, the legislator, who cannot decide upon individual cases, will direct the tribunals by general laws, and will leave them a certain latitude in order that they may proportion their judgment to the particular nature of the circumstances. (64)

Miss Barbary did not allow herself any latitude in her judgment of Lady Dedlock or Esther. The Law, specifically the Poor Laws, did not leave its citizens with a “certain latitude” in its judgment of illegitimate children. Instead, the Law reinforced the opinions of the Miss Barbarys of society; the Law preserved the honor and reputation of the family by preserving inheritance rights: “[ . . . ] and the claims of the real heirs, whose succession to the family inheritance has been thereby impeded, have been urged with great cogency and eloquence” (Nicolas 1). What was the result? The Law regarding inheritance was preserved, and the honor and reputation of the home and family was a Victorian institution as well as an ideal. *Bleak House*, however, says readers should ask “Oh, really?” The answer, of course, is “no,” at least, not until readers have considered the “nature of the circumstances.”



## Notes

<sup>1</sup>In the 1873 Hurd and Houghton edition of *Bleak House* edition used in this dissertation, Miss Barbary is referred to as “grandmother” (I: 3: 31), which seems to be a printing error as evidenced by the 1853 Bradbury and Evans edition which refers to Miss Barbary as “godmother” at the same point in the text where the Hurd printing error occurs (I: 3: 11).

<sup>2</sup>In my previous chapter, I discussed the dangers of viewing marriages solely in terms of contract law.

<sup>3</sup>In the chapter celebrating Mrs. Bagnet’s birthday, Mr. Bagnet remembers his mother fondly, but readers learn that she has been dead for twenty years (*Bleak House* 1873 IV: 49: 7), making George’s remark strange because George apparently thinks that she is still alive. The error, if error it be, does not alter my analysis because Mr. Bagnet loves and revisits the memory of his mother on his own birthday: “Some men rarely revert to their father, but seem, in the bank-books of their remembrance, to have transferred all the stock of filial affection into their mother’s name” (7).

<sup>4</sup>All parents are “natural parents” (Bird 75) or “guardians by nurture” (76), so all of the surviving biological parents in *Bleak House* are, in this sense, guardians of their children. This concept of guardian is complicated by the legal fiction that parents, though guardians by virtue of their natural relationship to their children, are not *ipso facto* legal guardians:

The usage in common conversation of calling parents the natural guardians of their children, however abstractedly true, is not true in law [ . . . ]. They are pointed out by nature as the natural persons to be *appointed* guardians of their children; but, until application to be made to the court to appoint them guardians, they are not legally so. (A. Browne I: 131)

<sup>5</sup>Allan Woodcourt, Prince Turveydrop, and Guppy may have been partially orphaned in their minority, but readers do not have those details to assert that they are examples comparable to Rosa.

<sup>6</sup>“Orphan-infant” is a term used consistently in legal treatises of the Victorian period to signify that the person is both parentless and a minor.

<sup>7</sup>Insofar as I am able to determine, Head seems to have been the first to publish this insightful remark. In order not to misrepresent Head’s work, however, I must note that his overall report does not condemn the Poor Laws (which is the sense in which I am using the quotations) but rather condemns other nineteenth-century critics for “magnifying present evils” and for “overlooking those from which we have escaped” (2). This sort of criticism is reminiscent of Bagehot who said of Dickens that “[t]here was most adequate reason for the sentiment [of excessive sentimentality] in its origin, and it had a great task to perform in ameliorating harsh customs and repealing dreadful penalties; but it has continued to repine at such evils long after they ceased to exist [ . . . ]” (158-59).

<sup>8</sup>Even John Jarndyce’s parenting skills have not gone unnoticed. In this article, Russell M. Goldfarb argues that John Jarndyce is a poor parent to Richard Carstone (148).

## CHAPTER FOUR

Dickens's *Bleak House*: Legal Advocacy and Professional Responsibility, or  
"Delay No Man [or Woman] for Lucre or Malice"

Almost everybody knows, and a man must be a secretary of state, or at least a cabinet minister, not to know—that in this profession, above all others, success depends upon accident, at least as much as aptitude:—that it has for its proximate cause a certain opinion in the heads of attorneys: and that, if external circumstances, altogether independent of inward endowments, do not concur in the generation of this opinion, a man may unite the rhetoric of a Murray with the logic of a Dunning, and, at the end of a long life, die, like Sergeant Kemble the reporter, without ever having clasped to his panting breast the blessing of a brief.

~ Bentham, *Benthamiana* (149)

A solicitor is a pettifogging sophister, one whom by the same figure that a North Country peddler is a merchant man, you may style a lawyer. [ . . . ] He calls himself Esquire of the Quill, but to see how he tugs at his pen, and belaboureth his half-amazed clyents with a cudgel of cramp words, it would make a dog break his halter.

~ "The Character of a Solicitor in 1675" (219)

Charles Dickens's *Bleak House* begins by bumping its readers along with sentence fragment after sentence fragment as unceremoniously as Grandfather Smallwood's ride in Phil Squod's hands: "Phil makes no reply; but seizing the chair and its load, sidles away, tightly hugged by the now speechless Mr. Smallweed, and bolts along the passage as if he had an acceptable commission to carry the old gentleman to the nearest volcano" (*Bleak House* 1873 II: 26: 228). Grandfather Smallwood is missing the support of functional legs; each of these *Bleak House* sentences is missing subject or predicate support. The incompleteness, the instability, of both Grandfather Smallwood and the novel's opening is unsettling. Dickens, after all, is the great Victorian writer, so where are the fully developed sentences that shape the deeply meaningful thoughts, ideas, and concepts about

the famous Victorian institutions that he often satirizes? What, as Vholes asks of his client Richard Carstone, “is doing” (III: 39: 156) with Dickens’s fragmentary introduction to *Bleak House*? What happened to Sir William Blackstone’s idealized Law institution, which object of Victorian pride is now the object of Dickens’s fragmented sentences?

As a social ideal, the Law, according to Blackstone, is that great civilizing institution that is “our admirable system of laws” that is “built upon the soundest foundations” (*Facsimile I: Intro.: 1: 5*), which, for Blackstone, meant that the Law was “an old Gothic castle” (III: 17: 268), roomy though slightly modified. In Dickens’s *Bleak House*, the Law as an institution of social significance is first seen as a place known as the High Court of Chancery that is capable of sinning by its very existence. As the “most pestilent of hoary sinners” (*Bleak House 1873 I: 1: 12*), the Chancery Court, as Dickens immediately suggests, is evidence that the Law may not be “built upon the soundest foundations.” Also, the Chancery Court is governed by the Lord High Chancellor who, like the building itself, is enveloped by fog: “Fog everywhere” (I: 1: 11). And the fog—the sin—has saturated the Law itself, and clarity of thought and deed fail to rise above the fog, leaving the Law in a “groping and floundering condition” (12) and in the hands of those who are

[ . . . ] mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horse-hair warded heads against the walls of words, and making a pretence of equity with serious faces, as players might. (13)

The “ten thousand stages of an endless cause” (13) are as fruitlessly bumping into the “walls of words” (13) as the “tens of thousands of other foot passengers” (11) are “slipping

and sliding since the day broke” (11). Neither is making any appreciable headway, and the question for the pedestrians is whether “this day ever broke” (11) in order to shine dawn’s light on their progress. The same can be asked of the Law, yet the question is lost in the “walls of words” that form the “interminable brief” (13) that each Jarndyce legalist “[clasps] to his panting breast” (Bentham, *Benthamiana* 149). Each holds but apparently never reads the brief; they never question when the dawn will break, behaving robotically instead: “Eighteen of Mr. Tangle’s learned friends, each armed with a little summary of eighteen hundred sheets, bob up like eighteen hammers in a pianoforte, make eighteen bows, and drop into their eighteen places of obscurity” (18). Perhaps *Bleak House*’s Gridley is correct; the appropriate starting point for reforming the Law is to begin with the lawyers:

“The system! I am told, on all hands, it’s the system. I mustn’t look to individuals. It’s the system. [ . . . ] My Lord knows nothing of it. He sits there to administer the system. [ . . . ] I mustn’t go to Mr. Tulkinghorn [ . . . ]. *He* is not responsible. It’s the system. [ . . . ] I will accuse the individual workers of that system against me, face to face, before the great eternal bar!” (1873 I: 15: 309-10)

After years of failing to obtain a just and fair hearing on his legal issue, Gridley ultimately abandons any hope that Chancery would do Equity and envisions an after-life form of justice that would remedy his legal ills. As pessimistic as Gridley’s perspective is, he is as single-minded as any Chancery court victim regarding the need to rectify a social institution that fails to craft a legal system giving citizens some sort of justice. Before appreciating Gridley’s need to accuse the individuals of the Law system, readers need to understand how grievously he has been misused by the system because his case is

Dickens's indictment of the procedural and substantive laws (or an indictment of the lack of meaningful laws) of the Victorian legal system.

As a Chancery Court litigant, Gridley has been sued by his brother in order to settle their family's estate. The question that the brothers have is how much of the three-hundred-pound bequest is Gridley's brother entitled to inherit pursuant to the terms of their father's will (*Bleak House* 1873 I: 15: 308). The brother, during the father's life, had already been advanced some money. In his literary criticism of Gridley's legal problems, Anthony Julius relies on *Bleak House's* Skimpole to assess what Gridley gains by entering the Chancery Court: "A failure of love—perhaps a double failure of love, both parental and filial—drives Gridley to law in which, in Skimpole's maliciously accurate observation, [Gridley] finds love, or (better) a passion that *replicates* love, and which kills him" (49). Two points need to be made regarding Julius's analysis. First, Gridley is not driven to the law in the sense that he seeks it out voluntarily. Gridley's brother is the one who commences the litigation by claiming his legacy (*Bleak House* 1873 I: 15: 308), or, as barrister W. Challinor says in the real "respectable Farmer in Staffordshire" case, the brother "filed a Bill in Equity" (6). Second, I doubt Skimpole's judgment is to be trusted and relied on to make this interpretation about the law-story/love-story possibilities of Gridley's character. Skimpole is (or pretends to be) so childlike that everyone for the most part lets him do anything and say anything he pleases, whenever he pleases, and wherever he pleases. As Terry Eagleton puts it so well, Skimpole is a "squalid egoist" (41). Therefore, I am not convinced that Julius's analysis explains Gridley's story as a love story, but Gridley is, indeed, driven by a passion.

And, if Gridley is driven by passion, it is a passion that drives him mad. He is caught up in the procedural nightmare that resulted from his father's will and his brother's subsequent challenge to it, giving rise to questions regarding the substantive legal reasons for the litigation that have to do with the English laws of intestacy and of wills. In the novel, Gridley's father left his wife, that is, Gridley's mother, a life estate in the homestead and chattels, and, upon her death, all was to pass to Gridley as the remainderman, "[ . . . ] except a legacy of three hundred pounds that I was then to pay my brother" (*Bleak House* 1873 I: 15: 308). So, is Gridley's brother entitled to the entire three hundred pounds as he claims, or should the amount be offset against the value of what the brother had already received in board and lodging as Gridley claims? Until readers separate procedural issues from substantive issues, Julius's question "[ . . . ] why didn't Gridley give his brother the full sum" (48) is difficult to answer.

