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THE DICK WHITTINGTON STORY: THEORIES OF POOR RELIEF, SOCIAL AMBITION, AND POSSIBILITIES FOR CLASS TRANSFORMATION

Helen Hershkoff†

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I. INTRODUCTION

A recent cartoon in the *New Yorker* shows a young child entering his parents' bedroom, teddy bear in hand, crying out: "I had another bad dream about Social Security."¹ The cartoon captures what some commentators see as the anxiety of contemporary life, particularly when it comes to parenting and economic matters.² Parents routinely seem to worry that their children's lives will be worse than their own.³ The gap between rich and poor has widened, dangers lurk in every corner, and ordinary people have difficulty imagining a bright future

† Professor of Law, New York University School of Law. Appreciation is extended to Jeffrey Benjamin, Seth Endo, Christian Ercole, and David Firestone for research assistance; to Linda Ramsingh for library support; and to Erica Tate for administrative help. Stephen Loffredo offered helpful comments on an earlier version of this paper. The paper was presented at a conference held at the University of Gloucester, *The Power of Stories: Intersections of Law, Culture & Literature: Celebrating the 400th Anniversary of the Tale of Dick Whittington and His Cat*, July 2005. Thanks go to Susan Ayres and Frank Snyder for organizing the conference and to Richard Dennery and Merin Ashton for hospitality. New York University School of Law provided funding for this project.

1. Michael Maslin, *NEW YORKER*, May 16, 2005, at 74. For a discussion of Social Security, see Henry Rose, *Retrospective on Justice and the Poor in the United States in the Twentieth Century*, 36 *LOY. U. CHI. L.J.* 591, 592–93 (2005) ("Social Security now faces a long-term financial crisis.").

2. See, e.g., Richard Bernstein, 2 *'No' Votes in Europe: The Anger Spreads*, *N.Y. TIMES*, June 2, 2005, at A-1 (quoting Nicolas Baverez that the French electorate's rejection of the European Union Constitution reflects "the 'despair and fears of the French in face of the decline of their country and the inability of their leaders to cope with the crisis'").

3. See, e.g., *Parenting in the Age of Anxiety*, *N.Y. FAMILY*, August 2005, at 18 (exploring why parents feel "anxious and stressed about raising kids these days").

on the horizon.⁴ Parental anxiety and the general lack of confidence that those “in charge” will work to improve conditions may be part of a broader social phenomenon. Austin Sarat and Jonathan Simon explain:

One of the most striking features of our present situation is the general decline in confidence in virtually every institution, reform movement, and program of knowledge-gathering attached to the social. Social work, social insurance, social policy, and social justice—once expected to be the engines of a more rational and modern society—are today seen as ineffectual and incoherent.⁵

The current crisis of social anxiety contrasts sharply with the breezy confidence of Dick Whittington and his cat, whose life and myth provide the point of celebration for this conference. Other presenters already have outlined the basic details of the Whittington story.⁶ An orphaned lad travels by foot from the west country, becomes apprenticed as a scullion to a London merchant, makes a fortune through his provident investment in a cat, marries well, thrice becomes the mayor of London, is Richard II’s man, and serves as lender to kings.⁷ Dick Whittington’s success, a prototype of the “rags-to-riches tale,”⁸ makes literary capital out of mercantile aspiration.⁹ As myth, young Dick provided a heroic model for the migrants who came to London at the turn of the seventeenth century,¹⁰ equipped, as Joan Thirsk puts it,

4. See Griff Witte, *As Income Gap Widens, Uncertainty Spreads: More U.S. Families Struggle to Stay on Track*, WASH. POST, Sept. 20, 2004, at A-01, available at <http://www.washingtonpost.com/wp-dyn/articles/A34235-2004Sep19.html>.

5. Austin Sarat & Jonathan Simon, *Beyond Cultural Realism?: Cultural Analysis, Cultural Studies, and the Situation of Legal Scholarship*, 13 YALE J. L. & HUMAN. 3, 6 (2001). The current period is not unique in its sense of anxiety about the future. See ANNE SCOTT MACLEOD, *A MORAL TALE: CHILDREN’S FICTION AND AMERICAN CULTURE 1820–1860*, 9 (1975) (expressing the view that attitudes toward children in the United States in the mid-nineteenth century “reflected doubt as much as hope, fear as often as optimism,” with “[i]nterest sharpened by anxiety in a society changing so rapidly”). On the relation between dread and literature, see Gretchen A. Craft, Note, *The Persistence of Dread in Law and Literature*, 102 YALE L.J. 521, 522 (1992) (“While dread is explicit in literature, it is implicit in law.”).

6. See Susanna Fischer, *Dick Whittington & Creativity: From Trade to Folklore, From Folklore to Trade*, 12 TEX. WESLEYAN L. REV. (forthcoming 2005).

