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***BLEAK HOUSE* AND THE DEMISE OF
CHANCERY
A Case Study in the Relationship between
Fictional Literature and Legal Reform**

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Abstract

This paper explores the relationship between fictional literature and law reform through the treatment of the Court of Chancery in Charles Dickens's 1852-183 novel *Bleak House*. It offers a reading of the novel as a law reform narrative which presents a coherent picture of the state of the law as it is and an imaginative alternative for its future. The Chancery represented in the novel is mythologised and symbolic rather than strictly historically accurate, and this enables Dickens to reveal its problematic essence as a morally bankrupt and bankrupting institution. The solution the novel puts forward is two-fold: calling for its readers to participate personally in an ethic of equity and for lawmakers to reconfigure the court in a way which encourages such an ethic in its participants. Although the novel did not have a noticeable effect on the historical process of Chancery reform, it did contribute a new and counter-cultural normative vision of reform, and impacted on its readership at an individual level.

Keywords

Bleak House, Chancery, law reform, legal reform, law and literature, Charles Dickens

I. Introduction

Legal reform is essentially grounded in narrative. It is motivated by, and implemented through, stories reformers tell themselves and others about the present and the future – about what *is* and what *could be*. Unsurprisingly, fictional literature is frequently used as a medium for expressing such reformist narratives, making legal reform one of the key areas where the disciplines of law and literature interact.

This paper explores this relationship through the issue of Chancery reform in Charles Dickens's novel *Bleak House*, first published in serial form between 1852 and 1853. The novel's forceful indictment of the delay and corruption endemic in the equitable Court of Chancery has become one of the most famous instances of the law in world literature. At the centre of the novel is the Chancery case of *Jarndyce v Jarndyce*, infamous both inside and outside the story's narrative world for its complexity and torturous longevity. *Jarndyce* is the centrepiece of the novel around which its plots revolve and the common denominator through which all of its characters are connected. Through it Chancery is revealed as a destructive and corrupting force; the warning "[s]uffer any wrong that can be done you, rather than come [to Chancery]!"¹ echoing throughout.

The exploration of Chancery in *Bleak House* was certainly topical. Dickens wrote in the middle of a five-decade long piecemeal process of reform of the Court, which culminated in the fusing of the courts of Law and Equity through the 1873 and 1875 Judicature Acts. However, Dickens is often accused of highlighting the abuses of Chancery without offering any positive reformist solutions. In the words of Richard Posner: "Though acutely aware of the large amount of evil in the world, and not in the least quietistic or resigned, Dickens had no suggestions for reducing" the evils he perceived.² This paper refutes that claim, offering a reading of *Bleak House* as a law reform narrative which posited an alternative vision for Chancery reform. Importantly, this vision was one which went against the prevailing cultural tide of reformism which, grounded in utilitarianism, was optimistic about the ability of institutional mechanisms to solve institutional problems. Rather, Dickens stresses the need for moral reform at the individual level and the need for legal institutions to be set up in a way that encourage an ethic of equity in their participants. The reformist solution of the novel is, in short, a return to an equitable ideal both in the legal sphere and at the level of the individual.

¹ Charles Dickens *Bleak House* (1853) (Oxford University Press, London, 1970) at 3.

² Richard Posner *Law and Literature* (2nd ed, Harvard University Press, London, 1998) at 143.

Although it is difficult to maintain that the novel had any measureable impact on the historical process of Chancery reform, it will be argued that the novel did participate in implementing its reformist ideal through the effect it had on its readership.

II. Part One: Bleak House in Context

A. The Abuses of Chancery

It is necessary firstly to briefly outline the main problems with the Court of Chancery that Dickens and his contemporaries perceived.

Of chief concern was delay in its processes and the inhibitive costs which delay bred. Partly to blame was the fact that the ultimate responsibility for all matters before the court fell to one individual – the Lord Chancellor.³ Although the Master of the Rolls and, from 1813, one Vice Chancellor acted as junior judges, these offices had only derivative powers, and as such suitors could ultimately demand recourse to the Chancellor by way of appeal.⁴ Many administrative matters were dealt with by the ten Masters of the court and their clerks, but again, their powers were derivative, and so issues often “oscillated expensively between master and judge.”⁵ Furthermore, the Chancellor only worked part time in that capacity, having also significant duties in the House of Lords.⁶ This reliance on one individual meant that the speed at which cases were heard depended somewhat on the capabilities and temperament of the Chancellor. Lord Eldon, Chancellor for much of the early part of the nineteenth century, was a self-professed procrastinator, and the target of much criticism. The fact that in 1822 there were two to four years’ worth of cases in arrears is hardly surprising.⁷

Even when a case reached the court, its processes were set up as to inevitably involve lengthy delays. The court would, in each case, administer ‘complete justice’: “It would not, for instance decide a single doubtful point connected with the administration of an estate, without administering the whole estate.”⁸ Every person with an interest in the matter before the court

³ JH Baker *An Introduction to English Legal History* (4th ed, Butterworths, London, 2002) at 111.