As the owner of his father's estate, Gridley has to protect his ownership interests against unlawful claims. His brother is making a claim against the estate, and readers do not know whether the claim is lawful. Therefore, in order to settle the estate, Gridley must have his brother's claim adjudged by the Chancery, or else the estate would never be settled.<sup>1</sup> But, to respond to Julius's question—" [ . . . ] why didn't Gridley give his brother the full sum" (48)—I must begin with the state of the substantive law at the time of the novel, which is set in the first half of the century. During this time, the Statute of Distribution stated that any advances made by an intestate during his life will be brought into the hotchpot, thereby allowing the intestate's administrator to make a proper inventory of the estate's value (Jenks, *A Short History* 272-3). The principle of hotchpot (or

hotch-potch) is “[ . . . ] that if the deceased person has in his lifetime advanced a sum or sums of money to any child of his, either to settle him or her in life, or to provide a marriage portion, that sum or sums shall be taken into account as part of the share of such child, or his issue if he predeceases the intestate” (Jenks, *Book of English Law* 306). The principle of hotchpot and issues of advancement, however, are principles that apply in the event of intestacy. Gridley’s father was not an intestate; he left a will. From Gridley’s account of events, none of his father’s bequests lapsed or failed, and, if they did not, the rules of intestate succession would not apply to any portion of the estate or to the estate as a whole. Thus, the question— “[ . . . ] whether part of that three hundred pounds had been already paid or not” (*Bleak House* 1873 I: 15: 308)<sup>2</sup>—makes sense only if Gridley’s father died intestate;<sup>3</sup> from a legal standpoint, Gridley is likely wrongfully withholding from his brother the full amount of the bequest.

But Gridley, though placed involuntarily in a defensive legal posture, never gets to argue his position.<sup>4</sup> The Chancery Court is in a position to substitute its judgment about what a father may have meant for his sons to have (that is, Gridley’s brother was to have advancements before his father’s death plus three hundred pounds after his father’s death) with its own (as yet undetermined) judgment, but the grievance is most keenly felt by Gridley because of the seemingly endless limbo he is in. Gridley neither gets to lose outright because he cannot obtain a judgment that says that his brother is entitled to the full amount of the bequest nor can he win outright because he cannot obtain a judgment that says that his brother is entitled to less than the full amount. Gridley is stuck; he is like the “[ . . . ] tens of thousands of other foot passengers [who] have been slipping and

sliding since the day broke [ . . . ]” (*Bleak House* 1873 I: 1: 11). He is procedurally stuck in the circular Law-world of responding to irrelevant questions regarding such issues as “whether I was my father’s son” (I: 15: 308), which issues were never in dispute or otherwise can be easily proven, without ever getting nearer a judgment on the substantive law governing the will’s construction. Of course, all of this litigation is going to require the time and expense demanded by the lawyers on behalf of all parties, and now, if Gridley’s brother is to receive his inheritance of whatever sum, the real property is at risk. The estate is being ruined by the costs and, if the suit goes against Gridley, he will have to sell some or all of the real property in order to pay off his brother’s claim. Worse still, no matter how the suit is ultimately decided, he likely will still have to sell some or all of the real property in order to pay off the court costs and legal expenses, assuming any of the estate remains.

All that can be expected to happen to Gridley, as “the man from Shropshire” (*Bleak House* 1873 I: 1: 18), is suggested by Challinor’s real-life “respectable Farmer in Staffordshire” (5). Neither Dickens’s “man from Shropshire” nor Challinor’s “respectable Farmer in Staffordshire” can reasonably expect justice from the “accursed Chancery.” Thus, through Gridley, Dickens provides a powerful distinction between the legal professionalism found in Challinor and in the *Bleak House* legalists. In Challinor, Dickens sees a legal professional as legalists should be rather than as Dickens thought they were:

It may be asked indeed, why I have selected a case in which so small a sum was involved? I reply, chiefly because it affords a good illustration of the system; and the very simplicity of the point in dispute, proves that there was no necessity for so much expense and delay, but that these are almost



entirely attributable to the pernicious mode of proceeding and levying fees, adopted in this Court. (10)

Likewise, Dickens's Gridley "affords a good illustration of the system" and the abuse perpetrated by the Law against its citizens, taken as he is directly from Challinor's case of the "respectable Farmer in Staffordshire":

[ . . . ] Dickens was encouraged and strengthened in his design of assailing Chancery abuses and delays by receiving, a few days after the appearance of his first number, a striking pamphlet on the subject containing details so apposite that he took from them, without change in any material point, the memorable case related in his fifteenth chapter. (Forster II: 7: 143-44)

The *Bleak House* difference is that Gridley does not have a Challinor-type attorney to care that he is being trampled underfoot from the sheer weight of the cost of litigation and from the uncertainty of being on the edge of losing everything, including his sanity.

Critics have often criticized Dickens for being out-of-step, for complaining about situations that had been remedied. As I have mentioned, one of Dickens's earliest critics in this regard was Bagehot who argued that "[t]here was most adequate reason for the sentiment in its origin, and it had a great task to perform in ameliorating harsh customs and repealing dreadful penalties; but it has continued to repine at such evils long after they ceased to exist [ . . . ]" (158-59). Of course, Bagehot was wrong. Challinor's essay was published in 1849, and his "respectable Farmer in Staffordshire" had yet to receive a final judgment in his suit, facts which, in themselves, indicate that Bagehot's criticism of Dickens is an exaggeration. In addition, *Bleak House* was published serially in 1852-53, and the issue of how and to what extent the judicial system could be reformed was not first addressed specifically until the Chancery Procedure Act of 1852 and the Common Law Procedure Act of 1852. The Chancery Procedure Act of 1852 gave litigants some

relief in terms of simplifying the issue of offering testimony by allowing evidence by oral testimony or by written affidavit and some relief in terms of reducing costs by abolishing the requirement that bills be engrossed on parchment (Severns 2: 325-26). But legislation requires some time to pass for full implementation and for the deficiencies in draftsmanship to appear. Even by 1858, legalists were discovering that the 1852 legislation did not fully eliminate or even reduce the costs of litigation (Haynes 82-83);<sup>5</sup> thus, Gridley's complaints about the oppressiveness of the costs of litigation and the overarching concerns of form-over-substance were still timely.

Consequently, even though Dickens's contemporaries could argue that the legal reformation was making some strides, the system was not yet fully reformed, and, as the case of Gridley shows us, the "wheel of Chancery" (*Bleak House* 1873 III: 35: 75) only moves because individuals are present who cause it to move, however slowly, giving rise to a new question. Rather than asking "what is doing" (III: 39: 156), *Bleak House* asks "who is doing"? In *Bleak House*, the "who" includes legalists Conversation Kenge, Vholes, and Mr. Tulkinghorn as the foremost representatives of the Law. They are the men who make the "one great principle of the English law" (153) work, and the "one great principle of the English law is, to make business for itself" (153).<sup>6</sup> To alter any part of the system, they fear, will result in the loss of business to one or more of them: "Now you cannot afford—I would say, the social system cannot afford—to lose an order of men like Mr. Vholes" (154). The interest of the individual citizen is weighed against the preservation of a class of practitioners, and the individual loses:

And with a great many people, in a great many instances, the question is never one of a change from Wrong to Right (which is quite an extraneous

consideration), but is always one of injury or advantage to that eminently respectable legion, Vholes. (155)

And, here, Dickens most clearly agrees with, yet diverges from, Bentham.

Dickens's contempt for legalists is palpable at this point in *Bleak House*. Gridley's suffering is undeniable. Likewise, although Anglo-American jurisprudence had marched steadfastly on since Jeremy Bentham memorialized his opinion in such statements as the one in this chapter's epigraph, contemporary readers can still feel the bite of his sarcasm, his absolute contempt for legalists and his firm belief in their general incompetence, a sentiment which is reinforced in *Bleak House*. But to Bentham's sense of radicalism, there is Dickens's sentimental radicalism. Thus, even though Dickens and Bentham despised the legal profession as one element of the perversion of the legal system and saw the need for the reformation of the legal system as a whole, each came to the discussion from very different perspectives.

Bentham advocated strongly for his belief that meaningful legal reform was the result of meaningful legislative change, which, in turn, ought to be predicated on his own theory of legislation, a theory that reflects his sense of utilitarianism. For Bentham, in order to produce laws that could be codified, the starting point is for legislators to understand what their purpose is in creating laws in the first place: "The sole object of the legislator is, to increase pleasures and to prevent pains; and for this purpose he ought to be well acquainted with their respective values" (*Theory of Legislation* I: 8: 46-47). A significant portion of the first volume of Bentham's *Theory of Legislation* concerns itself with demonstrating how a legislator can consider Bentham's "circumstances which affect sensibility"<sup>7</sup> and "secondary circumstances which affect sensibility"<sup>8</sup> in order to "increase

pleasures and to prevent pains.” Bentham’s focus was on legal reform as it could be effectively enacted through legislative reform. Thus, he did not concern himself directly with legal professionalism. Judges, solicitors, and barristers were simply purveyors of whatever poorly written legislation was written, and judges were performing a disservice to justice by legislating from the bench in the name of Equity.

In the context of effective legislation, Bentham scorned the very idea of Equity, deriding it as another legal fiction: “Equity? what means it? A bettermost, yes, and *that* the very best, sort of justice. But, justice being, the whole together, so good a thing, what must not this very best sort be?” (*Works* V: 484). Yet courts with Equity jurisdiction arose because, quite simply, money is not enough, and, as Roger L. Severns points out, the common-law courts rendered judgments that were satisfied by money-damages (1: 83). For example, sometimes persons must be enjoined to do (or not to do) something, and injunctive relief will lie: “Another familiar example of these extraordinary powers of the chancellor is the awarding of an injunction which is an order restraining the defendant from doing some particular act, or compelling, as in the case of a mandatory injunction, the performance of some duty” (83). Bentham, however, would have argued that positive law could be drafted giving a litigant a legal remedy without resorting to a theory of Equity. In this regard, Mark Tebbet’s example demonstrates how Bentham would redraw the debate:

These legal concepts, however, can be interpreted by Bentham’s method of paraphrase. A sentence containing the word “right” can be rewritten and translated as a legal duty. Thus, “X has a property right” can be translated into a sentence of equivalent meaning: “Y has a duty to refrain from appropriating or trespassing on X’s property”. But a “duty” is also a fictitious legal entity. This in turn can be translated into the language of

coercion: “If Y appropriates or trespasses on X’s land, then Y will be liable to a certain punishment”. Every legal term can be traced back in this manner to the pleasure-pain calculus of utilitarian social welfare. The threat of punishment is a perceptible and tangible, hard empirical reality. Bentham believed that all legal terms could be explicated by this method of paraphrasis. (101)

To this end, Bentham was (and is) often criticized for placing too much emphasis on his pleasure-pain principle and neglecting issues such as morality in order to derive a system of laws that could be codified.<sup>9</sup> John Stuart Mill, however, defended Bentham: “For our own part, we have a large tolerance for one-eyed men, provided their one eye is a penetrating one: if they saw more, they probably would not see so keenly, nor so eagerly pursue one course of inquiry” (*Bentham* 98). Readers should not be surprised then to see in *Bleak House* a foreshadowing of Mill’s opinion of Bentham in the character of Mrs. Jellyby with her “Telescopic Philanthropy,” possessing as she does “[ . . . ] handsome eyes, though they had a curious habit of seeming to look a long way off. As if—I am quoting Richard again—they could see nothing nearer than Africa” (*Bleak House* 1873 I: 4: 61).