7. Different versions of the Whittington story are available. See THE FAMOUS AND REMARKABLE HISTORY OF SIR RICHARD WHITTINGTON, THREE TIMES LORD-MAYOR OF LONDON (Boston, 1770); Wikipedia, *Entry for Dick Whittington*, http://en.wikipedia.org/wiki/Dick_Whittington (last visited Sept. 25, 2005); *Dick Whittington’s Cat*, <http://www.xmission.com/~emailbox/whittington.htm> (last visited Oct. 2, 2005). See also STEPHEN INWOOD, *A HISTORY OF LONDON* 59, 80–82, 102 (1998) (discussing Whittington as mayor, as Richard II’s man, as philanthropist, and as clothes merchant for Henry IV).

8. STEVE RAPPAPORT, *WORLDS WITHIN WORLDS: STRUCTURES OF LIFE IN SIXTEENTH-CENTURY LONDON* 368 (1989).

9. See Dan Piper, *Dick Whittington and the Middle Class Dream of Success*, in *HEROES OF POPULAR CULTURE* 53, 54 (Ray B. Browne ed., 1972).

10. See Edward T. Bonahue, Jr., *Heywood, the Citizen Hero, and the History of Dick Whittington*, 36 ENG. LANGUAGE NOTES, March 1999, at 33, 38.

“with a list of projects tucked in their knapsacks, and powerful optimism in their hearts.”¹¹ In the Whittington tale, law exists as an invisible but kind force that launches a hard-working boy of the lower orders into a new life and a new social class.¹²

The New Yorker cartoon, with its pessimistic emphasis on a child’s economic prospects, provides a foil to the Whittington story and its optimistic attitude toward law and social possibility.¹³ I suggest in this talk that contemporary children’s literature shares with the cartoon a similar lack of confidence in law’s capacity to generate advancement and prosperity.¹⁴ My comments rely on Eleanor Updale’s award-winning *Montmorency* series¹⁵ and Philip Pullman’s widely acclaimed *His Dark Materials* trilogy¹⁶ to try to glean a better sense of cultural understandings of law and of law’s contemporary relation to social mobility.¹⁷ I take these books as my texts, not because they are canonical (at least not yet),¹⁸ but because they tell wonderful stories, are su-

11. JOAN THIRSK, *ECONOMIC POLICY AND PROJECTS: THE DEVELOPMENT OF A CONSUMER SOCIETY IN EARLY MODERN ENGLAND* 101 (1978). See generally ROGER FINLAY, *POPULATION AND METROPOLIS: THE DEMOGRAPHY OF LONDON 1580–1650* (1981) (discussing population and migratory trends).

12. See GERTRUDE HIMMELFARB, *THE IDEA OF POVERTY: ENGLAND IN THE EARLY INDUSTRIAL AGE* 4 (1983) (referring to “the involuntary, ignoble poverty of the ‘lower orders’”).

13. Anita L. Allen & Michael R. Seidl, *Cross-Cultural Commerce in Shakespeare’s The Merchant of Venice*, 10 AM. U. J. OF INT’L L. & POL’Y 837, 837 (1995) (“Whittington and His Cat paints an optimistic portrait of cross-cultural economic exchange.”).

14. The term “children’s literature” includes the recently-minted category of “young people’s literature.” But see ROBERTA SEELINGER TRITES, *DISTURBING THE UNIVERSE: POWER AND REPRESSION IN ADOLESCENT LITERATURE* 7–10 (2000) (offering a distinction). On the relation between children’s literature and broader societal attitudes, see RUTH K. MACDONALD, *LITERATURE FOR CHILDREN IN ENGLAND AND AMERICA FROM 1646 TO 1774*, 1 (1982) (“[C]hildren’s literature, as a subspecies of popular literature, does not set social trends as much as it reflects them.”).

15. ELEANOR UPDALE, *MONTMORENCY: THIEF, LIAR, GENTLEMAN?* (Orchard Books 2004) (2003) [hereinafter UPDALE, *MONTMORENCY*]; ELEANOR UPDALE, *MONTMORENCY ON THE ROCKS: DOCTOR, ARISTOCRAT, MURDERER?* (2004); ELEANOR UPDALE, *MONTMORENCY AND THE ASSASSINS: COLLECTOR, KILLER, COLLABORATOR?* (2005) [hereinafter UPDALE, *MONTMORENCY AND THE ASSASSINS*].

