

ENGLISH B HL
Group 2 Category 3
EXTENDED ESSAY

Research Question: *To what extent do “Bleak House” by Charles Dickens and “The Children Act” by Ian McEwan accurately reflect the nature of legal practice in 19th and 21st century England, respectively?*

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I. INTRODUCTION

Law and literature are disciplines where, law can be referred as the legal system concerned with the customs, practices and rules of conduct of a community that are recognised as binding by the said community (“Law”), whereas literature can be defined as all literary texts including novels, stories, prose and poems (“Literature”). There exists a close-knit relationship between these disciplines, as numerous literary texts employ legal themes while several judgements cite works of literature (Gaakeer459-460). Although some scholars argue that law and literature are inherently interdependent contributing to each other in complementing ways (Gurnham96), others like Jane Baron (1060) and Sarah Krakoff (1747) suggest that differences between law and literature indicate their non-interdependence. Nonetheless, this essay will employ the view that the discipline of literature uses input from the discipline of law to engage in particular tasks such as, criticising legal institutions, the moral capacity of legal actors from a social perspective and the social impact of legal resolutions on family or individuals.

It is put forward that Charles Dickens had used the practice and practitioners of law in his novels as main theme and characters, more than any other novelist in English language. Dickens enriched all of his fifteen novels with legal cases and lawyers as important characters (Holdsworth1-3). Among them, *Bleak House* stands out since it centres on a legal case tried in Chancery Court¹ with numerous litigants and lawyers involved. He gives a thorough explanation of the Chancery Court practices as well as lawyers and other legal practitioners in the process. How did Dickens know the details of legal issues and its corresponding environment? A reference needs to be made to Dickens’ life to clarify this issue within the scope of biographical literary criticism which suggests that understanding an author’s life can help readers to comprehend his/her literary work (Brewton).

¹ Chancery Court will be explained in the part “II. Historical Account of Legal Practice in 19th Century and 21st Century England.

Charles Dickens (1812-1870) is commonly regarded as the greatest Victorian novelist (Marsha). After a poor childhood, Dickens started studying law as an attorney's apprentice in 1827(Coles564-565). In 1829, he became a reporter for the Chancery Court. Dickens would use his law apprentice and court reporter experiences later in his novels especially in *Bleak House* which centres on a fictional legal case "Jarndyce v. Jarndyce" tried in the Chancery Court. In 1836, Dickens switched to writing full-time and published his works in series and novel forms, respectively(Coles566).

Ian McEwan's novel, *The Children Act*, is considered as the contemporary version of Dickens's *Bleak House* due to similar opening lines, settings and legal cases, yet, opposite presentation of the legal system (Magrath). The novel is set in 21st century London, telling the story of Fiona Maye, a High Court Family Law² judge who tries controversial legal cases. Like Dickens, McEwan (1948-) is an English writer, yet, has no legal background. He studied English and worked on creative writing with Malcolm Bradbury and Angus Wilson (Matthews). His pieces evolved from exploring darker themes towards addressing broader issues, examining how social and political matters affect personal lives as demonstrated in *The Children Act*. Therefore, his work shall be analysed within the framework of sociological criticism which examines literature in the cultural, economic and political context in which it was written (Brewton).

The literary pieces *Bleak House* and *The Children Act* belong to the genre of legal fiction, focusing on the legal spheres of 19th and 21st century England, respectively. However, they demonstrate opposite views on the legal atmosphere of their times; Dickens criticises the slow progress of law and immoral lawyers, while McEwan reflects an efficient legal system. Are the reflections of both writers accurate or do they exaggerate issues to be critical and

² High Court Family Law will be explained in the part "II. Historical Account of Legal Practice in 19th Century and 21st Century England.

witty? This essay aims to analyse the research question: To what extent do “Bleak House” by Charles Dickens and “The Children Act” by Ian McEwan accurately reflect the nature of legal practice in 19th and 21st century England, respectively? “Accurate reflection” refers to literary realism which depicts how closely the world of the novel corresponds to the real-life environment of the respective period. The analysis³ will be initiated by revealing the historical account of legal practice in 19th and 21st century England. The subsequent section will portray the practice of law in *Bleak House* and *The Children Act*, exploring legal themes, symbols, and narration. The essay will continue with the portrayal of legal practitioners in both novels to reveal whether they reflect the reality of their respective eras, considering the background information provided. The essay will be concluded by answering the research question.