Bentham’s “one-eyed” view was transfixed with the steadfastness of Mrs. Jellyby’s telescopic vision on eliminating legal fictions or fallacies, codifying the Law, and creating a legal system that is based on rational decision-making. To this end, Bentham despised an incompetent Parliament, which made use of fallacies for the express purpose of obscuring reason:

But the Emperor of Morocco is not more irresponsible, and therefore more likely to be ignorant and prone to be deceived by the fallacy of authority, than a member of the British Parliament. [ . . . But] no ignorance prevents a man from becoming or continuing Emperor of Morocco, nor from becoming or continuing a member of Parliament. (*Political Fallacies* 32)

He goes on to say that “[t]he Emperor pretends not to be a trustee, agent, deputy, delegate, representative; lying is not among the accompaniments of his tyranny and insolence; the member does pretend all this, and if a borough-holder, he lies” (32). A Member of Parliament, for Bentham, meant that the person was “[a] trust-holder, yes; but he is a trust-breaker” (32). Not surprisingly, Dickens recreates Bentham’s contempt for the British Parliament in Dickens’s Lord Boodle and the Right Honourable William Buffy, M.P., who, each with “his retinue” (*Bleak House* 1873 I: 12: 234) has built a “theatrical stage” (234) on which they perform rather than legislate. Worse still, “[ . . . ] Boodle and Buffy, their followers and families, their heirs, executors, administrators, and assigns, are the born first-actors, managers, and leaders, and no others can appear upon the scene forever and ever” (234),<sup>10</sup> which sentiment is again found in Bentham’s writings when he points out that “[t]he Emperor’s title is derived from birth; so is that of many a member” (*Political Fallacies* 32) of Parliament.

Bentham expended much time and energy trying to educate legislators about how to devise carefully crafted, reason-based legislation and, therefore, was trying to affect reform from a different perspective than Dickens’s *Bleak House*. I do not suggest, however, that Bentham did not strongly criticize judges and lawyers; he did and did so with great enthusiasm. For example, in criticizing self-serving judges who subverted the purpose of the Law and the legal system, he compared British judges to those in America, and said that in America there is

[ . . . ] no judge pocketing 7,000 pounds a year for useless work for which one must address his clerks; no judge who, in the character of judge over himself, sits in one place to protect by storms of fallacy and fury the

extortions habitually committed in another [ . . . ]. (*Political Fallacies* 246-47)

Also, comparing British lawyers to American lawyers, he said that in America there are “[ . . . ] no tithe-gatherers exacting immense recompense for minute or never-rendered service” (247). Judges and lawyers are part of the system and, thus, susceptible to censure for their participation in the Law, though for Bentham, their roles were overshadowed by his preoccupation with reforming the legal process by reforming how laws are created.

To the extent that Dickens and Bentham share these views, Dickens, like Bentham, criticizes the ineffectiveness of members of Parliament in the characters of Boodle and Buffy. Dickens, like Bentham, criticizes the self-serving judiciary in the character of the Lord Chancellor who perverts the course of justice, for example, by willfully ignoring the lawyer Mr. Tangle who is trying to tell the Court that his client is dead (*Bleak House* 1873 I: 1: 18-19), which, to most rational-thinking persons, would be useful and relevant information for a court to have. However, unlike Bentham’s “one-eyed” view of legal philosophy or Mrs. Jellyby’s telescopic vision of philanthropy, the Lord Chancellor’s vision is not enhanced by the use of “his double eye-glass” (*Bleak House* 1873 I: 1: 19). From these objects of Benthamite attacks, Dickens narrowed his attack on the legal system to the participants who are construing and implementing the then-existing Law, so, in a sense, he too engaged in a one-eyed view of the Law’s lawyers. “The one great principle of the English law” may be “to make business for itself” (III: 39: 153), but Gridley is correct when he charges that individuals exist within the system who should be made to answer for their actions. Even Bentham knew the significance of Dickens’s point that people should look to the individual players on the “theatrical stage” (I: 12: 234):

“The whole character and complexion of English judicature would be belied, if, on this occasion as well as so many others, the professional fondness for mendacity were not indulged with its gratifications” (*Rationale* II: 3: 16: 365). For Bentham, he looked to the legislative theater and its players; Dickens looked to the legal theater and its players.

The *Bleak House* lawyers are interesting precisely because of their “professional fondness for mendacity.” Instances occur in the novel, when, arguably, the lawyers do not lie but rather can be charged with being scrupulously honest. When Mr. Tulkinghorn threatens Mademoiselle Hortense, for example, readers have no reason to suspect that he does not have the authority to do what he says he will do or that he lacks the will to have her arrested for harassment. When Vholes tells Richard Carstone that he, Richard, likely has a greater claim to the Jarndyce estate than John Jarndyce does, readers again have no reasonable basis for doubting him, and, when Conversation Kenge writes his fragmentary notes to Esther, readers can see that he is carrying out his instructions from John Jarndyce regarding Esther’s maintenance and education. Each of these legalists ostensibly subscribes to Vholes’s description of legal professionalism: “[ . . . ] when a client lays down his own principle, and it is not immoral, it devolves upon me to carry it out” (*Bleak House* 1873 III: 37: 133). Readers are, however, charged, and quite rightly, with the need to question the *Bleak House* lawyers’ sense of legal professionalism and their sense of morality in the context of how they perform their work.

Conversation Kenge appears early in the novel in order to act as a liaison between Miss Barbary, Esther’s aunt, and John Jarndyce and later between Esther and John Jarndyce. Miss Barbary, who has contacted John Jarndyce anonymously to arrange for



Esther's long-term care in the event of Miss Barbary's death, introduces Conversation Kenge to a young Esther to whom he barely speaks a word. Though Esther and Conversation Kenge's initial meeting was brief, after Miss Barbary's death, he returns to provide for Esther's removal to the Misses Donnys' Greenleaf boarding house for an education and then to Bleak House to serve as its housekeeper. From this second meeting, Esther develops an appreciation for why Conversation Kenge is called "Conversation": "He appeared to enjoy beyond everything the sound of his own voice" (*Bleak House* 1873 I: 3: 39). In the case of Conversation Kenge, the "wall of words" coming from the "sound of his own voice" are generated in defense of the status quo; Conversation Kenge is a Benthamite representation of a Blackstone-type lawyer who sees nothing but the grandeur of the Law that could support a cause such as Jarndyce and Jarndyce—" [i]t is a cause that could not exist, out of this free and great country" (38)—and the propriety of the Law that could justify the costs associated with such a suit—"I should say that the aggregate of costs in Jarndyce and Jarndyce [ . . . ] amounts at the present hour to from SIX-TY to SEVEN-TY THOUSAND POUNDS!" (38).

At their second meeting, Conversation Kenge is astounded that Esther is not familiar with the great Equity suit known as Jarndyce and Jarndyce: "Not [heard] of one of the greatest Chancery suits known? Not of Jarndyce and Jarndyce—the—a—in itself a monument of Chancery practice?" (*Bleak House* 1873 I: 3: 37-39). His remarks, of course, support Blackstone's famous architectural analogy wherein he defends the then-existing legal system:

We inherit an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers,

and the trophied halls, are magnificent and venerable, but useless. The inferior apartments, now converted into rooms of convenience, are cheerful [sic] and commodious, though their approaches are winding and difficult. (*Facsimile III*: 17: 268)

Not surprisingly, then, nothing that Conversation Kenge is saying about the “monument” makes any sense to Esther: “I felt very ignorant, but what could I do? I was so entirely unacquainted with the subject, that I understood nothing about it even then” (*Bleak House* 1873 I: 3: 38).

Yet, disregarding Esther’s lack of attention (*Bleak House* 1873 I: 3: 38), Conversation Kenge touts the magnificence of a lawsuit wherein “[ . . . ] every difficulty, every contingency, every masterly fiction, every form of procedure known in that court, is represented over and over again” (38). He plays his part in the legal system by keeping the myth of the legal fiction alive and, consequently, necessary to a fully functioning legal system. The best way to do this bit of gamesmanship is to keep laypeople, in this case Esther, completely baffled or, in Esther’s case, bored: “[ . . . ] I was afraid he addressed himself to [Mrs. Rachael], because I appeared inattentive [ . . . ]” (38). As Marjorie Stone summarized Bentham’s view, lawyers—and the legal fictions that they defend—serve the Law by keeping laypeople uninformed with “incomprehensible nonsense” (131), or, as Bentham himself says, “It is to every man’s interest to keep out of lawyers’ hands as much as possible; it is to the lawyer’s interest to get him in as often, and keep him in as long as possible” (*Political Fallacies* 35), and the best way to make the entrapment work is never to codify the Law: “Hence it is to the lawyer’s interest to prevent any written expression of the words necessary to keep non-lawyers out of his hands from coming into existence [ . . . ]” (35).

The written word certainly is not Conversation Kenge's forte. In response to Esther's thank-you letters, Conversation Kenge would respond routinely, formally, and always briefly: "We note the contents thereof, which shall be duly communicated to our client" (*Bleak House* 1873 I: 3: 46). Any correspondence longer than his perfunctory acknowledgment seems to entail his gross attempts to encode information, rather than simply writing the information clearly. One paragraph from his letter to Esther telling her of her placement in Bleak House is illustrative:

Our clt Mr. Jarndyce being abt to rece into his house, under an Order of the Ct of Chy, a Ward of the Ct in this cause, for whom he wishes to secure an elgble compn, directs us to inform you that he will be glad of your serces in the afsd capacity. (46)<sup>11</sup>

His words are not sentence fragments; Conversation Kenge deliberately removes consonants and vowels as if the effort to be clear is simply too much for him or is too great a claim on his time.

Time: Conversation Kenge expends little time beyond conveying information about how and why Esther is to leave Greenleaf and to go to Bleak House. Time: Esther views the letter as evidence that her unknown father, at some time in her past, has not forgotten her or failed to provide for her. Conversation Kenge, if he even thought of how his words (or what passes as words) were received, could not have imagined that Esther would have placed so much hope on them as evidence that someone cared about her. Is she behaving rationally? No. Is she behaving humanly? Yes. She latches onto her own interpretation of a legal writing that makes sense to her. Conversation Kenge does not concern himself with the impact of his "wall of words," only with the "sound of his own voice." As Vholes says, "[ . . . ] when a client lays down his own principle" (*Bleak House*

1873 III: 37: 133), which for Conversation Kenge concerns the instructions he receives from John Jarndyce, “and it is not immoral” (133), which assisting a young woman to an education and employment is not, then “it devolves upon me to carry it out” (133), which he does. He had, after all, “[ . . . ] formed himself on the model of a great lord who was his client [ . . . ]” (I: 3: 39).