16. PHILIP PULLMAN, *HIS DARK MATERIALS BOOK ONE: THE GOLDEN COMPASS* (Alfred A. Knopf, Inc. 1995) (1995) (changing from its original title, *HIS DARK MATERIALS BOOK ONE: NORTHERN LIGHTS*, as published in Great Britain in 1995); PHILIP PULLMAN, *HIS DARK MATERIALS 2: THE SUBTLE KNIFE* (1997); PHILIP PULLMAN, *HIS DARK MATERIALS 3: THE AMBER SPYGLASS* (2000). See Philip Pullman, <http://www.philip-pullman.com> (last visited Sept. 19, 2005). Pullman was the first children’s author to be awarded the prestigious Whitbread Prize. See Anne Whitehouse, *Honorary Graduate Philip Pullman Shares His Thoughts on Education*, THE OAK, Summer 2003, <http://www.brookes.ac.uk/publications/oak/issue20/Pullman/initial>.

17. Social mobility refers to “the movement of individuals from positions possessing a certain rank to positions either higher or lower in the social system.” SEYMOUR MARTIN LIPSET & REINHARD BENDIX, *SOCIAL MOBILITY IN INDUSTRIAL SOCIETY* 2 (1959).

18. See Richard H. Weisberg, *Entering with a Vengeance: Posner on Law and Literature*, 41 STAN. L. REV. 1597, 1613 (1989) (book review) (referring to “recent

perly written, and illustrate important current themes. Both are written by contemporary English writers¹⁹ and take place in imaginary versions of England in the past, present, and future. In both sets of stories, an orphan, actual or metaphysical, sets out to establish a new persona that requires the crossing of social boundaries. In both, law—invisible but all-present—drives the story into motion and affects the child’s capacity to create that new identity. And in both, the characters experience significantly less happiness than one might expect in their new social roles, and certainly less than is ascribed to Dick Whittington. Turning from the stories, I conclude by briefly taking up the central theoretical concern of this conference—the intersection of law, culture, and literature—and comment on what I think these stories teach about the experience of law in-the-world as it affects class identity. In so doing, I implicitly respond to the argument that literature has little to contribute to law or to legal culture.²⁰

II. DICK WHITTINGTON: LAW, CLASS TRANSFORMATION, AND CULTURAL OPTIMISM

As with many children’s stories, the tale of Dick Whittington concerns an orphan, abandoned by society, who transforms himself through luck, pluck, and obedience to his master’s wishes into an esteemed pillar of the community.²¹ The tale is not a legal story in any

debates about what factors create the literary ‘canon’”); see also Desmond Manderon, *From Hunger to Love: Myths of the Source, Interpretation, and Constitution of Law in Children’s Literature*, 15 *L. & Literature* 87, 95 (2003) (urging exploration of “the development of legal understanding through the medium of children’s literature”); David Ray Papke, *Problems with an Uninvited Guest: Richard Posner and the Law and Literature Movement*, 69 *B.U. L. REV.* 1067, 1086 (1989) (book review) (urging commentators to move beyond “the works of Shakespeare, Dickens, Melville, and other canonized white males”).

19. For biographical information about the authors, see Eleanor Updale, *About Me*, <http://www.eleanorupdale.com.uk/> (last visited Sept. 19, 2005), and Philip Pullman, *About the Author*, http://www.philip-pullman.com/about_the_author.asp (last visited Sept. 25, 2005).

20. See RICHARD A. POSNER, *LAW AND LITERATURE* (rev. ed. 1998). See also James Boyd White, *What Can a Lawyer Learn from Literature?*, 102 *HARV. L. REV.* 2014, 2045 (1989) (reviewing RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988)) (book review) (referring to the argument “that literature cannot have much of importance to say about law because law is about physical power, indeed imbued with violence, while literature is mere words”).

21. See PERRY NODELMAN, *THE PLEASURES OF CHILDREN’S LITERATURE* 82, 191 (2nd ed. 1996) (contending that “[t]he main characters in many children’s stories and novels are orphans” and that the genre often is “optimistic”). See also A.O. Scott, *Abandoned Children Stow Away at Home*, *N.Y. TIMES*, Feb. 4, 2005, at E-1, E-25 (“Children’s literature, from the Brothers Grimm to ‘The Secret Garden’ to Lemony Snicket, is heavily populated by foundlings, orphans and cast-off children whose pluck and resourcefulness feed fantasies of heroic self-sufficiency.”). See generally BRUNO BETTELHEIM, *THE USES OF ENCHANTMENT: THE MEANING AND IMPORTANCE OF FAIRY TALES* 37 (Vintage Books Edition 1989) (1975) (stating that fairy tales, unlike myths, are always “optimistic” and have “happy” endings).

conventional sense.²² Nor does the story stand for the category of law in literature: it does not “deal with legal issues as express content.”²³ Dick is not placed on trial for loitering; the cook, who makes the Dursleys seem like kind guardians,²⁴ is not arrested for child abuse; a contract dispute does not arise between Mr. Fitz-Warren and the carrier of the jewels taken to London. But “the law is all over” in the Whittington tale, for the rules that govern poor children in early modern England set the story in motion and frame Dick’s adventures.²⁵ The hallmarks of the Elizabethan Poor Law of 1601—the criminalization of vagrancy, the emphasis on work, and the use of apprenticeship for control and education—are all present and shape the narrative flow.²⁶