II. HISTORICAL ACCOUNT OF LEGAL PRACTICE IN 19TH CENTURY AND 21ST CENTURY ENGLAND

Although Dickens wrote and published *Bleak House* in the early 1850’s, as a typical Dickens novel, it is set in an earlier time, particularly in the 1820’s England corresponding to the end of the Georgian era (Holdsworth⁷⁹). The Georgian era (1714-1837) was a period of great change both economically and socially. Georgians witnessed industrial revolution which brought forward radicalism, repression, intensified class divisions, extreme luxury alongside extreme poverty (“The Georgian Era”).

The Chancery Court, shown in *Bleak House*, acted as a separate court of equity⁴ in England until it was dissolved in 1875 (“A History of the Court of Chancery in English Law”). The Chancery Court followed a loose set of rules, instead of depending on pre-defined causes

³As an acknowledgement, more weight will be given to *Bleak House* due to its relatively richer content and historical setting.

⁴Equity is a branch of law that developed alongside common law and is concerned with fairness and justice, formerly administered in special courts (“What is Equity”).

of action like the common law⁵ courts (Burns 221). The Chancery had jurisdiction over all matters of equity including trusts⁶, land law, the estates of lunatics and the guardianship of infants. The Chancery Court led by Lord Chancellor who presided on behalf of the Monarch, with his staff, approached each case on its own merit. Eventually, the court experienced an explosive growth in its work, resulting in problems such as slow pace, huge backlogs and high costs which led to severe criticism.

Reforms made in 1813 and 1841 did not solve problems of the court thus with the 1873 and 1875 Supreme Court of Judicature Acts, the Chancery was dissolved and a new unified High Court of Justice with the Chancery Division was created (Holdsworth 114-115).

The legal education in 19th century England was taught at the inns of courts and was based on apprenticeship rather than law schools (Nuall). Thus, the legal profession has traditionally been monopolistic and created lawyers of hermit nature.

The Children Act was written by Ian McEwan in the 2010's and published in 2014, referring to the English Family Law in the contemporary era. The title "The Children Act", refers to the real-life act passed by the UK Parliament in 1989 and reads: "*When a court determines any question with respect to...the upbringing of a child...the child's welfare shall be the court's paramount consideration.*" (Children Act 1989).

Family matters, including local authority⁷ intervention to protect children, parental disputes over the upbringing of children, special guardianship and so forth, are dealt in the High Court Family Division ("The Family Court") which is the setting of the novel. The High

⁵ Common law is the legal system used in England, according to which judges consider the decisions of earlier courts about similar cases when making decisions ("What is Common Law?").

⁶ A trust is a legal arrangement for managing assets by a party (trustee) on behalf of another party (beneficiary) ("A History of the Court of Chancery in English Law").

⁷ Local authority is the council of a municipality that is a city, town, or shire, constituted under the Local Government Act 1960 ("Local Authority").

Court Family Division is based at the Royal Courts of Justice in London led by High Court judges.

III. PORTRAYAL OF PRACTICE OF LAW IN CHARLES DICKENS' BLEAK HOUSE AND IN IAN MCEWAN'S THE CHILDREN ACT

Areas of law: In Charles Dickens' *Bleak House*, the practice of law is portrayed through the Chancery Court fictional case Jarndyce v. Jarndyce which required resolution of a will with multiple litigants, being encapsulated in the area of equity and trusts law. On the other hand, the area of law in *The Children Act* is family law and the legal cases given in the novel are real-life cases⁸ of Family Law High Court and Court of Appeal (McEwan 215-216). Dickens' choice of equity and trusts paves the way for his institutional criticism since by its nature, equity and trusts necessitate more technicalities, formalities, and bureaucracy. Contrarily, McEwan chose a humanistic area of law which lay the foundations for his favourable representation of law.

Narration: *Bleak House* has dual narrators. Esther, the protagonist, is the primary narrator telling the story in the past tense from a limited, subjective point of view, stressing concerns on private and domestic life. The third-person narrator, who appears in the remaining chapters uses present tense in a generalising, objective point of view discussing social and public concerns. This unique approach gives the reader a wider and more realistic perspective on the dialectic between individual moral responsibility and system's criticism, complementing each other. However, the shift between past and present tense narration makes it difficult to follow. Dickens used narrative ellipses⁹ in the novel to involve the reader in institutional

⁸ Although *The Children Act* is written around real-life cases, the novel is enriched by fictional characters (McEwan 215).