⁴ Michael Lobban “Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery, Part I” (2004) 22(2) *Law & Hist Rev* 389 at 394.

⁵ Lobban, above n 4, at 393.

⁶ Baker, above n 3, at 111.

⁷ Lobban, above n 4, at 406.

⁸ William Searle Holdsworth *Charles Dickens as a Legal Historian* (Yale University Press, New Haven, 1928) at 87.

was made a party, including those born or married into an interest. When a party entered or exited (through death or marriage) the suit, a complicated bill of revoir would be filed before the case could proceed, and administrative processes would need to be repeated. The first stage of a proceeding was the filing of a Bill, or petition, which included a long ‘interrogating’ section which converted the issues into a series of detailed questions addressed to the respondent, which tended to confuse and confound.⁹ Evidence from witnesses was attained by way of interrogatories which were prepared by counsel but administered by third party commissioners who were not familiar with the case or parties. The interrogatories were often difficult to understand, and witnesses’ answers were sometimes lost in translation as they were reported to the court by the commissioners in the third person.¹⁰ The case could not continue until all witnesses’ evidence had been adduced to a satisfactory standard.

A second category of abuses are what Lobban terms the ‘ancien regime corruptions’.¹¹ Chancery was an old institution which had failed to keep up with a rapidly changing England, and many no longer useful positions continued to be part of the process, adding cost and further delay at every stage. Most of the Masters’ incomes, and the incomes of the hierarchy of clerks below them, came from self-appropriated and self-administered fees. Among the worst in this regard was the office of the Six Clerks. Historically, these clerks served as legal advisors and administrators for Chancery suitors, but in time they delegated this work to clerks in their own employ while still charging compulsory, arguably extortionate, fees. By the nineteenth century the Six Clerks each only sat one day per week, and their office became a “virtual sinecure.”¹² The clerks under them, known as the Sworn Clerks, charged fees of their own for administrative functions, even after professional solicitors took on the more substantive role which was initially theirs. It was in practice compulsory for suitors to purchase multiple copies of all documentation involved in their case, for which the Sworn Clerks charged over six times the production cost.¹³ Because their income came entirely from such fees the clerks also developed practices such as lengthening Masters’ reports by including “the whole of the previous proceedings verbatim in a ‘whereas’ clause”, and using large handwriting and margins to increase the number of pages suitors had to pay for.¹⁴

⁹ See AH Manchester *A Modern Legal History of England and Wales 1750-1950* (Butterworths, London, 1980) at 140.

¹⁰ Holdsworth, above n 8, at 93.

¹¹ Lobban, above n 4, at 394.

¹² Lobban, above n 4, at 395.

¹³ Lobban, above n 4, at 396.

¹⁴ Baker, above n 3, at 112.

B. *Bleak House* in the Process of Reform

The above sketch is representative of the state of Chancery in the early nineteenth century up until the 1830s. Between then and the time Dickens started writing *Bleak House* in November 1851,¹⁵ much had been done to remedy several of the issues outlined. The personnel issue was partially dealt with by the appointment of two more Vice Chancellors in 1842, and in 1851 a Court of Chancery in appeal was established with additional justices who heard appeals concurrently with the Chancellor.¹⁶ In 1850, the Chancellor at the time, Lord Cottenham, issued an order which significantly altered the way in which certain cases were conducted. For some cases the Bill was done away with, replaced by a claim with no formal pleading and able to be heard summarily on affidavit evidence.¹⁷ While the monthly instalments of *Bleak House* were coming out in 1852, three pieces of substantial legislation built on these reforms, doing away entirely with the interrogatory part of Bills and replacing them with a simple concise narrative of the facts and issues. Witnesses were to be examined orally, in the presence of the parties and their counsel, and Bills of Revoir were made unnecessary by ending the compulsory enlistment as a party of everyone who might have an interest in the case.¹⁸ In 1852 the Masters' office was also abolished, allowing for a more streamlined system with more direct access to judgement from those with the proper authority.¹⁹

Much was also done to eliminate the 'old corruption'. In 1833 the Masters were put on salaries and so no longer relied on the fee system.²⁰ In 1842 the Six Clerks office was abolished and from 1852 all officers of the Court were remunerated by salary.²¹ Suitors still paid fees, but to a central fund rather than directly into the pockets of those enforcing them.

By the time the final instalment of *Bleak House* was released in September 1853, the main procedural and corruption problems that plagued Chancery had been taken away. There were still complaints of delay, and taking a cause to Chancery was still a costly exercise, but the state of affairs was certainly improved. Streamlining measures continued to be implemented, but before long the reformist conversation shifted its focus to the issue of fusing the courts of

¹⁵ John Butt and Kathleen Tillotson "The Topicality of *Bleak House*" in *Dickens at Work* (Methuen, London, 1957) 177 at 186.

¹⁶ Baker, above n 3, at 113.

¹⁷ Michael Lobban "Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery, Part II" (2004) 22(3) *Law & Hist Rev* 565 at 579.

¹⁸ Lobban, above n 17, at 582.

¹⁹ Lobban, above n 17, at 583.