The Whittington story appeared on the London stage in 1605,²⁷ a time when poverty in England had become “unusually severe” due to agricultural disaster, war, and politics.²⁸ The narrative of the child’s entry into the City of London and his initial reception reflects the central concern of the Elizabethan Poor Law to regulate vagabonds and to repress mobility.²⁹ In the preceding decades, the Poor Laws had emerged as a legal and administrative response to the landless poor who traveled the country in search of work, treating vagrancy as a crime and authorizing extreme summary punishment.³⁰ The titles of the statutes telegraph the headlines: An Act for the Setting of the Poor on Work, and for the Avoiding of Idleness, was promulgated in 1576; an Act for the Relief of the Poor came twenty years later, enforcing work requirements through boards of overseers while making some provision to avoid begging; and the 1597 Act for the Punishment of Rogues, Vagabonds and Sturdy Beggars, deeming any individual who would not work at the statutory wage as a vagabond punishable

22. POSNER, *supra* note 20, at 1 (explaining the concept of the “legal novel”).

23. Robert Weisberg, *The Law-Literature Enterprise*, 1 YALE J.L. & HUMAN. 1, 17 (1988).

24. The Dursleys are the cruel “Muggle” guardians of Harry Potter in the series by J.K. Rowling. See *The Harry Potter Lexicon: Vernon & Petunia Dursley*, <http://www.hp-lexicon.org/muggle/dursley.html> (last visited Sept. 25, 2005).

25. The phrase is borrowed from Austin Sarat. See Austin Sarat, “. . . *The Law Is All Over*”: *Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343, 343 (1990).

26. See STEVE HINDLE, *THE STATE AND SOCIAL CHANGE IN EARLY MODERN ENGLAND, C. 1550–1640*, 146–47 (2000) (discussing local enforcement of the poor law).

27. See Piper, *supra* note 9, at 53–54 (recounting the history of the Dick Whittington myth, its publication, and its performance).

28. PAUL SLACK, *THE ENGLISH POOR LAW 1531–1782*, 11 (L.A. Clarkson ed., 1990).

29. See BRIAN TIERNEY, *MEDIEVAL POOR LAW: A SKETCH OF CANONICAL THEORY AND ITS APPLICATION IN ENGLAND* 112–13 (1959) (explaining that “from mid-fourteenth century on, the problem of relieving poverty became inextricably intertwined with the problem of suppressing vagrancy”).

30. See generally William P. Quigley, *Five Hundred Years of English Poor Laws, 1349–1834: Regulating the Working and Nonworking Poor*, 30 AKRON L. REV. 73 (1996) (providing a history of the English Poor Laws and their ideological context).

by whipping.³¹ Children whose families could not support them entered apprenticeships that tied them to the master's household.³² In the Whittington story, young Dick appears as a stranger in London with no family or friends, and he begs for his dinner without any hope of public charitable support. Mr. Fitz-Warren, moved by Christian spirit, is impressed with young Dick's willingness to work and agrees to take him on as an apprentice. In contrast to the Poor Laws themselves, law moves the Whittington story, not as an instrument of coercion and control, but rather as a benevolent, if unpredictable, framework for advancement, happiness, and fame.

If we believe the biographical accounts of Richard Whittington, the most important details of his life depart from the sixteenth-century legal framework in which the narrative is embedded. For the "real" Dick Whittington was born in the late fourteenth-century, just after the major catastrophe of the Black Death and the resulting period of extraordinary change and dislocation.³³ As in the story that gains currency centuries later, law controlled the young man's life chances. But Whittington was not an orphan or a run away. Instead, he was the youngest son of a local landowner put out to apprentice in the normal course of education.³⁴ Primogeniture, together with the principle of impartible heritage, blocked Whittington from acquiring his father's land.³⁵ Like most youngest sons, Richard enjoyed only limited occupational choices. Some boys went into the Church; others took up law; some entered the service of a lord. A nineteenth-century commentary explains:

31. See A.L. BEIER, *THE PROBLEM OF THE POOR IN TUDOR AND EARLY STUART ENGLAND* 39–42 (1983) (setting forth chronological list of statutes). See also TIERNEY, *supra* note 29, at 128–29 (tracing the development of secular legal responses to treatment of the poor).

32. See SLACK, *supra* note 28, at 18 (discussing clauses in the Act of 1547 that provided for the employment of poor children); *id.* at 18–19 (discussing provisions in the Act of 1598 that provided for "apprenticing poor children"); *id.* at 23 (discussing reports in the 1630s of the apprenticing of "poor children bound as apprentices"). See also T.W. FOWLE, *THE POOR LAW* 59 (Fred B. Rothman & Co. 1980) (1881) (discussing treatment of poor children under the Act of 1601).