The “great lord” reference is *Bleak House*’s further criticism of the dangerous interplay between political power and legal power: the Law “doers” practice “what is doing” by imitating the Law makers. Sir Leicester, like Conversation Kenge, vividly evokes the memory of Bentham’s criticism of Blackstone. If Conversation Kenge is Blackstone’s legal mouthpiece, then Sir Leicester is the person in a position of Parliamentary power to preserve the legal institution intact. Readers learn, however, before *Bleak House* ends, that a person like Mrs. Rouncewell’s son, the Ironmaster, is part of the changing social atmosphere, contrary to what Sir Leicester believes: “And he is upon the whole of a fixed opinion, that to give the sanction of his countenance to any complaints respecting it, would be to encourage some person in the lower classes to rise up somewhere—like Wat Tyler” (1873 I: 2: 27-28). Mr. Rouncewell’s rise, coupled with Sir Leicester’s loss of political power, imply that political and, consequently legal, reformation is possible, but, until then, Sir Leicester is satisfied with the slowness of Chancery justice. Judicial delay has been institutionalized to the point of pride:

But [Sir Leicester] regards the Court of Chancery, even it should involve an occasional delay of justice and a trifling amount of confusion, as a something, devised in conjunction with a variety of other somethings, by the perfection of human wisdom, for the eternal settlement (humanly speaking) of everything. (I: 2: 27)

Of course, *Bleak House* demonstrates how difficult, if not impossible, people find their chances are in the Court of Chancery and how illusory the hope is of ever achieving an “eternal settlement (humanly speaking)” of anything much less “everything.” However, such a dilatory system could not succeed unless someone had a specific reason for ensuring that it remained the institution of choice. One segment of the “someone” who perpetuated the myth that the “occasional delay of justice and a trifling amount of confusion” (*Bleak House* 1873 I: 2: 27) was for the good of the country was the legalists, specifically Vholes and Mr. Tulkinghorn, who “[ . . . ] are in all points *officers* of the respective courts in which they are admitted” (Lowe x), that is, Law-created officers who are themselves operating as legal fictions.

As officers of the courts, ancient lawyers took an oath of allegiance to their courts and an oath of office to perform their duties according to their learning, discretion, and conscience (Lowe x). This ancient oath included specific language that required, among other things, that attorneys “do no falsehood, nor cause any to be done in the court,” report misconduct directly to the court, “delay no man for lucre or malice,” and “not wittingly sue or procure to be sued any false suit, or give aid or consent to the same, on pain to be expelled the court for ever” (x). The language of this oath was subsequently dropped to the much more abbreviated oath that simply required attorneys to promise that “I will truly and honestly demean myself in the practice of an *attorney*, according to the best of my knowledge and ability. So help me God” (x). The ideal of a dual allegiance to courts and clients remained, but the ideal was diminished. Lawyers were no longer specifically required to do no harm by delaying justice or failing to self-police.

Vholes, the attorney who bribes Skimpole to gain introduction to Richard Carstone, is one of those who delays justice for the obvious reason: lucre. Readers could, possibly, debate whether Vholes paid Skimpole a bribe or if he simply paid him a referral fee in the form of a “commission” (*Bleak House* 1873 III: 37: 132). However, given Skimpole’s willingness to accept money from Inspector Bucket in exchange for information about Jo, I believe that readers are on solid ground in assuming that Skimpole knows a bribe when he sees one. With Vholes willing to bribe his way into the Jarndyce suit, Richard Carstone is now placed in Gridley’s position. Richard, like Gridley, does not voluntarily come to the Chancery Court; he is maneuvered into the Chancery Court through circumstances outside his control. As an orphan-infant, his immediate familial inheritance was governed by the Chancery Court, as Ada’s would have been.<sup>12</sup> The most likely scenario is that, during their minorities, the Chancery Court required Richard and Ada to be named parties to the Jarndyce suit through Jarndyce as their guardian; once Richard meets Vholes, he is not trying to become a party but is interested in protecting his interests. Now, no longer an orphan-infant, he is free to manage his inheritance and to participate directly in the lawsuit. However, to assume that Richard voluntarily employs Vholes as his representative requires one to believe that he did so knowingly, and, by any analysis, Richard is uneducated and a weak-willed character who is ripe for Vholes’s sort of vampirism.

Vholes’s predation of Richard is relatively easy because he only has to prey upon Richard’s vanity. Richard, who successively fails at his various career choices, comes to see himself as victim. When he fails as a physician-trainee, Richard, though he almost

assumes responsibility when he says that “I don’t take to it,” instead blames his lack of success on Mrs. Badger saying, “And I get too much of Mrs. Bayham Badger’s first and second” (*Bleak House* 1873 II: 17: 25). He finally blames the profession itself saying, “Then [ . . . ] it’s monotonous, and to-day is too like yesterday, and to-morrow is too like to-day” (25). When he fails in his apprenticeship with Kenge and Carboy to study the Law, Richard, now in debt through too much billiards-playing (II: 23: 154), blames his study of the Jarndyce lawsuit for his inability to become settled as to his future. He finally fails as an army man, during which time Vholes feeds Richard’s sense of victimization by bolstering Richard’s misperception of Jarndyce as the predator and setting himself up as the savior figure.

Vholes has Richard; Vholes has a client who has laid “[ . . . ] down his own principle, and it is not immoral” (*Bleak House* 1873 III: 37: 133);<sup>13</sup> therefore, according to Vholes, “it devolves upon me to carry it out” (133). Once they have been introduced, Richard charges Vholes with the question of whether his interests in the Jarndyce suit are being put forward. Once Richard is no longer an orphan-infant, that is, a ward of John Jarndyce, he has a legal interest that he can pursue on his own; he has a legal right, and, arguably, is the sort of person one would expect to find some way to entangle himself eventually in the litigation. The vexatious delay arises, however, because Vholes deliberately and with his own interest to be considered inserts himself into Richard’s life in the role of legal advisor.

Vholes is quick to explain that he is a humble man with bad digestion who is simply looking out for his daughters and his aged father: “His digestion is impaired;

which is highly respectable. And he is making hay of the grass which is flesh, for his three daughters. And his father is dependent on him in the Vale of Taunton” (*Bleak House* 1873 III: 39: 153). Ostensibly, as the respectable man supporting several dependents, Vholes’s contribution to the legal system is made clear in *Bleak House*’s chapter 39, and the clarity of the passage demonstrates how abusive the system was in terms of the Parliament that creates it and the lawyers who support it:

But not perceiving this quite plainly—only seeing it by halves in a confused way—the laity sometimes suffer in peace and pocket, with a bad grace, and *do* grumble very much. Then this respectability of Mr. Vholes is brought into powerful play against them. “Repeal this statute, my good sir?” says Mr. Kenge to a smarting client, “repeal it, my dear sir? Never, with my consent. Alter this law, sir, and what will be the effect of your rash proceeding on a class of practitioners very worthily represented, allow me to say to you, by the opposite attorney in the case, Mr. Vholes? Sir, that class of practitioners would be swept from the face of the earth. Now you cannot afford—I will say, the social system cannot afford—to lose an order of men like Mr. Vholes. Diligent, persevering, steady, acute in business. My dear sir, I understand your present feelings against the existing state of things, which I grant to be a little hard in your case; but I can never raise my voice for the demolition of a class of men like Mr. Vholes.” (153-54)

Those within the profession, in this example Conversation Kenge, support the existence of lawyers like Vholes on the basis that the legal system must support their existence, a very circular way of justifying not repealing or altering laws to prevent them being “a little hard in your case” (155). Conversation Kenge’s sort of logic ensures that Vholes retains his professional position, deservedly or not, because he is a class of men who must be supported, and he is a class of men who must be supported by the Parliament:

The respectability of Mr. Vholes has even been cited with crushing effect before Parliamentary committees, as in the following blue minutes of a distinguished attorney's evidence. “Question (number five hundred and



seventeen thousand eight hundred and sixty-nine). If I understand you, these forms of practice indisputably occasion delay? Answer. Yes, some delay. Question. And great expense? Answer. Most assuredly they cannot be gone through for nothing. Question. And unspeakable vexation? Answer. I am not prepared to say that. They have never given *me* any vexation; quite the contrary. Question. But you think that their abolition would damage a class of practitioners? Answer. I have no doubt of it. Question. Can you instance any type of that class? Answer. Yes. I would unhesitatingly mention Mr. Vholes. He would be ruined. Question. Mr. Vholes is considered, in the profession, a respectable man? Answer”—which proved fatal to the inquiry for ten years—“Mr. Vholes is considered, in the profession, a *most* respectable man.” (154-55)

Thus, as long as Vholes conforms his conduct to maintain his respectability among those lawyers who are “[ . . . ] the greater attorneys who have made good fortunes, or are making them [ . . . ]” (153), his place in the system is assured. They, after all, need Vholes, too.

When Vholes drums up his own business in the form of a client, the opposing party will need to find his own “greater attorneys” who, in their turn, now have business. Vholes’s dual allegiance to the court and to his clients has become a farce, another legal fiction that serves neither the court nor the client well. Clients, according to the system, owe him a living, and the legal institution supports his efforts to obtain as much lucre as he can get in order to support his three daughters and his father from the Vale of Taunton, so help him God.

Even presuming to accept the premise that laws should not be repealed or altered in order to protect the legal institution’s ability “to make business for itself” (*Bleak House* 1873 III: 39: 153) and, in turn, its practitioners’ ability to make business for themselves, readers know that clients are the ones who suffer by the delay and the expense. Even Skimpole, the least sympathetic character in *Bleak House*, understands that his loss is the lawyer’s gain:

“Wholes? My dear Miss Clare, I had had that kind of acquaintance with him which I have had with several gentlemen of his profession. He had done something or other, in a very agreeable, civil manner—taken proceedings, I think, is the expression—which ended in the proceeding of his taking *me*.” (III: 37: 131-32)

The resulting loss occasioned by Wholes’s search for money, of course, is only one sort of gain that *Bleak House* censures. Another sort is found in the malicious conduct of Mr. Tulkinghorn.

In his 1993 essay, Daniel H. Lowenstein defended Mr. Tulkinghorn’s conduct, arguing that his conduct is professionally justified on several bases that I would like to address briefly. First, according to Lowenstein, “When [Mr. Tulkinghorn] starts his investigation, he knows nothing of the relationship that has existed between Hawdon and Lady Dedlock. At the outset, he must consider the possibility of a secret that is unquestionably his duty to discover and bring to his client’s attention” (1207). Lowenstein’s second point is that “[ . . . ] Tulkinghorn conceives his client to be not only Sir Leicester as an individual, but Sir Leicester as the representative of the Dedlock family. [ . . . ] For the lawyer to defend the family’s interest, he needs to know the family’s secrets” (1207-08). For my part, I do not see any meaningful distinction between Lowenstein’s first and second points; he seems to be restating the same point, which is that Mr. Tulkinghorn is justified in ferreting out any secrets that he feels may have an impact on Sir Leicester either as an individual or as a holder of a baronetcy even if the secrets involve Lady Dedlock. Mr. Tulkinghorn himself is of two minds about whether he should bring Lady Dedlock’s secret to Sir Leicester’s attention, so, at the least, he is not satisfied as to what his duty is.