⁹ Narrative ellipsis is a literary device which is employed to leave out a certain part of the narration, allowing readers to imagine what happened in the omitted portion ("Ellipsis"). With respect to *Bleak House*, the most conspicuous narrative ellipsis used in the novel is at the resolution part of the novel, wherein Esther's narration ends in the middle of a sentence, suspending the story in perpetuity.

critique and continue the sense of mystery that pervades the novel. Esther is the only female narrator in Dickens' novels and is used as an irony for the oppressiveness of patriarchal institutions of the era.

In *The Children Act*, although the third-person omniscient narrator is telling the story in past tense, the perspective used is entirely of Judge Maye's, consisting of her point of view about the legal cases and related issues, arguments as well as characters presented in the novel. So, why would McEwan not prefer a first person narration of the protagonist? That would hamper the fictional form of the already realistic novel. Therefore, McEwan uses the unusual form of omniscient narrator from protagonist's perspective to keep the literary element in the novel.

Efficiency of the Court: In *Bleak House*, the Chancery Court is portrayed as inefficient; legal cases last over long periods of time and due to delays in judgement, many people's lives are ruined. The will subject to the Jarndyce v. Jarndyce case is described as a "*dead letter*" (Dickens 83), legatees under it as reduced to "*a miserable condition*" (83) and fortune of it as "*squandered away*" (83). Furthermore, it is "*...so complicated that no man alive knows what it means*" (5) and that, "*innumerable children have been born into the cause, innumerable young people have married into it; innumerable old people have died out of it*" (5). So, firstly, the case is progressing extremely slow because of the bureaucratic formalities and secondly, numerous litigants who had tied their hopes to this case have been all ruined during the process. For example, Tom Jarndyce shot himself (84) and Richard Carstone died slowly due to the despair the case brought (734). Dickens notes the warning an honourable practitioner should give to the prospective litigants to avoid the Chancery Court: "*Suffer any wrong that can be done you, rather than come here!*" (4).

Dickens states in the preface of the novel that, his portrayal of the Chancery Court being slow and inefficient is often criticised as being an exaggeration but everything set forth in the novel is substantially true. Furthermore, Dickens names real-life Chancery Court cases such as the Gridley Case which have lasted as long and incurred as much costs as the fictional Jarndyce v. Jarndyce case.

The only efficient decision made by the court is the appointment of Mr Jarndyce as guardian of Ada and Richard (Dickens 8), which is ironic, since it shows that the court is able to make quick decisions when the issue is not monetary.

In *The Children Act*, the portrayal of the legal system, which is given as efficient, timely and just, is the opposite of Dickens' *Bleak House*. Judge Maye is required to urgently decide on the case brought to the court by the hospital. 17-year-old boy Adam and his family refuse a blood transfusion treatment due to their faith, being Jehovah's Witnesses. She efficiently prioritises the case for a contested hearing after being informed by her clerk on a Sunday afternoon (McEwan 33). The timing and content of judge's decision is critical due to urgency of the treatment for the boy's life to be saved. The decision of the judge is timely and resembles the real-life case of *Re E* dated 1990 (Macaulay-Smith). It was held in both cases that the welfare of the child was the court's paramount consideration (McEwan 123) in line with the Children Act. Yet, the underlying religious principles and the human right for adults of full capacity to have freedom of choice regarding medical treatments were considered. The related judgement read: "*I find it essential for his well-being to protect him from himself and his parents, and so I override his and his parents' decision*" (123). This judgment underpins legal paternalism which is a rarely applied notion in 21st century justice system due to its liberal nature which reduces the accurateness of the said century's legal practice. However, the intent of the author is not to display legal paternalism but rather to demonstrate the

paramount significance of child's welfare which does reflect the respective century's legal environment.

The other three legal cases presented in the novel are similar to their fictional counterparts, all portraying disputes arising from religious beliefs of individuals. Such cases include a dispute over two Jewish girls' education between divorcing parents who belong to Chareidi community (McEwan8), child abduction case by a Muslim father and the controversial Siamese twins' case in which Catholic parents do not allow an operation to save one of the twins while the other would most likely die. In all portrayed cases the parties expect that: *"The court must choose on behalf of the children between religion and something a little less."* (3). However, Judge Maye remarks in her judgement that, *"This court is a court of law, not of morals,...our duty is then to apply the relevant principles of law..."* (26-27), emphasising the secular structure of the legal system. There exists a critique of religion by Dickens in *Bleak House* wherein the neglect and abuse of children in society due to strict religious rules is discussed but such criticism is not linked with the law, contrary to *The Children Act*.