²⁰ Lobban, above n 17, at 569.

²¹ Lobban, above n 17, at 573.

law and equity. In 1854 the Common Law Procedure Act empowered Chancery to decide questions of law and to try issues of fact by jury, and granted the Common Law courts the ability to decide equitable questions and award equitable remedies.²² In 1858 further legislation empowered Chancery to award damages,²³ thus enabling each court to deal with a case before it in full. The fusion became complete through the Judicature Acts of 1873 and 1875, and the Court of Chancery as a separate entity was abolished.

C. The Spirit of Reform

One final piece of the contextual puzzle is required in order to understand *Bleak House* as a narrative of reform. Reform during the period Dickens wrote was not restricted to Chancery – it was a time of great legal and societal change. Dominating much of the reformist discourse was the philosophy of utilitarianism, which had its origins in Jeremy Bentham. As Allen Boyer writes: “Nineteenth Century reformers marched under the banner of Utilitarianism and their prophet was Jeremy Bentham.”²⁴ Crudely put, utilitarianism as it relates to the law is the claim that the law should serve “the greatest good of the greatest number”,²⁵ a guiding principle with implications for both the substance and procedure of the law. Many of the century’s reforms were heavily influenced by this school of thought, although the ultimate goal of Bentham – to create a complete and rational legal code based on utilitarian principles – was never realised. Chancery reform was no exception to this pervasive influence, and many of its key advocates were heavily influenced by it, most notably Samuel Romily and the Whig politician and later Lord Chancellor Lord Brougham.²⁶

Importantly for present purposes, Bentham and his followers had a clear idea about the means through which their ideas would be implemented. The utilitarian reformers were optimistic about the efficacy of legislation in achieving their ends. They “considered society on an institutional level”,²⁷ and as such saw both the problems of society and its solutions on

²² Baker, above n 3, at 114.

²³ Lobban, above n 17, at 590.

²⁴ Allen Boyer “The Antiquarian and the Utilitarian: Charles Dickens vs. James Fitzjames Stephen” (1989) 56 Tenn L Rev 595 at 597.

²⁵ Boyer, above n 24, at 597.

²⁶ See generally Lobban, above n 17.

²⁷ Boyer, above n 24, at 597.

institutional terms. “Rational and coordinated” legislation was the key to solving the legal system’s ills, both in terms of process and substance.²⁸

The piecemeal process of reform outlined above was by no means the radical and systematic reform utilitarianism would have envisaged for Chancery. Nevertheless, utilitarian ideals and especially an optimism about the proficiency of the institutions of government and legislation to implement effectual reform was a dominant voice in the conversation about Chancery reform that Dickens entered in 1852.

²⁸ Boyer, above n 24, at 298.

III. Part Two: Reading Bleak House as a Narrative of Reform

A ‘narrative of reform’ here refers to the kind of story reformers tell themselves and others about what is and what could be, with a view to persuading others to accept that story and bring it about. To understand *Bleak House* in this way, it is necessary to look at both how Dickens represented the state of Chancery, and the vision the narrative offers for its future.

A. The Representation of Chancery in *Bleak House*, or ‘The Law as It Is’

1. Mythologising Chancery

The picture of the Chancery process that Dickens paints throughout the novel is strikingly lacking in detail. Where specific references to particular abuses of the kind outlined in Part One are made they are generally made in passing, relegated to the back-stories of the characters’ suits and playing no significant part in the narrative progress of the novel. Both Jarndyce and Gridley lament the compulsory enlistment of countless parties to their suits, Jarndyce remarking “we can't get out of the suit on any terms, for we are made parties to it, and *must be* parties to it, whether we like it or not.”²⁹ Likewise he comments, in his brief sketch of the background to *Jarndyce v Jarndyce*, that “everybody must have copies, over and over again... and must go down the middle and up again through such an infernal country-dance of costs and fees and nonsense and corruption.”³⁰ The inefficiency of the Court’s evidence processes,³¹ the inconvenience of being sent between law and equity for the settling of various issues,³² and the delay in a case being heard in the first place³³ are all canvassed summarily in this way. They are part of an essential background to the state of affairs in Chancery, but are not in themselves the targets of sustained criticism. This approach immediately puts Dickens’s narrative in stark contrast with many of the competing reformist narratives of his day, which, at each stage of the piecemeal reform process focused on refining and honing the minute processes of the Court.

The novel’s lack of specificity is accompanied by anachronisms in the details it does divulge, something which has attracted much criticism, especially in light of Dickens’s claim in the

²⁹ Dickens, above n 1, at 96.

³⁰ Dickens, above n 1, at 95.

³¹ Dickens, above n 1, at 95, 215.

³² Dickens, above n 1, at 95.