33. See generally MAURICE KEEN, *ENGLISH SOCIETY IN THE LATER MIDDLE AGES, 1348–1500*, 5 (1990) (explaining that "changes in the structure of [English] society that took place during the period between around 1350 and around 1500 were vast ones").

34. See PHILIPPE ARIES, *CENTURIES OF CHILDHOOD: A SOCIAL HISTORY OF FAMILY LIFE* 204, 366 (Robert Baldick, trans., 1962) (discussing the role of apprenticeship in the education of noble children in Europe and subsequent academic conflation of the concept of domestic service with that of apprenticeship). For a review of the literature on the history of childhood and a discussion of the Aries thesis, ARIES, *supra*, see LINDA A. POLLOCK, *FORGOTTEN CHILDREN: PARENT-CHILD RELATIONS FROM 1500 TO 1900* (1983).

35. See P.J.P. GOLDBERG, *MEDIEVAL ENGLAND: A SOCIAL HISTORY 1250–1550*, 76 (2004) (discussing inheritance rules); KEEN, *supra* note 33, at 58 (discussing primogeniture).

Other professions there were none. The barbers were surgeons, and let blood; there were no engineers, architects, bankers or writers; there was no army in which to hold a commission; there was no standing navy; there was no Civil Service, unless a post in the royal Household might be called a Civil Service; there was only one way possible outside service, the church, or the law by which a lad could earn his livelihood, which was by practising some honourable trade or mystery in a great city.³⁶

Apprenticeship was the conventional mechanism by which the better orders educated and prepared their boys for life, building on a system of patronage that looked to birth, as well as to talent, as the point of entry for upward mobility.³⁷ Whittington entered his London apprenticeship,

not to a handicraft, but to an honourable trade; not to a meanly born tradesman, but to a man of good old west-country stock, . . . ; he has promised to receive him into his service. He will take care that the slender portion of the youngest son shall not be wasted; he will teach the boy the mystery of buying and selling; he will launch him into the great world.³⁸

Although the apprentice was subject to the rules of his position, he was not a vagrant nor was he inevitably a member of the lower orders.³⁹

Whittington-the-man developed a position of influence in London and his biographers ascribe no social anxiety to his new social role. As a merchant prince, Whittington served as Richard II's man, later making loans to Henry IV and Henry V, risking capital in overseas investment,⁴⁰ and establishing a novel secular philanthropic trust to care for the poor.⁴¹ Transformed centuries later into myth, the story carries no ambivalence toward a society that leaves a young boy in an alleyway, crying and hungry, without hope of assistance. Cook may

36. WALTER BESANT & JAMES RICE, SR., *SIR RICHARD WHITTINGTON: LORD MAYOR OF LONDON* 36 (1881).

37. See KEEN, *supra* note 33, at 22 (stating that during the period of Whittington's life, "lordly patrons were looking out not just for clients equipped by birth and position to fit into their established networks of influence, but also for talent"). See also WARREN W. WOODEN, *CHILDREN'S LITERATURE OF THE ENGLISH RENAISSANCE* 55-56 (Jeanie Watson ed., 1986) (explaining that by the sixteenth century "the late medieval custom of removing the child from the home when he had attained the capacity for rational thought, usually around seven years of age, for dispatch either to a lengthy apprenticeship to learn a trade or, if of gentle birth, to serve as a page or maid in another's house began to be replaced").

38. BESANT & RICE, SR., *supra* note 36, at 38.

39. See generally BARBARA KAYE GREENLEAF, *CHILDREN THROUGH THE AGES: A HISTORY OF CHILDHOOD* 32 (1978) ("Apprenticeship was the universal form of education.").

40. See KEEN, *supra* note 33, at 122.

41. See INWOOD, *supra* note 7, at 80-81; JEAN IMRAY, *THE CHARITY OF RICHARD WHITTINGTON: A HISTORY OF THE TRUST ADMINISTERED BY THE MERCERS' COMPANY, 1424-1966*, 1-3 (1968).

be nasty, but Dick's patience is rewarded. No major social change was needed for the boy to achieve economic success—just fortitude and trust. Dick's happy success illustrates a trend typical of his period: "[Whittington] was just one of a number [of newcomers to London] who 'made it' to high city office without starting from any established niche in the merchant aristocracy."⁴² As myth, Whittington provided inspiration to the many apprentices who came to London in the sixteenth century to seek their fortunes, men who desired "to become citizens, run their own shop, and participate fully in ward and parish life, even if the ambitions which Dick Whittington's story had inspired in them were unattainable."⁴³ The story lacks the satirical perspective of the puppet shows that emerged in the early seventeenth century and took aim at an emerging bourgeois ethos.⁴⁴ Even as social stratification increased and punishment tightened for those who failed, the apprentices of London looked to the Whittington tale as "a freer and more heroic ideal of life,"⁴⁵ combining as it did social mobility with personal satisfaction.