Lowenstein's third point is that Lady Dedlock's secret must be revealed and that Mr. Tulkinghorn's investigation is "ratified" by Sir Leicester after Mr. Tulkinghorn's death (1208). This alleged ratification is not supported by the text. The exchange that Lowenstein refers to in chapter 54 begins with Inspector Bucket announcing that he has something to say in regard to Lady Dedlock to which Sir Leicester warns him "'Officer,' [ . . . ] you know your duty. Do your duty: but be careful not to overstep it" (*Bleak House* 1873 IV: 54: 93), which, of course, has nothing to do with Mr. Tulkinghorn. Lowenstein excuses Mr. Tulkinghorn because, according to him, in their exchange Sir Leicester ratifies Mr. Tulkinghorn's investigation of Lady Dedlock. Sir Leicester, however, not only does not ratify Mr. Tulkinghorn's actions, but he does not say anything at all (95-96),<sup>14</sup> a point that is also made in Markey's rebuttal to Lowenstein: "There is certainly no explicit authorization either" (716). Mere silence on the issue is not necessarily evidence of his ratification of Mr. Tulkinghorn's actions taken through Inspector Bucket as Mr. Tulkinghorn's alleged agent, and, in Sir Leicester's situation, he is stunned into silence even before he suffers his stroke:

[An agreement] may be inferred from inaction or forbearance of acting. Thus a man by his silence, in case he be present and acquainted with what is doing, is supposed to give his assent to what is then done; unless it appear that he was awed into silence, or any ways hindered from speaking. (Powell 81)

Lowenstein's fourth point is that Mr. Tulkinghorn is not doing what others are not already doing. He points to Guppy as an example of someone who is already piecing together Lady Dedlock and Esther's relationship. This argument is, perhaps, Lowenstein's most objectionable because it tends to support conduct that cannot be characterized as

professional. Lowenstein's point is, quite literally, Mr. Tulkinghorn, even though he has taken an oath to "truly and honestly demean" (Lowe x) himself in the practice of the law, should not be held to a higher standard of conduct than persons like Grandfather Smallweed and the Chadbands who undeniably seek to profit from their knowledge of Lady Dedlock's secret. They are seeking a financial advantage; Mr. Tulkinghorn too seeks his own advantage.

Although I do not find any of Lowenstein's arguments to be particularly persuasive or supportive of his theory that Mr. Tulkinghorn behaves in a professionally responsible manner, I also do not think that Maureen E. Markey fully plumbs the issue in her response to Lowenstein's essay. Markey and many critics who precede her find Mr. Tulkinghorn to be a misogynist, a flaw that explains his motivation for persecuting Lady Dedlock: "Mr. Tulkinghorn is simply malevolent, the closest thing to a purely evil presence in the novel. Malevolent, malignant, sadistic, calculating, intentionally and consciously evil" (695). Disagreeing completely with Lowenstein and others who defend Mr. Tulkinghorn, Markey says, "[Mr. Tulkinghorn] is a thoroughgoing villain and his reprehensible behavior toward both his client, Sir Leicester, and Lady Dedlock should be soundly condemned. To defend or justify his conduct risks further discredit to the image of lawyers held by much of the public" (758). Both Lowenstein and Markey view Mr. Tulkinghorn primarily in terms of his relationship with Lady Dedlock. I suggest that, when considering Mr. Tulkinghorn's other clients and other persons he deals with, he uses and misuses both men and women; he is an equal opportunity dispenser of ill-will in addition to being just as motivated by money as Vholes.

Like Vholes, whose search for lucre, necessitates that justice be delayed, Mr. Tulkinghorn's self-interest also delays justice. Gridley is one of the earliest examples in *Bleak House* of Mr. Tulkinghorn's participation in judicial delay. Gridley apparently received legal advice from Mr. Tulkinghorn who, after the Gridley estate was eventually ruined, washed his hands of Gridley: "I mustn't go to Mr. Tulkinghorn, the solicitor in Lincoln's Inn Fields, and say to him when he makes me furious, by being so cool and satisfied—as they all do, for I know they gain by it while I lose, don't I?" (*Bleak House* 1873 I: 15: 309). As I have already pointed out, the delay in justice suffered by Gridley is simply unconscionable, and Mr. Tulkinghorn's association with the case, however directly or tangentially, is inexcusable and inexcusable because of his self-serving interest in a paying client. Once Gridley's estate is ruined, Mr. Tulkinghorn no longer has any interest in Gridley and refuses to talk to him: "I mustn't go to Mr. Tulkinghorn [ . . . ]" (309). Gridley is left with no money and, consequently, no lawyer.

Sir Leicester, on the other hand, is a client who is not short of money, and, with him, Mr. Tulkinghorn is involved again in another lawyer-client relationship where justice delayed is justice denied. Sir Leicester has a longstanding feud with Lawrence Boythorn regarding an easement right that Sir Leicester claims against Boythorn's property (*Bleak House* 1873 I: 9: 176). Sir Leicester tries to close the easement with the gate; Boythorn tears down the gate (177). They bring and defend actions for trespass and for assault and battery against each other (177). Sir Leicester has his agent, presumably Mr. Tulkinghorn, write letters that simply serve to agitate the situation, which is, simply, barrety: "Common barrety is the offence of frequently exciting and stirring up suits and quarrels

with his majesty's subjects, either at law or otherwise," and, if the offending party is a lawyer, "[ . . . ] who is thus able as well as willing to do mischief, ought also to be disabled from practicing for the future" (Blackstone, *Facsimile* 4: 10: 133-34).<sup>15</sup> Boythorn, being represented by Kenge and Carboy, waits for correspondence that does not arrive although he is optimistic that Conversation Kenge's law firm can settle things in his favor: "I dare say they will report progress to-morrow morning" (*Bleak House* 1873 I: 9: 178). Of course, resolution does not arrive, and, even at the end of the novel, Sir Leicester and Boythorn's land dispute, which conforms to Sir Leicester's belief in the supremacy of the Law to achieve justice, has become virtually institutionalized as another example of an ineffective and essentially meaningless legal dispute.

In his essay, Larry M. Wertheim makes an interesting point in regard to the Leicester-Boythorn feud; sometimes lawyers have "intractable clients" who themselves "often are most guilty of perpetuating litigation" (133). These sorts of intractable clients use the Law in order to communicate, albeit somewhat perversely, and, therefore, "[ . . . ] litigation satisfies a societal need, at least in the contexts of social discourse and conflict resolution" (133), which is certainly true of Sir Leicester who sees his family name attached to a lawsuit to be a point of pride (*Bleak House* 1873 I: 2: 27). An alternative view of Sir Leicester's refusal to settle, as Bentham notes, is that sometimes clients simply lie, thereby doing nothing to expedite justice: "In the written instrument, the bill, by which the suit commences, the plaintiff, not upon oath, enjoying a complete license for mendacity, tells whatever story suggests itself to his professional fabricator as best adapted to whatever may be the purpose" (*Rationale* II: 3: 16: 347). Obviously, both Sir Leicester

and Boythorn are in the wrong. Sir Leicester has no legal standing to construct gates on property that Boythorn owns; Boythorn has no legal justification for assaulting Sir Leicester's servants. Each believing in his own justice, though, readers can fairly assume that whatever Sir Leicester has told Mr. Tulkinghorn and whatever Boythorn has told Conversation Kenge has been greatly embellished by the time their complaints are reduced to a formal bill.

But Mr. Tulkinghorn engages in other conduct that not only violates a sense of legal professionalism but also demonstrates how malicious he is. Mr. Tulkinghorn moves beyond merely carrying out a principle that Sir Leicester sets out, which is that Sir Leicester wants the feud to continue no matter what. Wertheim suggests that Mr. Tulkinghorn is trying to negotiate a settlement when he proposes that Sir Leicester relinquish a "minor point" in his complaint against Boythorn (133). In the context of all of Mr. Tulkinghorn's interactions with the novel's characters, I do not find this interpretation persuasive. I believe that he is touching Sir Leicester's vanity and doing so for a particular purpose. Just as Vholes keeps Richard in a state of agitation regarding John Jarndyce, Mr. Tulkinghorn, by suggesting that Sir Leicester should blink first, keeps Sir Leicester agitated. Mr. Tulkinghorn, by his question, tests Sir Leicester's resolve to keep the litigation going. Negotiation is not in Mr. Tulkinghorn's monetary interest, and, once he gets Sir Leicester's reaction, he understands that "I have now my instructions" (*Bleak House* 1873 I: 12: 237), and any additional delay and expense can be justified on the basis that "Mr. Boythorn will give us a good deal of trouble" (237).

As scrupulous as Mr. Tulkinghorn is to be clear as to his instructions regarding how to proceed against Boythorn, his willingness to pursue his investigation against Lady Dedlock is hard to fathom. Mere ill-will or greed does not satisfy most critics who try to explain why Mr. Tulkinghorn would, without consulting Sir Leicester, take the initiative to find out Lady Dedlock's connection to Nemo. Their difficulty in understanding Mr. Tulkinghorn follows in the tradition of George Brimley who in 1853 was one of the first who criticized Dickens for creating such a character: "Mr. Tulkinghorn, the Dedlock confidential solicitor, is an admirable study of mere outward characteristics of a class; but his motives and character are quite incomprehensible [ . . . ]" (935). Mr. Tulkinghorn actually is portrayed as being such a dark and shadowy figure that discerning his motives is indeed difficult. I can more easily find reason to suspect that he explains what Hans Christian Andersen's "The Shadow" (1847) does for a living when he leaves his master for years on end only to return with wealth and dressed as a human being during which time he learns that "Taken all in all, it's a wicked world" (299-300).

Some critics, over the generations, however, have differed from Brimley's argument that Mr. Tulkinghorn is villainous and that his "fate excites precisely the same emotion as the death of a noxious brute" (935) and have argued in Mr. Tulkinghorn's defense. In addition to Lowenstein, Stanley Tick has written on the issue and argues that Mr. Tulkinghorn can be defended because he has a valid principle for investigating Lady Dedlock: "[ . . . ] his sense of loyalty and duty to Sir Leicester and, it would seem, to Sir Leicester's class, had motivated him from the first to uncover the secret—in order to better preserve it [ . . . ]" (212). But, for those critics who find Mr. Tulkinghorn's behavior



defensible, I would like to address two points of his behavior that are never taken into account by Lowenstein or Tick and have a direct bearing on his dual allegiance to the court and to his client: first, Mr. Tulkinghorn is a liar, and, second, he is a criminal.