³³ Dickens, above n 1, at 215.

preface that everything in the novel “concerning the Court of Chancery is substantially true, and within the truth.”³⁴ References are made in the novel to procedures and offices (such as the Six Clerks) which were abolished before the novel was written, leaving Dickens open to accusations from both his contemporaries and modern critics that he had a shallow understanding of the institution he was critiquing, and discounted the reforms that had occurred.³⁵ Many have sought to defend Dickens by making cases for saying the novel is set at an earlier date, either in the 1840s³⁶ or the late 1820s.³⁷ However, at each proposed date, the novel contains details outside of its time. The most reasonable view is that of Butt and Tillotson that Dickens “was content to draw upon his memory of Chancery procedure without reflecting, or perhaps caring, whether in every respect his knowledge was up to date.”³⁸

That Dickens was unaware of his era’s reforms or the actual state of Chancery is an untenable position. Dickens was well connected in the legal community and spent several years in early adulthood both as a legal clerk³⁹ and as a court reporter.⁴⁰ Butt and Tillotson’s study suggests that his Chancery knowledge came partly from the *Times*, which extensively reported the ongoing reforms.⁴¹ It must be recognised that Dickens wrote as a novelist, not as an historian or journalist, and employed the techniques and prerogatives of an artist. Importantly he is trying to entertain – boring details of court processes were not conducive to such an end. Yet something more profound is going on than Dickens merely ignoring the reforms which were not helpful for his story. The ‘truth’ that Dickens lays claim to must be understood as something other than the literal truth of the process of Chancery at the time. The lack of specificity and the representation of an amalgamated Chancery that seems to take the worst from every period is a deliberate choice. In the preface Dickens also remarks that the novel focuses on “the romantic side of familiar things”.⁴² The truth that Dickens claims to depict must be understood as one in the Romantic tradition: a truth about the essence of things.

³⁴ Dickens, above n 1, at xiii.

³⁵ The eminent law reformer James Fitzjames Stephens remarked that Dickens’s “notions of law... are precisely those of an attorney’s clerk.” (Boyer, above n 24, at 607).

³⁶ E.g. Susan Shatto *The Companion to Bleak House* (Unwin Hyman, London, 1988) at 1.

³⁷ E.g. Holdsworth, above n 8, at 81.

³⁸ At 200.

³⁹ Robert Douglas-Fairhurst *Becoming Dickens* (Harvard University Press, London, 2011) at 52.

⁴⁰ Douglas-Fairhurst, above n 39, at 65.

⁴¹ At 193.

⁴² Dickens, above n 1, at xiv.

Kieran Dolin writes that “*Bleak House* abjures both discussion and the intricate details of legal processes in favour of a dramatic and symbolic expression of Chancery’s effects in society.”⁴³ This is certainly true, but more than expressing Chancery’s effects, the symbolic picture of it attempts to get across what Dickens believes to be its essence, getting to the heart of that which needs fixing. That Dickens leaves out most of the details of the cases before the Court and the processes they go through reveals that those details, which up until then had been the focus of the discourses of reform, were in Dickens’s view merely symptoms of a deeper problem. In other words *Bleak House* does not present a picture of Chancery as an institution with problems, but as a problematic institution.

Thus the Chancery of *Bleak House* is a mythologised Chancery. More important than the factual legal content is the atmosphere that is created around the court which has the effect of impressing on the reader’s mind associations between Chancery and a general state of confusion, procrastination, expense, and corruption. Chiefly this is through the descriptions of the case of *Jarndyce* and of the courtroom itself. The opening chapter, entitled ‘In Chancery’, sets a pattern for Chancery’s representation throughout as being paired with oppressive weather. Here Chancery is described as steeped in deep fog. Zabel notes that every adjective used in this opening chapter contributes to an overall sense of impending doom: “sallow”, “murky”, “hopeless”, “pestilent”, “grimly writhed”, “haggard and unwilling.”⁴⁴ Later, Chancery is depicted at length in the stifling and equally oppressive height of summer. At each description it is emphasised that Chancery is suffocating and hostile to human participation.

Details about *Jarndyce* go only so far as to evoke a sense of unproductive busyness, and, above all, confusion. Emphasised is the fact that “no man alive knows what it means”,⁴⁵ and that it has long since “passed into a joke”.⁴⁶ The Court workers bustle about “making a pretence of equity as players might”.⁴⁷ The whole ordeal is a costly charade, more of a grotesque pantomime than a functioning legal forum. When we receive Esther’s first person account of her encounters with the Court the confusion is similar, but the fact that the majority of the descriptions of the Court come from the anonymous third person perspective show that it is

⁴³ Kieran Dolin “Reformist critique in the mid-Victorian “legal novel” – *Bleak House*” in *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge University Press, Cambridge, 2009) 71 at 74.

⁴⁴ Morton Dauwen Zabel “*Bleak House*” in George Ford (ed) *The Dickens Critics* (Cornell University Press, New York, 1966) 325 at 326.

⁴⁵ Dickens, above n 1, at 4.

⁴⁶ Dickens, above n 1, at 4.

⁴⁷ Dickens, above n 1, at 2.

objectively like this – it is not merely a case of an unfamiliar and intimidating environment. The Court, and the equity it ostensibly stands for, *is* entirely inaccessible.