III. MONTMORENCY: LAW, NEW BEGINNINGS, AND SOCIAL ANXIETY

F.J. Harvey Darton in his *Children's Books in England: Five Centuries of Social Life* calls Dick Whittington "the strangest of changelings."⁴⁶ But Whittington takes second-place to Montmorency, the changeling at the center of the eponymous series by Eleanor Updale ("an instant classic," Stephen Fry said of the first of the series⁴⁷). Updale's tantalizing novel recounts the adventures of a nameless prisoner who is saved from certain death by medical experimentation and then transforms himself into a London gentleman living on the thievery of his alter ego Scarper, who uses the sewers of London as a pathway to steal from the rich. The first in the *Montmorency* series opens in London 1875; the two succeeding novels take the reader to the beginning of the twentieth century. The books were all written in the last five years and have won numerous awards in England.⁴⁸

Like Whittington, the protagonist in the *Montmorency* series creates a new identity that allows him to cross social boundaries. He goes to the Opera, has his clothes hand-made at the finest London

42. KEEN, *supra* note 33, at 121.

43. INWOOD, *supra* note 7, at 181. For a discussion of myth-making in sixteenth-century London, see LAWRENCE MANLEY, *LITERATURE AND CULTURE IN EARLY MODERN LONDON* 273 (1995).

44. See MANLEY, *supra* note 43, at 467.

45. INWOOD, *supra* note 7, at 224.

46. F. J. HARVEY DARTON, *CHILDREN'S BOOKS IN ENGLAND: FIVE CENTURIES OF SOCIAL LIFE* 93 (3rd ed. 1982).

47. Eleanor Updale, *News, Prizes and Reviews*, <http://www.eleanorupdale.co.uk/prizes.php> (last visited Sept. 19, 2005).

48. For a list of prizes, see *id.*

tailor, joins an important social club, and teaches himself manners and style so he can play by the rules. His performance is superb. But unlike Whittington, Montmorency never experiences his position as secure: one false move, one wrong turn, and the edifice of his new life will come crumbling. At the prospect that Montmorency's past will be revealed, Frank, the young boy who takes on the lower-order role of Scarper as Montmorency grows older, "imagined Montmorency's falling apart when the story of his life as a thief and a conman came out."⁴⁹ The author lets the reader know that at a moment's whim, Montmorency might lose his place in the upper orders and with it his identity. Despite the book's breathless excitement (the book won the "I couldn't put it down prize"), the mood throughout is edgy, nervous; we wait for Montmorency to be revealed, exposed, punished for violating an invisible hierarchy that ought not to be breached.

Like the Whittington story, *Montmorency* is not a "legal novel." True, it opens in a prison, depicted as a panopticon-like institution with hopes of rehabilitation, which no one other than Nurse believes. A trial, together with a hanging, figures prominently in the story and in Montmorency's evolving sense of who he is and what he must do (or be willing to do) to survive. The novel does not explicitly stake out a legal terrain of the sort we associate with *Bleak House*. But the invisible hand of law allows the story to go forward and shapes the narrative. When the protagonist arrives at prison, almost destroyed by a catastrophic fall, he has no name, and is known only by the number assigned to his cell. He eventually is charged under the moniker Montmorency, a name that "had been taken by the hospital staff from the brand name on the toll bag still clasped to his chest when the porters had carried him in." Hippolyte Taine in 1860 likened the workhouse to a prison; in both spaces, institutions created by law, a man like Montmorency is commodified and dehumanized.⁵⁰

Later in the series we learn that Montmorency actually does not know his birth name. If Whittington, the myth, starts life with the respectability of the orphan, Montmorency begins in the Foundling Hospital in London, without knowledge of his parents or kin: "Montmorency could remember only too well the many nights he had lain on his hard bed in the Foundling Hospital wondering who his own parents had been, imagining a woman somewhere pondering what might have happened to the child she had given away."⁵¹ Established in the 1730s, the Foundling Hospital was designed as a regenerative institu-

49. UPDALE, MONTMORENCY AND THE ASSASSINS, *supra* note 15, at 245.

50. See PETER WOOD, POVERTY AND THE WORKHOUSE IN VICTORIAN BRITAIN 102 (1991). See also FELIX DRIVER, POWER AND PAUPERISM: THE WORKHOUSE SYSTEM 1834-1884 (1993) (describing the Victorian Poor Law and the campaign to establish workhouses).