As to the first point, I need to turn first to Mr. Tulkinghorn's discovery of the dead Nemo. During Woodcourt's examination of the body, Mr. Tulkinghorn says, "I looked in here [ . . . ] just before you, with the intention of giving this deceased man, whom I never saw alive, some employment at his trade of copying" (*Bleak House* 1873 I: 11: 206). Plausible, but a lie (that he intended to offer Nemo employment) coupled with a truth (that he never saw Nemo alive) does not make the lie less a lie. Mr. Tulkinghorn never saw Nemo alive; Mr. Tulkinghorn, however, went to find Nemo with the intention of learning his connection to Lady Dedlock. To have said otherwise, as Markey says, is a "manipulative lie" (705). In this instance, one could argue that his lie falls into the no-harm-no-foul category, but readers should instantly suspect Mr. Tulkinghorn's motives especially in light of his actions once Nemo is declared dead. Mr. Tulkinghorn, presuming himself to be in charge, questions Snagsby about Nemo's connections and virtually orders that a search be done of Nemo's apartment for any papers that might reveal any of Nemo's connections to other persons, which, as readers know, is his real motive for going there in the first place.

If "The whole character and complexion of English judicature would be belied, if [ . . . ] the professional fondness for mendacity were not indulged with its gratification" (Bentham, *Rationale* II: 3: 16: 365), then Mr. Tulkinghorn's little white lie, his intentional little white lie, does not seem to rise to the level of "professional fondness for mendacity"

(365) even though his oath of office specifically says that legalists are required to “do no falsehood” (Lowe x). This lie must be seen in the context of Mr. Tulkinghorn’s overall course of conduct. After engaging Mademoiselle Hortense to impersonate Lady Dedlock, Mr. Tulkinghorn has Inspector Bucket locate and return to his office with Jo. Even though Mademoiselle Hortense is dressed in Lady Dedlock’s clothes, Jo confirms to Mr. Tulkinghorn that he had seen Lady Dedlock (and not anyone like Mademoiselle Hortense) on the night that a veiled lady had asked him to lead her to Nemo’s residence and grave. Once Jo leaves but before being dismissed, Mademoiselle Hortense asks Mr. Tulkinghorn to recommend her services for a new job placement. To this request, Mr. Tulkinghorn replies, “By all means, Mademoiselle Hortense” (*Bleak House* 1873 II: 22: 145). Later in the story, however, when Mademoiselle Hortense is able finally to confront Mr. Tulkinghorn in his chambers, he has not done what he promised (III: 42: 209-10). He lied.<sup>16</sup>

Mademoiselle Hortense, though not a terribly sympathetic character, understandably feels used. She is a woman without any means of support and a foreigner who has no contacts for finding a post comparable to the one she lost with the Dedlocks. She takes an extreme form of vengeance by shooting Mr. Tulkinghorn dead. Lowenstein’s essay is interesting because he glosses over Mr. Tulkinghorn’s treatment of third-parties as not evidence of his questionable legal professionalism:

It would be comforting to assume that Tulkinghorn’s destructive actions are the result of a lack of professionalism, but the disturbing truth is the opposite. Whatever his own inscrutable motives may be, Tulkinghorn’s ruthless treatment of characters like Guppy, Jo, and George is performed in the line of duty. (1217)

Lowenstein does not address his own point in regard to Mr. Tulkinghorn but, instead, argues that Inspector Bucket is evidence of his point that “[o]ne of the chief exploiters in the novel is Bucket, who, like Tulkinghorn, exploits others in a representative capacity” (1217), but this shift in the discussion is understandable because the text does not support Lowenstein regarding his “line of duty” argument. Nothing that Mr. Tulkinghorn does in regard to the Leicester-Boythorn feud and to Hortense can be “in the line of duty” (1217) if his oath of office has any meaning at all. Even if critics can somehow defend Mr. Tulkinghorn’s conduct in these matters, Mr. Tulkinghorn undeniably abandons his oath entirely when he deals with George Rouncewell.

In conjunction with Mr. Tulkinghorn’s malfeasance that I have labeled barrettry and a breach of his oath, readers must also consider his conduct toward George Rouncewell. George is a military man, reared at Chesney Wold, who left home under a cloud. None of the characters, including George, ever reveals precisely what he is supposed to have done to disgrace his family or what he believes he has done:

“That involves explanations not very hard to be guessed at, not very well timed here, and not very creditable to myself. However opinions may differ on a variety of subjects, I should think it would be universally agreed, Sir Leicester, that I am not much to boast of.” (*Bleak House* 1873 IV: 58: 186)

Whatever his actual or presumed transgression, his mother never lost faith in him and longs for his return. Their reunion occurs while George is in jail as a suspect in Mr. Tulkinghorn’s murder, but what brings him to this state is again a question of “who is doing.” Mr. Tulkinghorn is the “who,” stepping as he does beyond any course of conduct that can be characterized as being within his professional duty. He extorts property from

George to which he, Mr. Tulkinghorn, has no right, which is a point that Lowenstein admits (1217) though he fails to see the criminality of Mr. Tulkinghorn's actions: "EXTORTION signifies any oppression by colour or pretence of right, and in this respect it is said to be more heinous than robbery itself [ . . . ]" (Adlington 253). Mr. Tulkinghorn does more than manipulate others as Markey argues; he extorts others.

George Rouncewell supports his shooting gallery by carrying a longstanding debt to Grandfather Smallweed. In chapter 21, during Grandfather Smallweed and George's conversation, Grandfather Smallweed reveals that he and his "friend in the city" (*Bleak House* 1873 II: 21: 122) are actively seeking to get in touch with Captain Hawdon. George tells Grandfather Smallweed that he will not help him for two reasons. First, he will not put people in touch with Captain Hawdon who, George believes, want Captain Hawdon "clapped into prison" (123). Second, George believes that Captain Hawdon drowned at sea (124). At a subsequent meeting, Grandfather Smallweed tells George what Mr. Tulkinghorn wants: "He wants to see some fragment in Captain Hawdon's writing. He don't want to keep it. He only wants to see it, and compare it with a writing in his possession" (II: 26: 226). In chapter 27, George agrees to go with Grandfather Smallweed to see Mr. Tulkinghorn in person in order to find out more about "what is doing." Mr. Tulkinghorn offers George money for an exemplar, but he acknowledges that George is not required to sell the item: "There is no need for you to part with the writing against your inclination—though I should prefer to have it" (II: 27: 233). George refuses.

Grandfather Smallweed, however, likewise refuses to leave the matter alone when money is to be made. Speaking privately with Mr. Tulkinghorn for a moment,

Grandfather Smallweed tells him that George has a writing and vows to make George give it to Mr. Tulkinghorn (*Bleak House* 1873 II: 27: 237), which he does. Grandfather Smallweed sends George a letter reminding him of his debt and that Matthew Bagnet, George's longtime friend, has also obligated himself on George's behalf. Grandfather Smallweed is calling the debt due (III: 34: 47-48). Refusing to extend the debt, Grandfather Smallweed throws George and Bagnet out of his house, causing George and Bagnet to go to Mr. Tulkinghorn (61). At this meeting, Mr. Tulkinghorn specifically tells George to give him the writing and he will intercede with Grandfather Smallweed to reinstate the loan, making Bagnet secondarily liable. If George does not comply, he will simply have to take his chances with Grandfather Smallweed (65). Reluctantly, George agrees: "I must do it, sir" (65). Consequently, Mr. Tulkinghorn, now the "Esquire of the Quill" ("Character" 219), reduces their agreement to writing. What he produces "[ . . . ] with a cudgel of cramp words [ . . . ] would make a dog break his halter" (219):

So Mr. Tulkinghorn, putting on his spectacles, sits down and writes the undertaking; which he slowly reads and explains to Bagnet, who has all this time been staring at the ceiling, and who puts his hand on his bald head again, under this new verbal shower-bath, and seems exceedingly in need of the old girl through whom to express his sentiments. (*Bleak House* 1873 III: 34: 65)

After this recitation, George produces the letter, "only a letter of instructions" (65-66), which seems to satisfy Mr. Tulkinghorn. What is important for readers to notice is that Mr. Tulkinghorn and George have made their own agreement, which I would describe as an adhesion contract, and, as a written agreement, legal considerations come into play, leading to my suggestion of Mr. Tulkinghorn's further criminal activities.

George Rouncewell, after not seeing Captain Hawdon for years, thought enough of his old friend to have retained what he describes as “only a letter of instructions” (*Bleak House* 1873 III: 34: 65-66), so the letter clearly has sentimental value to George. Yet, because of his disadvantaged position, Mr. Tulkinghorn exerts pressure in order to secure the letter from George. These facts give rise to an extortion: “Lastly, *extortion* is an abuse of public justice, which consists in any officer’s unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due to him [ . . . ]” (Blackstone, *Facsimile* 4: 10: 141). Mr. Tulkinghorn’s action against George’s interest cannot be excused as consisting of a duty within his “representative capacity” (Lowenstein 1217).

*Bleak House* readers, whether nineteenth century or twenty-first century, may not know that Mr. Tulkinghorn commits, as I have argued, extortion or can be accused of barrety, but readers understand that his behavior towards people is simply malicious and leads to a perversion of justice. The novel itself suggests several reasons why Mr. Tulkinghorn behaves as he does, at least toward Lady Dedlock:

Yet it may be that my Lady fears this Mr. Tulkinghorn, and that he knows it. It may be that he pursues her doggedly and steadily, with no touch of compunction, remorse, or pity. It may be that her beauty, and all the state and brilliancy surrounding her, only gives him the greater zest for what he is set upon, and makes him the more inflexible in it. Whether he be cold and cruel, whether immovable in what he has made his duty, whether absorbed in love of power, whether determined to have nothing hidden from him in ground where he has burrowed among secrets all his life, whether he in his heart despises the splendor of which he is a distant beam, whether he is always treasuring up slights and offences in the affability of his gorgeous clients,—whether he be any of this, or all of this, it may be that my Lady had better have five thousand pairs of fashionable eyes upon her, in distrustful vigilance, than the two eyes of this rusty

lawyer, with his wisp of neckcloth and his dull black breeches tied with ribbons at the knees. (*Bleak House* 1873 II: 29: 265-66)

I do not believe that readers are expected to choose, but I do believe that readers are expected to agree that he is “any of this, or all of this” (266). Yet I now have to consider whether Bagehot is ultimately correct in arguing that “[ . . . ] Mr. Dickens never ceases to hint that these evils are removable, though he does not say by what means” (160). To answer that charge, I need to note that none of the major *Bleak House* lawyers delays justice negligently. None of them commits an honest error in judgment. Each of them engages in delaying justice for money or malice, and they do so intentionally while simultaneously “under colour” of being officers of the court and representatives of their clients.

If, as I argued in my third chapter, the Bagnet family is the ideal against which the institution should be measured, then who in *Bleak House* is the ideal against which lawyers should be measured? I would suggest Guppy. He is silly, pretentious, and often annoying. He also has a sense of morality that no other *Bleak House* legalist has. Before arguing my point, however, I must clear up a misstatement of the text made by Stanley Tick. In his essay, “In the Case of *Bleak House*: A Brief Brief in Defense of Mr. Tulkinghorn,” he says, “We cannot doubt for a minute that Guppy is looking to blackmail whomever is vulnerable” (214). Tick points to nothing in the text to support this statement because nothing in the text does support it. Guppy is the first to see the physical resemblance between Lady Dedlock when, after already meeting Esther, he and his friend Jobling see Lady Dedlock’s portrait while touring Chesney Wold (*Bleak House* 1873 I: 7: 132). Guppy’s interest turns immediately to courting Esther with the object of marriage, which,

while not the most worthy of motives for marrying, turns on his plan to marry someone associated with the Jarndyce lawsuit and likely to come into an inheritance. This action, however, is not blackmail.