It can be concluded that the aim of McEwan in *The Children Act* is to critique the impact of religion on individual decision making for supporting the secular mindset. Thus, the portrayal of the legal system is effective, just and impartial supported with real acts and judgements reflecting the reality of the 21st century English legal system despite the use of fictional narrative. However, the choice of the cases exhibits bias on behalf of the writer since such controversial cases in real-life are rare (2020 Judgements) and disputes arising from religious beliefs do not constitute the majority among those dealt in Family Courts (Family Court).

Weather as a symbol of the legal system:The opening of *Bleak House* is important to set the tone of the novel and foreshadow other themes. The setting is the area of law courts in London, which is described with sentence fragments, visual and sensory imagery; mud, smoke and fog, suggesting its bleakness. Fog symbolises the Chancery Court which is an old, worn-out and obsolescent institution within the English legal system; “*the most pestilent of hoary sinners, holds, this day, in the sight of heaven and earth*” (Dickens⁴). Dickens indicates that people live in and suffer from misery, poverty, and injustice due to flaws of the legal system which grinds and eventually disposes of them.

The Children Act opens with a similar setting; London, yet with a contrasting timing; “*Trinity term and implacable June weather*” vs “*Michaelmas Term and implacable November weather*” of *Bleak House*. June weather, indicating warm summer days, is a positive connotation and foreshadows favourable legal environment for the rest of the novel, whereas, November weather in *Bleak House* induces negative connotation. Therefore, the meaning of “implacable” changes with the “weather” from determined, unshakable to relentless, ruthless symbolising the legal system in *The Children Act* and *Bleak House* respectively.

Destiny of the legal system:The death of Mr Krook by spontaneous combustion (Dickens, 389) is a metaphor used to predict the destiny of Chancery. The Chancery Court was dissolved in 1875 after a number of unsuccessful reform attempts. Dickens, who wrote *Bleak House* in 1820's, had foreseen its destiny and issued a warning that the legal system, which becomes totally absorbed by its own procedures, is destined to destroy itself. Dickens stated in the preface of the novel that the possibility of “spontaneous combustion” has been denied by certain critics and he was accused of exaggeration. However, his investigation led him to discover about thirty real-life cases of death due to spontaneous combustion on police and medical records (Preface).

Ironically, Mr Krook's death initiated events which resulted in the resolving of the decades lasted Jarndyce v. Jarndyce case, being the climax within the framework of Freytag's Pyramid. However, the resolution did not bring any joy to litigants because the entire equity subject to the will had been used up in legal costs and nothing was left for the litigants, demonstrating the ultimate injustice sarcastically inflicted by the justice system (731).

In *The Children Act*, however, there is no implication for the destiny of the legal system since as it is efficient, the continuation, rather than the end, of it is desired.

IV. PORTRAYAL OF PRACTITIONERS OF LAW IN CHARLES DICKEN'S BLEAK HOUSE AND IN IAN MCEWAN'S THE CHILDREN ACT

Although practitioners of law portrayed in *Bleak House* can be categorised as judge, lawyers, clerks, support staff and detective, the main emphasis is on lawyers who practice, accommodate, and are educated in "Inns" as in real-life practice of 19th century. Also, there are no female practitioners of law in the novel, in line with the patriarchal society of 19th century England, where women stayed at home and took care of the house and children. Additionally, Inspector Bucket is the first portrayal of a detective in English literature which makes Dickens a pioneer (Banerjee) and his novel in line with the real-life practice of law.

In *The Children Act*, however, the portrayal of barristers, solicitors and clerks are limited¹⁰. The emphasis is on Judge Maye due to the focus of the author on the judiciary, trying to showcase its secularism.

Immorality of Lawyers: As implied by the assigned names, Dickens portrayed Mr Tangle as the lawyer who enjoyed mixing things up in an already complicated case (Dickens7) and Mr

¹⁰ Due to this limitation, lawyers in *The Children Act* will not be discussed in the following two subsections, namely; "Immorality of Lawyers" and "Lawyers as a Representation of Social Classes".

Vholes as “*a Vampire*” with his “*black clothes, dead glove and dark office*” (466-468). Dickens referred to Mr Vholes’ blood thirsty nature as “*Make man-eating unlawful, and you starve the Vholeses*” (467) because he ruined Richard by taking all his money with the promise that he was making great progress on the case. In line with the reality, Dickens announces that, “*The one great principle of the English law is, to make business for itself.*” (467). After all, lawyers had an interest and motivation in long lasting court cases and delays in justice confirmed by another lawyer, Mr Kenge, “*the system of equity is a very great system*” (711).