51. UPDALE, MONTMORENCY AND THE ASSASSINS, *supra* note 15, at 176.

tion to create a decent servant class for imperial England.⁵² The foundlings were privileged relative to other poor children in England.⁵³ Among other benefits, law gave the foundlings a new identity that permitted them to start life *tabular rasa* with corruption of birth erased.⁵⁴

The Hospital provided the foundlings with a spring board to a new life, but one with little bounce. Special hymns were sung to “early imbibe the Principles of Humility and Gratitude to their Benefactors, and to learn to undergo with Contentment the most Servile and laborious Offices.”⁵⁵ Lisa Zunshine explains:

[T]he Hospital needed to distance itself from one particular aspect of cultural myth: the fantastic social mobility of the foundling. The young charges of the charity were not to entertain any high-flown ideas about their birth or destiny, and neither were the visitors to the Hospital to receive an impression that the children were “cod-dled” and being brought up above their station.⁵⁶

At the Foundling Hospital, which is famously decorated with Hogarth paintings,⁵⁷ the children likewise found themselves placed on display: “Smart citizens had made it fashionable to visit the Foundling Hospital. They came to see the children at all times of day, watching them work, eat and even sleep, until this was stopped by a decree that the sightseers must leave by seven o’clock.”⁵⁸ So, too, Montmorency finds himself on display at the prison hospital, as Dr. Farcett—whose medical experiments saved the prisoner’s life while advancing his own position in London society—“showed [Montmorency] off in public like an animal in the zoo.”⁵⁹

In some sense, Montmorency’s fear of exposure logically develops out of the extraordinary “scheme” that he has devised to “transform his life.”⁶⁰ Certainly the fear of downward mobility fits with the eco-

52. For a history of the Foundling Hospital, see BENEDICT NICOLSON, *THE TREASURES OF THE FOUNDLING HOSPITAL* 1–19 (1972).

53. See DEREK JARRETT, *ENGLAND IN THE AGE OF HOGARTH* 74 (1974) (describing the competition among poor mothers for children’s places at the Foundling Hospital).

54. See generally Rhian Harris, *The Foundling Hospital*, BBC SOC’Y & CULTURE, Jan. 5, 2001, http://www.bbc.co.uk/history/society_culture/society/foundling_02.shtml. For a discussion of the treatment of indigent children consigned to the workhouse or to other institutions, see PAMELA HORN, *THE VICTORIAN TOWN CHILD* 181–210 (1997). For an account of the Victorian-era “New Poor Law,” see also WOOD, *supra* note 50.

55. RUTH K. McCLURE, *CORAM’S CHILDREN: THE LONDON FOUNDLING HOSPITAL IN THE EIGHTEENTH CENTURY* 233 (1981) (internal quotations omitted).

56. LISA ZUNSHINE, *BASTARDS AND FOUNDLINGS: ILLEGITIMACY IN EIGHTEENTH-CENTURY ENGLAND* 108 (2005).

57. See NICOLSON, *supra* note 52, at 57–91 (providing a “catalogue of the Hospital treasures”).

58. JENNY UGLOW, *HOGARTH: A LIFE AND A WORLD* 430 (1997).

59. UPDALE, *MONTMORENCY*, *supra* note 15, at 15.

60. *Id.* at 5.

conomic twists and turns of the Victorian Age; Penny Kane observes: “Downward mobility was alarmingly frequent, and the fall could be dramatic. Bankruptcy is a pervasive theme in nineteenth-century fact and fiction.”⁶¹ Although the legal system offered foundlings a passport to a new identity, Montmorency’s adventures violate the compact that foundlings are meant to have with society. A poor man can go so far and no farther in the England that Updale imagines. Montmorency wonders whether he might more firmly establish his new identity across the Atlantic, speculating that “in America he really could put his old identity behind him. This was a land of new beginnings and forgiven pasts.”⁶² By contrast to Dick Whittington, Montmorency never completely owns the new identity that he creates. The author leads us to believe that Montmorency’s anxiety goes beyond the personal and instead is linked to general fears of imperial decline—the social anxiety associated with an England that is closing in on itself and on the run from anarchists and assassins.⁶³

IV. *HIS DARK MATERIALS: LAW, SOCIAL MOBILITY, AND BLOCKED POSSIBILITY*

The very title of Philip Pullman’s trilogy, *His Dark Materials*, contrasts with the optimism of the Whittington story and its affirmative attitude toward law. A richly conceived fantasy, Pullman draws from Milton’s *Paradise Lost* to present a monumental struggle: rather than the angels alone battling God, man and angels join together to establish a Republic of Heaven on earth. In Pullman’s imaginary Oxford, where the trilogy begins, the Reformation has never taken place: the production of knowledge, and so all law, continues under the auspices of the Church. The story itself involves the adventures of two children who live in parallel universes that can be entered only if you know how to create a space for yourself using a device called “the subtle knife.” The children are Lyra Belacqua, possessed of special knowledge that allows her to read the future, and Will Perry, who can cross universes. Lyra, who believes herself to be an orphan, is raised by Oxford-style tutors to whom she was entrusted by the man said to be her uncle. Will, whose domestic circumstances are more modest, must protect his mentally unstable mother from the social service authori-