In Guppy's defense, his proposal to Esther, though couched in legal terms, seems to be honestly spoken. He sets out his present worth and his expectations as an employee of Kenge and Carboy and declares, "I adore you" (*Bleak House* 1873 I: 9: 183). He offers to help her by "[ . . . ] advancing your interests, and pushing your fortunes" (184), an offer which is made in what he hopes to be his future position as her husband and legal representative. He is, however, like Vholes who insinuates himself unbidden into Richard Carstone's life. He is like Mr. Tulkinghorn in that he takes upon himself the mission to learn what Esther's connection is to Lady Dedlock. He is not like Vholes, though, because, after Lady Dedlock's death, he returns to renew his marriage proposal to Esther. He makes his proposal in John Jarndyce's presence; he makes no demand of blackmail. Instead, he makes his declaration even though Esther has no expectation of inheritance as a bastard. Of course, he is firmly and finally rejected, but he leaves having obtained his certificate to practice law and with some prospects for his own future. No Vholes-like vampirism results. He is not like Mr. Tulkinghorn because he does not use what he learns to coerce anyone to do anything. On the contrary, in chapter 55, Guppy goes to see Lady Dedlock to warn her that the Smallweeds and the Chadbands have been to see Sir Leicester for the purpose of blackmailing him because they know of Lady Dedlock's secret (IV: 55: 137). He knows that his original meddling in something that is none of his business should now be put right:



“[ . . . ] I have acted up to Miss Summerson’s wishes in letting things alone, and in undoing what I had begun to do, as far as possible; that’s sufficient for me. In case I should be taking a liberty in putting your Ladyship on your guard when there’s no necessity for it, you will endeavor, I should hope, to outlive my presumption, and I shall endeavor to outlive your disapprobation.” (137)

In *Dickens, Dali & Others* (1946), George Orwell said of Dickens that “[i]t seems that in every attack Dickens makes upon society he is always pointing to a change of spirit rather than a change of structure” (22). I believe that Guppy’s change of spirit is the change that Dickens sees as a remedy for the evils he saw in the legal profession. Dickens did not advocate the abolition of the Law and the legal system it supports; instead, he gives his readers a rather silly, rather pretentious legalist in the form of Guppy who matures during the course of the novel to try to do some things that are honorable, including giving Dickens’s readers hope that he will honor his oath of office by accepting everything that an allegiance to the court and to his client entails: to “delay no man [or woman] for lucre or malice” (Lowe x), to know the “blessing of a brief” (Bentham, *Benthamiana* 149), and not to become a “pettifogging sophister” (“Character” 219).

## Notes

<sup>1</sup>The Chancery Court did not have original jurisdiction over probate matters. Rather, Ecclesiastical Courts had jurisdiction of probate matters until 1857 “[ . . . ] when it was transferred to the lay courts [ . . . ]” (Maitland et al 164). However, a beneficiary could seek redress in the Chancery because the Ecclesiastical Courts did not have the authority to enforce the payment of a legacy (Jenks, *A Short History* 231). In the Chancery court, a beneficiary (whether of a testate or an intestate) could seek equitable relief and cause the payment of his legacy to be made from “[ . . . ] the accounts of the deceased’s property, and, if necessary, direct a sale of his land, and payment out of the proceeds” (231-32).

<sup>2</sup>Dickens only slightly restated the legal issue, which in Challinor’s text appears as “whether part of the £300 had been paid” (6).

<sup>3</sup>I have found no other author who has analyzed Gridley’s case in light of the then-existing law as I have. In *Charles Dickens as Legal Historian*, Holdsworth points out that Dickens erred in *The Old Curiosity Shop* when he has Daniel Quilp’s widow inherit all of his property (6) and that Dickens also erred on a point of procedural law in *The Pickwick Papers* (149). As Allen Boyer points out, however, readers need to bear in mind that Dickens “[ . . . ] was not a legal historian, and that he wrote as an observer, not as a trained participant” (596), but Dickens succeeds as a reformer because his novels are substantively accurate and, therefore, credible (628), and, in the case of Gridley, his character is entirely and substantively accurate and credible, being drawn directly from the Law.

<sup>4</sup>Challinor makes no defense for the “respectable Farmer in Staffordshire” (5) because he represented a defendant who is described as being only tangentially associated with the estate. Like Gridley, though, Challinor’s client is also involuntarily drawn into the litigation: “My client was, unfortunately, included in the number [of defendants], in consequence of his being Executor of his uncle, who had been surviving Executor under the Testator’s Will. Neither of them it is true, had ever acted, or had ever received any part of the Testator’s assets into their possession” (6).

<sup>5</sup>According to Haynes,

Still the advantages that might be expected from a successful introduction into our equity practice of oral examination in open court, in those classes of litigation in which *vivâ voce* evidence is essential to eliciting truth, appear so great, that the absence of any fair experiment of the feasibility of the step seems a subject of legitimate regret. [ . . . It] may, I think, be safely said that a *vivâ voce* examination before the examiner presents no advantage over affidavit evidence, except as affording a convenient machinery for the examination of those witnesses who are unwilling to swear affidavits, and must, therefore, be summoned to give evidence in some form. (82-83)

In a similar vein, Kieran Dolin points out the following:

The charge of lateness is difficult to credit when it is remembered how long and hard the process of Chancery reform was: from Lord Eldon’s inconclusive Chancery Commission of 1824 to the final establishment of a single system of courts exercising common law and equity powers in 1875; even the Parliamentary Acts were resisted, such as that of 1833 abolishing the Six Clerks’ Office, which required another Act in 1842 to achieve its aim. (77)

<sup>6</sup>Bentham may have focused on legislation and legislators, but Dickens’s remark could have been (and likely was) taken directly from the ideas contained in the subchapters in Bentham’s *Handbook of Political Fallacies* entitled “Lawyers: oppositeness of their interest to the universal interest” (34-38) and “Lawyers: Their Interest in the Employment of This Fallacy” (134-135).

<sup>7</sup>Bentham's first set of circumstances include: "temperament" ("that radical and primitive disposition which attends us from our birth"), "health," "strength," "corporal imperfections," "degree of knowledge," "strength of the intellectual faculties," "firmness of soul," "perseverance," "bent of inclination," "notions of honor," "notions of religion," "sentiments of sympathy," "antipathies," "folly, or disorder of mind," and "pecuniary circumstances" (*Theory of Legislation* I: 9: 1: 49-55).

<sup>8</sup>Bentham's secondary circumstances include: "sex," "age," "rank," "education," "habitual occupation," "climate," "race," "government," and "religious profession" ("the sect to which he belongs") (*Theory of Legislation* I: 9: 1: 55-60).

<sup>9</sup>Bentham's ideas do not seem to be so out of step with his contemporaries when readers note that Sir William Blackstone, the object of much of Bentham's criticism, says in his *Commentaries* that "[t]he only true and natural foundations of society are the wants and fears of individuals" (*Facsimile* I: Intro.: 2: 47) and "[. . .] that the whole should protect all it's [sic] parts, and that every part should pay obedience to the will of the whole [. . .]" (48). The difference arose between Bentham and others when he advocated the idea of utilitarianism to the exclusion of everything else.

<sup>10</sup>Because of Dickens's choice of legalese ("heirs, executors, administrators, and assigns") in the context of a political office without end, readers may suspect that he is punning on the Rule against Perpetuities, which, of course, is a limitation on real property conveyances that still exists. Even with the Rule against Perpetuities, Parliament could create a perpetuity, however, if the Crown granted a fee-tail to an individual "[. . .] as a reward for services, where the remainder or reversion is vested in the Crown, which cannot be barred by fine or recovery" (*Cruise* IV: 25: 507).

<sup>11</sup>The 1873 edition of *Bleak House* uses superscripted lines that are represented here with underscoring.

<sup>12</sup>The Jarndyce will is too ancient for Richard and Ada to have been named specifically. They are likely a class of beneficiaries who could take under the will based on their relationship to the testator.

<sup>13</sup>For my purposes in this chapter, I am setting aside any argument that Richard's use of Ada and her fortune in his pursuit of the Jarndyce suit is "immoral" and leaving that debate for another scholarly analysis.

<sup>14</sup>Lowenstein uses the *Bleak House* edition edited by George Ford and Sylvère Monod, and his reference is to page 640.

<sup>15</sup>A separate charge of barrettry could be made against Vholes, but such an allegation is not as clear as the one that I have set out against Mr. Tulkinghorn. Richard Carstone has not directly sued John Jarndyce in regard to the inheritance issue, and Vholes is representing him on a pre-existing lawsuit. I will note, however, that if such a close reading of the Law is necessary in order to defend Vholes, then Vholes's conduct still falls below an appropriate standard of legal professionalism.

<sup>16</sup>Lowenstein himself notes that Mr. Tulkinghorn manipulates the inquest into Nemo's death to prevent Jo's testimony (1208), which action likely necessitated lying about the Law or the facts (or both). Mr. Tulkinghorn's visit to Snagsby to inquire about the author of the Nemo writing sample is an example of Mr. Tulkinghorn's propensity for lying. As Markey points out, Mr. Tulkinghorn "creates a situation whereby he can get the information he needs from Snagsby without alerting Snagsby to the significance or importance of Tulkinghorn's inquiry" (704-05). Likewise, Markey argues that Mr. Tulkinghorn lies to

Hortense when he thanks her for impersonating Lady Dedlock in order to settle a wager: "This is a lie, but it is part of Tulkinghorn's effort to conceal his real reasons for setting up the scene" (709 fn).

## CHAPTER FIVE

Dickens's *Bleak House*: Getting the Megalosaurus up Holborn-hill

“Mr. Kenge, before I lay this paper on your desk and have done with it, let me tell you how it has come into my hands.”

He did so shortly and distinctly. “It could not, sir” said Mr. Kenge, “have been stated more plainly and to the purpose, if it had been a case at law.”—“Did you ever know English law, or equity either, plain and to the purpose?” said my Guardian.—“O fie!” said Mr. Kenge.

~ Dickens, *Bleak House* 1873 (IV: 62: 256)

*Bleak House* is Dickens's effort to reform the Law's relationship with the nineteenth-century society that it was intended to serve. The novel tries to change the relationship from one that focuses on what the Law is—“a monument of Chancery practice” (1873 I: 3: 37-38)—to one that focuses on what the Law ought to be. For Blackstone, the monument was “an old Gothic castle” (*Facsimile* III: 17: 268), but, as A.V. Dicey notes in his analysis of the effect of Benthamism on the nineteenth century's law and public opinion, the architectural metaphor of the Law, contrary to Blackstone's intention, condemns much more than it praises:

English law had in fact grown, rather than been made, and the language used by [William] Paley with regard to the constitution might, with the change of one word, be applied to the whole law of England.