The image of Chancery that is constructed in the reader's mind is furthered by its personification in the character of Krook. Krook has been christened by his patrons as a second Lord Chancellor, and his rag and bone shop a second Chancery. Krook's own explanation for this is that he has "so many things... of so many kinds... wasting away and going to wrack and ruin",⁴⁸ just like in Chancery. Krook is a hoarder, and an illiterate drunk – the perfect image of incompetency and procrastination. He refuses to learn to write because he is suspicious that someone might teach him wrongly, which parallels the Court's longstanding unwillingness to develop and learn from mistakes.

2. The Corrupting Nature of Chancery

What, though, is the essence of Chancery and the deeper problems which this fact-light yet powerfully evocative picture of Chancery sets the novel up to reveal? As the narrative unfolds, Chancery is revealed as a destructive force, as something which not only is corrupt, but which corrupts. The third person narrator offers the following meditation:⁴⁹

How many people out of the suit Jarndyce and Jarndyce has stretched forth its unwholesome hand to spoil and corrupt would be a very wide question. From the master upon whose impaling files reams of dusty warrants in Jarndyce and Jarndyce have grimly writhed into many shapes, down to the copying-clerk in the Six Clerks' Office who has copied his tens of thousands of Chancery folio-pages under that eternal heading, no man's nature has been made better by it.

This presages the trajectory which Chancery suitors are shown throughout the novel to fall into, from being perfectly normal, to becoming morally bankrupt and irrationally obsessive. Miss Flite explains how each member of her family has been "drawn" into Chancery, and how Chancery has "drawn" them: "Draw peace out of them. Sense out of them. Good looks out of them. Good qualities out of them. I have felt them even drawing my rest away in the night."⁵⁰ Miss Flite herself has been 'drawn' into Chancery, which has transformed her from a tambour-

⁴⁸ Dickens, above n 1, at 52.

⁴⁹ Dickens, above n 1, at 5.

⁵⁰ Dickens, above n 1, at 498.

worker living “ve-ry respectably”⁵¹ into the local lunatic, living out her existence in the court in hopeless expectation of ‘judgement’.

Other characters have similar stories. Gridley’s moral corruption took on a different form, although there is the same sense of inevitability about Chancery’s effects in his account. He explains to Jarndyce how he has been told he was “a good-enough-tempered man once”,⁵² but that his endless journey through Chancery has made him bitter and angry:⁵³

‘I am violent, I know... I have been in prison for contempt of court. I have been in prison for threatening the solicitor. I have been in this trouble, and that trouble, and shall be again.’

Tom Jarndyce, the prior occupant of Bleak House, turned to despair and committed suicide. Even Bleak House itself does not escape the corrupting nature of Chancery – it being christened that name by Tom as a consequence of his Chancery woes. Jarndyce remarks that the “brains seemed... to have been blown out of the house too, it was so shattered and ruined.”⁵⁴

Nowhere is the corrupting nature of Chancery so evident, though, than in the development of Richard Carstone. At the outset he is young and innocent, and firmly resolved that “Chancery will work none of its bad influences on” him and his cousin (and later lover and wife), Ada.⁵⁵ Yet almost immediately it begins to do just that, and his natural tendencies towards carelessness and indecision turn into something much more destructive. He becomes obsessed with his Chancery interests, and it takes over every aspect of his life, financially ruining himself and Ada and ruining his relationship with his benevolent guardian. Eventually it claims his health and his life. As the negative effects of Chancery begin to become apparent Jarndyce remarks:⁵⁶

‘How much of this indecision of character... is chargeable on that incomprehensible heap of uncertainty and procrastination on which he has been thrown from his birth, I don’t pretend to say; but that Chancery, among its other sins, is responsible for some of it, I can plainly see.’

In this way Chancery is shown to take character defects and to augment them to the point where the virtuous aspects of its victims are forced to give way. ‘Victims’ is a term that must be used loosely here. It is not that those subject to Chancery are imbued with vice by Chancery – it rather acts as an amplifier of vices and defects already within the characters, minimising their

⁵¹ Dickens, above n 1, at 499.

⁵² Dickens, above n 1, at 216.

⁵³ Dickens, above n 1, at 216.

⁵⁴ Dickens, above n 1, at 96.

⁵⁵ Dickens, above n 1, at 58.

⁵⁶ Dickens, above n 1, at 167.

virtue. It is true that those who manage to escape Chancery's destructive influence seem to do so by staying as far away from it as possible. Ada, Jarndyce, and, to a lesser extent, Esther, all have interests in the suit but refuse to be active participants. Yet it is not simply the fact that they keep away from Chancery that enables them to keep their moral character intact, but it is their superior moral character and judgment that motivates them to keep away in the first place. It is Richard's lack of prudence that leads him to fall into the clutches of Chancery.

George Orwell wrote that "Dickens's criticism of society is almost exclusively moral."⁵⁷ Here, at least, it is clear that Dickens's criticism of Chancery intentionally moves away from issues around processes and the substantive law and towards the moral character and implications of the institution. For Dickens, the delay and cost in Chancery are symptomatic of a moral bankruptcy that runs deep within its institutional structures.