61. PENNY KANE, VICTORIAN FAMILIES IN FACT AND FICTION 10 (1995).

62. UPDALE, MONTMORENCY AT THE ASSASSINS, *supra* note 15, at 240.

63. See ROBERT HUMPHREYS, SIN, ORGANIZED CHARITY AND THE POOR LAW IN VICTORIAN ENGLAND 2 (1995) (explaining that by the 1870s, “[e]ven the seemingly impermeable confidence of the middle classes [in England] began to be eroded by deceleration in national prosperity growth”). See also E.J. HOBSBAWM, THE AGE OF EMPIRE 1875–1914 (1987). For a discussion of England’s imperial decline in the late nineteenth century, the period in which the MONTMORENCY series opens, see generally NIALL FERGUSON, EMPIRE: THE RISE AND DEMISE OF THE BRITISH WORLD ORDER AND THE LESSONS FOR GLOBAL POWER (2004). See also E.J. HOBSBAWM, THE AGE OF EMPIRE 1875–1914 (1987).

ties, find his lost father, discover the source of consciousness, and contribute to God's death. Together the children, as they approach adolescence, relive the eating of the forbidden apple in the Garden of Eden, fall in love, and redeem the universe. It's quite a story.

Once again, law's treatment of children provides a framework for the narrative action. Each parallel universe has rules and understandings about parentless children and how they are to be raised in the world. Both children run away from the legal orders in which they find themselves. Will, believing himself to be in trouble with the police, devises ways to cover his tracks and protect his mother. Throughout the story, both children change in directions that are both foreordained and unpredictable. Lyra's new identity is manifested by the solidifying of her "daemon": a metaphysical animal associated with a person's soul that reflects a spiritual core; adolescence is the time at which a person's daemon takes shape and loses its chameleon-like capacity to morph into other identities.

At the story's end, we are rooting for Will and Lyra to make a life for themselves, to hurdle the barriers that separate their universes, and to establish a new Garden of Eden on earth. But Pullman does not give us a happy ending. Instead, he forbids the children from crossing permanently into each other's worlds. If Will stays in Lyra's universe, he will die. Moreover, all of the openings between Will's world and Lyra's are to be closed and Will must destroy his "subtle knife": "There will be no travel outside . . . anymore."⁶⁴ Pullman presents the barrier that closes off the universes as a natural law that cannot be breached. Now that the children's identities are complete, now that their souls or daemons have taken permanent shape, each must stay in his or her own universe without any alternative prospect. Life is fixed and constrained.

Pullman's incredible story of growth and change almost defies comparison with that of Dick Whittington. The trilogy ends with the hopeful words that Lyra will help build a "republic of heaven," a world in which meaning is democratically created and life acquires purpose freed from the oppressive rule of the Inquisition-style church that Pullman has depicted. But in closing the window between the parallel universes of Lyra and of Will, and so enforcing their eternal separation, Pullman leaves the reader anxious that boundaries are impermeable and mobility blocked. In the world that Pullman so fantastically creates, law closes off possibility.

V. CONCLUSION

Richard A. Posner, in the revised edition of his controversial book, *Law and Literature*, argues that "we"—and here he is talking about legal scholars and to a lesser extent lawyers—can learn a great deal of

64. PULLMAN, *supra* note 16, at 495.

jurisprudence from some works of literature,”⁶⁵ but that “we cannot learn a great deal about the day-to-day operations of a legal system from works of imaginative literature even when they depict trials or other activities of the formal legal system.”⁶⁶ In retelling the stories of *Montmorency* and *His Dark Materials*, I have emphasized the ways in which law, invisible but ever present, shapes the narrative and facilitates or constrains the characters’ adventures. Comparing these stories to that of Dick Whittington, I find the contemporary stories lacking the breezy confidence of the sixteenth-century tale. In particular, I read them as taking a less optimistic view of law and of its capacity or willingness to encourage social mobility. As a lawyer and law professor, the stories offer me important evidence of law not simply as a method of command and control, but also as a constitutive force in human relations.

By letting us see how law is implicated, even unconsciously, in the telling of stories, literature enables us to acquire a better sense of the way in which legal meaning becomes fixed and the ways in which it can be changed for the better or for the worse.⁶⁷ Quite apart from the pleasure of reading these books, that insight alone seems significant to any lawyer interested in how law works and how it can be adapted to improve contemporary life.

65. POSNER, *supra* note 20, at 5.

66. *Id.* See also Richard A. Posner, *Law and Literature: A Relation Reargued*, 72 VA. L. REV. 1351, 1351 (1986) (stating that literature “has little to contribute” to the study of legislation).

67. See Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1579 (1989) (stating that “legal and popular culture, as images of each other, help explicate and illuminate their respective contents”).