Lawyers as a Representation of Social Classes: Dickens’ portrayal of Mr Tulkinghorn as an elite, “*old school attorney*”, because of his aristocratic clientele (Dickens 11) represents criticism by Dickens referring to the social class differentiation in 19th century English society. Although Mr Tulkinghorn is considered as a superior lawyer among his colleagues, his back clothes, secretive character, mechanical and misogynistic behaviour represents the metaphor of law bringing misery rather than justice to society. Therefore, Dickens’s representation of lawyers as immoral practitioners and having class differences like the society itself is in line with the reality of the 19th century England.

Judges: In *Bleak House*, Lord Chancellor, the judge, is likened to the owner of the legal junkshop, Mr Krook¹¹. Mr Krook indicates that he is called the “*Lord Chancellor*” and his shop “*Chancery*” (Dickens 46) which is ironic since he is an illiterate man and his shop is full of documents which provides no practical use. Additionally, Dickens uses visual image of halo over Lord Chancellor’s head, describing him “*with a foggy glow round his head*” (4), shedding misery around him.

¹¹“Krook” sounds like the adjective “crook” which suggests a dishonest person.

The fictional character Fiona Maye in *The Children Act* is the Family High Court Judge revered by her peers, authoritative, clear, balanced, efficient and objective but her personal life is falling apart (McEwan13). Her devotion to her work is reflected as a praise for the judge as well as critique of religion; “...when...she was sworn in (as a judge)...she knew the game was up, she belonged to the law as some women had once been brides of Christ” (45). Her portrayal as a judge is the opposite of Lord Chancellor in *Bleak House* who is at the very heart of the “fog”, responsible for the misery caused by the system.

McEwan states that he has used real-life cases but all characters in the novel are fictional. However, Judge Maye resembles Former President of UK Supreme Court Judge Brenda Hale who helped devise the Children Act 1989 (Hattenstone). This resemblance makes the portrayal of the Judge Mayemore realistic.

Judge Runcie, another judge in the novel, is portrayed as hard-working, likable, benevolent, yet he caused “*the greatest miscarriages of justice in modern times*” (McEwan50). By creating two opposite characters as judges and other supporting legal workers like clerks and barristers, McEwan manages to present the realistic 21st century English legal system in his novel.

V. CONCLUSION

Bleak House by Charles Dickens and *The Children Act* by Ian McEwan are legal fiction novels written two centuries apart, in 19th and 21st centuries, respectively. Both novels centre around a major legal case and depict how the practice of law affect the society and individuals in their unique ways, offering social and institutional criticism to the reader. Therefore, as important examples of law in literature, the aim of this study has been to discuss to what extent legal fiction depicted in both novels are accurate reflections of 19th and 21st century England.

Charles Dickens' portrayal of the legal system in *Bleak House* as being inefficient and obsolete, hence, consuming people and making them suffer at the expense of providing business for itself reflects the reality of the situation in 19th century England for several reasons. The Chancery Court was dissolved in 1875 after a series of unsuccessful reforms and Dickens predicted the dissolution of the Chancery Court warning that the legal system which does not provide justice shall destroy itself. Additionally, Dickens basing his story on a few real-life Chancery Court cases on which he personally worked while serving in the court proves that he provided his readers more reality than fiction. Although Dickens has been criticised for using exaggerated events in the novel, like death due to internal combustion, he defended himself referring to similar real-life cases. It should be noted that his aim had been to provide criticism with the use of literary tools like metaphors. He confirms his aim as; "...I have purposefully dwelt on the romantic side of familiar things" in the preface of the novel.

In *The Children Act*, Ian McEwan portrayed the legal environment of High Court Family Division in 21st century England basing the story on real-life cases with consultation from a retired High Court judge. Although McEwan disclosed that characters in the novel are purely fictional, the resemblance of the protagonist to a real-life judge as well as the variety and sophistication of other characters makes the novel realistic. It is worth noting that McEwan describes the legal practice in his book as efficient and just. Nevertheless, he critiques religion, arguing that the secular mindset outperforms religion when people are making reasonable judgments about their lives. He proves his point through presentation of all legal disputes in the novel arising from religious beliefs. However, the presentation of all legal disputes being connected to religious beliefs is a bias on behalf of the writer since in real-life cases other types of disputes are more likely to happen. It can be stated that the writer used exaggeration to make his point as a social critique like Dickens accomplished in *Bleak House*.

Overall, it is concluded that the legal fiction depicted in both novels are accurate reflections of 19th and 21st century England legal practice despite criticisms and biases on the part of both authors.

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