3. The Chancery Practitioners

Just as the representation of the negative effects of Chancery is brought down to the level of individuals and their moral characters, so too is the representation of the wrongs within the institution. Although the brief descriptions of the Lord Chancellor himself are relatively complimentary, the lawyers 'in Chancery' are shown in a much less sympathetic light and serve to highlight the moral bankruptcy of the institution. Kenge is characterised as a "proprietor" and champion of Chancery. As soon as he is introduced to the narrative he sets about singing its praises:⁵⁸

'Jarndyce and Jarndyce—the—a—in itself a monument of Chancery practice. In which (I would say) every difficulty, every contingency, every masterly fiction, every form of procedure known in that court, is represented over and over again? It is a cause that could not exist out of this free and great country.'

Kenge personifies the pompousness and self-importance of the Court, and is incapable of seeing any wrongs in it or any reason for reform. Even Jarndyce's refusal to participate in the suit that has caused his family so much misery is seen by Kenge as "echoing a popular prejudice."⁵⁹ While Kenge is himself harmless, he stands in for the 'ancien regime' which holds on to the system as it is for its own sake, perpetuating its wrongs.

⁵⁷ George Orwell "Charles Dickens" in *Collected Essays* (Secker & Warburg, London, 1968) 31 at 34.

⁵⁸ Dickens, above n 1, at 20.

⁵⁹ Dickens, above n 1, at 844.

Richard's solicitor Vholes also characterises the court and its practitioners as "victims of prejudice",⁶⁰ but his character represents a much more sinister side of the moral corruption of Chancery. Vholes is depicted as a parasitic Chancery vampire who feeds off his clients for sustenance. He is "a sallow man with pinched lips that looked as if they were cold... dressed in black, black-gloved, and buttoned to the chin."⁶¹ Even the desk in his office is likened to a coffin. His vested interests in Richard being 'in Chancery' for as long as possible are thinly veiled by false modesty and constant references to his father and daughters whose upkeep justifies his earning a living. That façade is undercut by the third person narrator's ironic discussion of Vholes's "respectability", culminating in the statement: "The one great principle of the English law is to make business for itself."⁶²

Vholes and the other Chancery practitioners are morally hollowed out. They are intent on making business for themselves and nothing else, having no regard for the suitors and the harm that Chancery so evidently causes them. Vholes expressly conflates law and morality, saying "when a client of mine laid down a principle which was not of an immoral (that is to say, unlawful) nature, it devolved upon me to carry it out."⁶³ The law itself becomes the only standard which the Chancery practitioners look to; all morality which derives from conscience or some external code has been sucked out of them, just as it is slowly drained from the Chancery suitors. The result is that they are without exception cold and distanced, and wilfully blind to the suffering going on around them.

The allegations of Dickens's contemporaries such as James Fitzjames Stephens,⁶⁴ and more recent critics such as Richard Posner,⁶⁵ that Dickens came in too late to the Chancery debate and that it had already been effectively reformed entirely miss the point that Dickens is trying to make about Chancery. As has been seen Dickens deliberately sidesteps the minute details of the Chancery process and the reforms to that process which had already been implemented. As Alan Boyer writes: "legally doubtful, his fiction is metaphorically sound."⁶⁶ In creating a mythologised version of Chancery he asks his readers to take as a starting point the delay, cost, and corruption in the Court so that he can then go on to highlight the problem that lies beneath; a problem which in his view the reforms at the time of writing had not sufficiently dealt with.

⁶⁰ Dickens, above n 1, at 819.

⁶¹ Dickens, above n 1, at 533.

⁶² Dickens, above n 1, at 548.

⁶³ Dickens, above n 1, at 821.

⁶⁴ See Boyer, above n 24, at 606.

⁶⁵ Richard Posner *Law and Literature* (3rd ed, Harvard University Press, London, 2009) at 188.

⁶⁶ Boyer, above n 24, at 621.

It becomes apparent that this problem is a moral bankruptcy of a kind peculiar to legal institutions, which manifests itself in both those administering the Court's processes, and in the effect it has on suitors.

B. An Imaginative Alternative, or 'The Law as It Could Be'

1. Failed Reformist Approaches

As has already been noted, Dickens's depiction of Chancery, by omitting the minute details of abuses, rejects the kind of piecemeal reform which sought to improve the Court step by step. There are two other competing pictures of Chancery reform that appear in the novel that are also set up as unsuccessful. The first is the utilitarian approach. Right in middle of the narrative, Krook dramatically spontaneously combusts, a cause of death that at most was relegated to the realms of pseudo-medical-science even in the mid-nineteenth century. The death of the Chancellor's symbolic double is of no small significance to the message of reform, especially in light of the gloss the narrator gives on that event:⁶⁷

The Lord Chancellor of that court... has died the death of all lord chancellors in all courts and of all authorities in all places under all names soever, where false pretences are made, and where injustice is done... [I]t is the same death eternally—inborn, inbred, engendered in the corrupted humours of the vicious body itself, and that only—spontaneous combustion, and none other of all the deaths that can be died.