“The [law] of England, like that of most countries in Europe, hath grown out of occasion and emergency; from the fluctuating policy of different ages; from the contentions, successes, interests, and opportunities of different orders and parties of men in the community. It resembles one of those old mansions, which, instead of being built all at once, after a regular plan, and according to the rules of architecture at present established, has been reared in different ages of the art, has been altered from time to time, and has been continually receiving additions and repairs suited to the taste, fortune, or conveniency of its successive proprietors. In such a building we look in vain for the elegance and proportion, for the just order and

correspondence of parts, which we expect in a modern edifice; and which external symmetry, after all, contributes much more perhaps to the amusement of the beholder than the accommodation of the inhabitant.” (135)

The Law as an ideal lost its sense of servicability to its sense of self-service as an institution the object of which was to keep the wheel of Chancery revolving: “The one great principle of the English law is, to make business for itself” (*Bleak House* 1873 III: 39: 153).

Unfortunately, the Chancery “wheel” revolved in the sense that it moved repeatedly within the same “slippery precedents,” leaving litigants “groping knee-deep in technicalities” and wondering if “this day ever broke” (I: 1: 13): repetition without meaningful alteration.

However, to know more specifically how the Law made business for itself, which Laws Dickens exposed and censured, and what may have been Dickens’s vision of meaningful legal reform, I “[extracted] and [elaborated] the jurisprudential dimension” (Allen 181-82) of Bentham’s theory of jurisprudence in *Bleak House*. My effort, thus, included “gauging [the Law’s] strength and provenance” (Julius 47), “gauging the verisimilitude of [the novel’s] legal representations” (Allen 180), and “illuminating the legal philosophy, that is, [Bentham’s] jurisprudence” (180). At the core of Bentham’s work is his firm belief that his theory of legislation provides the science behind the Law. If legislators carefully considered and balanced his primary and secondary circumstances, they could craft Laws that could be codified, thereby removing judge-made law that grew from an unreasonable reliance on precedents, eliminating a perceived need for legal fictions, and ushering in clearly-defined justice. Yet underlying all of his disdain of the

Parliamentary law-making process was Bentham's equally firm belief that legal fictions were the absolute bane of rational legal theory.

Bentham argued that legal fictions were deliberately contrived falsehoods that served no purpose except to thwart the ends of justice: "What you have been doing by the fiction, could you, or could you not, have it without the fiction? If not, your fiction is a wicked lie: if yes, a foolish one" (*Rationale* IV: 8: 18: 300). Without the use of legal fictions, the Law could not deny a person's parentage in order to create "a nameless piece of babyhood" (Hooper 122) known legally as a bastard. Even if Esther Summerson were inclined to assert a claim in the Jarndyce estate litigation, the Jarndyce litigants would simply contest her standing by pleading her legal status as a bastard. Nor could the Law otherwise deny married women the rights that it already accorded to "servants, to apprentices, to the sailor on the high seas" (Norton 2). Even if Lady Dedlock were inclined to assert a claim against Mr. Tulkinghorn for his actions against her, according to her fictional coverture status, she could not do so without Sir Leicester agreeing to join in his name to such a suit (Blackstone, *Facsimile* I: 15: 430-31), which possibility is virtually nonexistent. Likewise, even if George Rouncewell were inclined to assert a claim against Mr. Tulkinghorn, Mr. Tulkinghorn would deny the allegations, relying as he would on his status and privilege as an officer of the court, and the court would dismiss any action against him.<sup>1</sup> Esther, Lady Dedlock, and George Rouncewell would all be "[ . . . ] checked—brought up suddenly, I would say—upon the—shall I term it threshold" (*Bleak House* 1873 IV: 65: 290).

Within *Bleak House*'s wicked lies of bastardry, coverture, and a failed system of legal advocacy and professional responsibility, all of which involve the Law's own reliance on each artificial status it has created for certain persons, is Dickens's equally firm belief that Equity is indispensable to justice. To the degree that Bentham's jurisprudence did not account for "the nature of the circumstances" (*Theory of Legislation* I: 9: 3: 64), Dickens censured this aspect of Bentham's philosophy. In *Bleak House*, the questions surrounding "the nature of the circumstances" are ever present, and the novel does not let its readers ignore their significance. The "nature of the circumstances" for Lady Dedlock, Richard Carstone, Ada Clare, and Esther Summerson are simultaneously legal, personal, and social. The "nature of the circumstances" account for "[ . . . ] the *more or less* of [Lady Dedlock's] derangement of mind, the *more or less* of [Richard and Ada's] strength [to live in the shadow of the Jarndyce cause], the *more or less* of fortune [and family withheld from Esther because of her bastardy]" (Bentham, *Theory of Legislation* I: 9: 3: 64). The "nature of the circumstances" cannot be codified and are important to justice. *Bleak House* exposes and censures the Law; the novel exposes and censures Bentham's jurisprudence for its disdain of Equity.

As I have argued, Dickens and Bentham approached the matters of justice and Equity from different perspectives. Bentham concerned himself with legislators' need to create Laws that are applicable to the general public rather than to the exceptions to the general Laws: "[ . . . ] the legislator, who cannot decide upon individual cases, will direct the tribunals by general rules, and will leave them a certain latitude in order that they may proportion their judgment to the particular nature of the circumstances" (*Theory of*



*Legislation I: 9: 3: 64*). Dickens, on the other hand, was intensely concerned with the individual cases. With her own “*more or less*” of life, Lady Dedlock abandoned her marriage, which action was very radical, legally, socially, and personally. She intended to assume responsibility for herself and become a legal and literal Nemo. In order to engage with his “*more or less*” of life, Richard studies the Law, intending to become the legalist who could do what other lawyers could not do. He intended to assume responsibility for himself and Ada and to put their orphan status behind them by becoming united in marriage: “I should be able to look after Ada’s interests, and my own interests (the same thing) [ . . . ]” (*Bleak House* 1873 II: 17: 27-28). No major character, however, has as much “*more or less*” to deal with than Esther Summerson who is abandoned to become a No One and later studies teaching in order to become a Someone.

Lady Dedlock, Richard Carstone, and Esther Summerson all fail to some degree in these attempts. Lady Dedlock cannot erase herself from the memory of those who love her. She was a legal being whose death does not diminish the esteem that Sir Leicester and Esther have for her. Richard cannot succeed because he does not have the skills, knowledge, and education necessary to engage in a very mature undertaking. Esther retains some of the insecurities about herself that the Law has stamped upon her with its label of illegitimacy. But from each of these characters’ individual cases, we, like Dickens, can place them in the wider context of the general public and see that they are really representative of the ills inflicted on society at large by the Law. They are not isolated, individual cases after all. They are like the Jellyby children on whose legs life’s distress has etched itself: “The children tumbled about, and notched memoranda of their accidents in

their legs, which were perfect little calendars of distress [ . . . ]” (*Bleak House* 1873 I: 5: 92). The Law and the legalists are exposed and censured for their participation in social distress. The *Bleak House* legalists are individual cases, but they are also representative of legalists in general, taking pride in their self-serving roles like Vholes who says, “A good deal is doing, sir. We have put our shoulders to the wheel, Mr. Carstone, and the wheel is going round” (III: 39: 156).

In conjunction with thinking about and moving these characters from individual cases to considerations of the “nature of the circumstances” and deriving an appreciation for Bentham’s jurisprudence, I have looked at the applicable Law, any associated sanctions, and the actors both inside and outside of the legal system in order to “[ . . . ] have something important to add to scholarly efforts to understand works of fiction, their authors, and their authors’ intellectual milieu” (Allen 181-82). To the extent that I have been able to explicate Dickens’s *Bleak House* in the context of my three-pronged analysis, which is an expansion of Allen’s “reading for the jurisprudence,” I believe that his characters are those expected from a Sentimental Radical. The *Bleak House* characters’ sense of justice and Equity come from, essentially, which side of the bar they are standing. Ultimately, I believe that *Bleak House* encourages its readers to continue asking of its Law and legal system: “what is doing” and “who is doing.”

In Anglo-American jurisprudence, the status of coverture is no longer “what is doing.”<sup>2</sup> Likewise, contemporary jurisprudence abrogated the legal fiction of bastardy: “In the United Kingdom and France, the word ‘illegitimate’ has gradually been banned from the vocabulary used in family law” (Chauveau et al 304). Legislatures and

Parliaments have enacted Laws to govern the behavior of its officers of court. Yet residual aspects of these conditions remain. Morgan Lee Woolley's 2007 article regarding marital rape points out that the Law and society have been reluctant to prosecute marital-rape crimes because, historically, "[ . . . ] a man could not be prosecuted for raping his wife" (276) and this legal construction is traceable to the theory of coverture. The argument is that, if husband and wife are legally one and the same person, the husband would not seek prosecution against himself for rape. The argument can be traced back to "[ . . . ] Sir Matthew Hale, the Chief Justice in seventeenth-century England, [who] proposed, marriage granted a wife's ongoing and unbreakable consent to sexual intercourse" (275-76). Carol Withey also demonstrates that remnants of coverture still exist. She argues that, based on statistics from such sources as the British Crime Survey, one reason women do not report marital rape is that "[ . . . ] women do not deem non-consensual intercourse within the marital home to be rape at all" (56).

Like coverture, the issue of bastardy finds its way back into recent conversations. Richard Wallington argues in his "Wills & Probate Supplement" (2001) that the Family Law Reform Act of 1987 inadvertently created what he calls an anomaly: "[ . . . ] if a child of an intestate survives him but dies under the age of 18 leaving an illegitimate child of his own, neither the child of the intestate nor his illegitimate child will take an interest under the intestacy" (par. 15). Finally, the legal fiction that an attorney can be both an officer of the court—an artificial status—and an advocate, likewise, remains. Robert S. Bennett, speaking before an audience at the Jacob Burns Ethics Center, asks in 2000: "How do we, in our adversary system, reconcile our roles as officer of the court, role model, and public

citizen with that of the zealous advocate” (25). He also asks, apparently unwittingly, a question that is not that far removed from *Bleak House*: “[ . . . ] are we to totally disregard the rights of the victim and society by taking advantage of the deficiencies of the system and by using trickery to delay and defeat a prompt and just disposition on the merits” (27). Part of his advice for remaining ethical while balancing these roles is never to become “[ . . . ] a ‘ player’ with a personal interest [because] your objectivity will be clouded, your advice will be slanted” (27), which sounds a great deal like how Conversation Kenge, Mr. Tulkinghorn, and Vholes failed as lawyers. The signs and tokens of the Megalosaurus’s path are indeed still visible.

## Notes

<sup>1</sup>In addition to John I. Burn's *The Attorneys' Practice of the Court of King's Bench*, Alexander Pulling also discusses the summary proceedings that could be brought against an attorney. He says,

It is the practice of the courts, in the exercise of their power, to give the attorney complained against full time to answer the charge against him, in the same term in which it is made. Such charges cannot, therefore, be made on the last day of term, and if the attorney, in answer, positively deny the malpractices imputed to him, the application will be dismissed, but if he do not unequivocally repudiate the charges made against him, an attachment will be issued. (III: 3: 435)

<sup>2</sup>The Married Women's Status Act of 1957 is an example of legislation that dealt with eliminating the disabilities of coverture.

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