The significance of this event has received much attention from those looking at the law reform question. As Dolin notes, many early to mid-twentieth century critics read this as a case for "the revolutionary destruction of the social order."⁶⁸ 'All courts and all authorities where injustice is done' must be brought down at one fell swoop through a violent and sudden death. Dolin himself interprets the combustion as "less a revolutionary prophesy than as apocalyptic warning":⁶⁹ ultimately, in divine final judgment, all injustices will be accounted for as a matter of course. Ramble posits an alternative interpretation: "Nothing can be done to right the court of chancery. We must learn to live with it and await its spontaneous combustion."⁷⁰ Law reform

⁶⁷ Dickens, above n 1, at 456.

⁶⁸ Kieran Dolin "Law, Literature and Symbolic Revolution: Bleak House" (2007) 12(1) *Australasian Victorian Studies Journal* 10 at 11.

⁶⁹ Dolin, above n 43, at 91.

⁷⁰ Donald Ramble "Bleak House: Law Reform or Literature? A Shellyan Argument" [1997] *UCL Jurisprudence Rev* 66 at 70.

is necessarily institutional, but institutions are not “able to solve the problems of society; rather they exacerbate those problems and are themselves sources of suffering.”⁷¹

Both this and the revolutionary interpretation are problematic, though, because the story does not end with Krook’s death. His junk shop – his Chancery – is subsequently occupied by Smallweed, a miserly money lender, a hoarder in his own right. Following the death of this pseudo-Chancellor no change is made for the better – indeed its main effect is to give Smallweed possession of papers which he uses as a bribe to intensify the suffering of others. While Krook was useless, Smallweed is cruel and calculated. If Krook’s death represents a violent revolution that overthrows Chancery, then the revolutionary replacement is certainly no better, and just as symbolic of corrupt and morally devoid institutionalism. If it is a call to wait and allow Chancery to organically implode by its own “corrupted humours” there is no sense in which doing so will improve the state of affairs.

Rather, Krook’s death must be seen as an image of failed law reform – a symbol of the end of a corrupt institution which in itself offers no positive alternative. In such a reading Krook’s death speaks directly to one half of the utilitarian approach to law reform – that of replacing one structure entirely with another. However bad Krook was, and however bad what he symbolises – Chancery – is, Dickens’s narrative warns that placing faith in something structurally and procedurally new will not solve anything unless its fundamental moral character is improved.

The other half of the utilitarian approach – a confidence in the process of legislation to realise effective reform – is also the subject of criticism. As Dolin notes, there is no reformist lawyer in *Bleak House*, nor is there any mention of reformist legislation.⁷² In a period dominated by reformer personalities and constant legislative solutions this absence in itself is a statement that institutional mechanisms are not part of Dickens’s imaginative alternative. Legislators appear only in the novel as “the nepotistic political aristocracy that meets at Chesney Wold”⁷³ – humorously caricatured as the Lords Boodle, Coodle, and Loodle and the Right Honourable Buffy, Cuffy, and Duffy MPs and so on. In these comic descriptions Dickens ruthlessly depicts the law making class as being as self-interested as the Chancery practitioners, unwilling and unable to cater to the needs of the people or any external scheme of justice.⁷⁴

⁷¹ Ramble, above n 70, at 68.

⁷² Dolin, above n 43, at 89.

⁷³ Dolin, above n 68, at 15.

⁷⁴ Dickens, above n 1, at 161.

A People there are, no doubt—a certain large number of supernumeraries, who are to be occasionally addressed, and relied upon for shouts and choruses, as on the theatrical stage; but 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 for ever and ever.

In highlighting this failed reformist approach, Dickens asks his readers to refocus their attention on what has already been identified as the real problem; that is, the moral bankruptcy of the institution and its practitioners, and its propensity to infect its participants with the same. The symbol of Chancery reform and substitution through Krook and Smallweed is an illustration at an individual level – it is the moral failings of each which the reader abhors. Likewise, the criticism of the governing elite is not directed at the legislature or the process of legislation, but on individuals – law makers.

There is one other failed reformist approach in the narrative, but it is shown in a somewhat more sympathetic light: the approach taken by Gridley. As has already been mentioned Chancery's effect on Gridley is to make him violent and irascible. He responds to the injustices he has faced by taking it out on individuals within Chancery, not pining for justice as Richard does, but demanding it. When Jarndyce mentions the wrongs of the 'system', Gridley responds:⁷⁵

"The system! I am told on all hands, it's the system. I mustn't look to individuals.... I mustn't go into court and say, 'My Lord... is this right or wrong? Have you the face to tell me I have received justice and therefore am dismissed?' My Lord knows nothing of it. He sits there to administer the system. I mustn't go to Mr. Tulkinghorn, the solicitor in Lincoln's Inn Fields... HE is not responsible. It's the system. But, if I do no violence to any of them, here—I may! I don't know what may happen if I am carried beyond myself at last! I will accuse the individual workers of that system against me, face to face, before the great eternal bar!"

If the problem of Chancery the novel perceives, as has been argued, is the moral character of the individuals who make up the system and the capacity of that system to promote morality in its participants, then it makes sense that the reform must happen on an individual level first. Gridley perceives this, but his method of demanding and resorting to violence is the result of his Chancery-corrupted character, and thus is unsuccessful. Gridley represents the hopelessness of one individual responding to injustices which, although perpetuated by individuals, can hide behind an institutional superstructure.

⁷⁵ Dickens, above n 1, at 215.

2. Esther: An Equitable Ideal

What, then, is Dickens's reformist solution to the problem of Chancery? The solution is two-fold. Firstly, it is a call for people to practice an ethic of equity at an individual level, and secondly, a call for a reconfiguring of the institutional structure in a way which encourages this ethic of equity to be played out.

Gary Watt offers a convincing reading of Esther as the embodiment of equity.⁷⁶ The legal concept of equity that Chancery was developed to implement was designed to remedy injustices caused by the rigid application of the law. As has been shown, in the mid-nineteenth century it had become a hindrance rather than a help to this corrective purpose. While Chancery and its agents are shown to be entirely without equity, Esther operates on "an everyday ethic of practical engagement with, and correction of, injustice arising from the rigid perpetuation of rules, formalities and other norms."⁷⁷ Watt argues that in every relationship, Esther serves as a moderating force, encouraging virtue in others and restraining their excesses and vice, and assisting those who are victims of adverse social norms and conditions. She offers refuge and care to Joe and Charley, softening the negative impact of their poverty; she extends friendship and wisdom to Caddy whose upbringing has left her with little of either; she offers kind advice to Richard when his own advice becomes destructive. She even moves a Chancery practitioner – Guppy – to a romantic passion otherwise entirely absent from the inhabitants of Chancery Lane.

Esther and her practical equity embody in the private sphere what Chancery ought to be in the public sphere. Esther is set up as a contrast to Chancery down to the last detail: her name, 'summer sun', is in diametric contrast to the fog and oppressive weather patterns associated with Chancery. Together with Jarndyce she establishes an "alternative Chancery" at Bleak House.⁷⁸ This alternative Chancery follows her wherever she goes, and is finally represented by the new, ironically named, Bleak House that she and Woodcourt reside in.

Esther is without a doubt set up in the novel as a model to follow. Ramble posits that this is as far as the reformist solution goes – that Dickens is "not concerned with institutional change but with changing the attitudes of individuals in general".⁷⁹ On this view equity is something that

⁷⁶ Gary Watt "The Equity of Esther Summerson" (2009) 3(1) *Law and Humanities* 45.

⁷⁷ Watt, above n 76, at 47.

⁷⁸ Dolin, above n 43, at 84.

⁷⁹ Ramble, above n 70, at 79.

institutions are unable to appropriately attain, and thus reformers should look away from institutions and turn to encouraging equity in themselves and their communities. Watt comes to a similar conclusion:⁸⁰

Dickens' intention is that his readers should imitate the example of Esther and practise equity as individuals in their everyday lives when confronted with injustice arising from excessive formality and legality and over-strict insistence on institutionalised norms.

This is certainly true, and the fact that the novel places the responsibility for the wrongs of Chancery so much on individuals rather than systems and processes suggests that such a technique might have been Dickens's primary motivation. No real positive change can occur without the moral reform of the Chancery practitioners and suitors. Whereas the piecemeal process of reform takes things as they are as a starting point, and the utilitarian approach to reform takes institutionalised rationalism as a starting point, the message of *Bleak House* is that moral, equitable individuals must be the starting point.

But the novel came in the midst of institutional reform and can also be seen as speaking to that conversation. As Watt notes Esther is clearly modelled off her biblical namesake – the young Jewish orphan who becomes Queen of Persia and prevents the murder of all the Jews in the Empire.⁸¹ She too is an equitable character, seeking to moderate and soften the impact of a genocidal legal decree. The mechanism which the biblical character uses to achieve this is institutional and legislative – like the seal of the Lord Chancellor, the King gives Esther use of his seal and ring to bring about her reform.

While Watt and others stop at saying that Esther is an equitable model for individuals, it is possible to go one step further and see her as Dickens's offering to legislators as a model for reforming Chancery institutionally. Dickens himself was neither a lawyer nor a legislator, and so he does not spell out how this could be practically carried out, but unlike the utilitarians, Dickens evidently rejects the complete rationalisation of the law. Rather than seeing law and morality as completely distinct, Dickens sees the two as inherently connected. Nowhere in English legal history is the overlap between law and morality more pronounced than in the traditional equity jurisdiction. Historically equity was designed to encourage virtue in people – to appeal to and enforce adherence to, their consciences.

⁸⁰ Watt, above n 76, at 68.

⁸¹ Watt, above n 76, at 51.

Watt notes that Esther embodies some of the maxims of Equity that form the basis of that traditional jurisdiction. One such maxim is the preference for substance over form, which Watt argues is represented by the ongoing documentation of Esther's looks.⁸²

Her face is disfigured by small pox and yet her beauty triumphs, not only inwardly, but in the way she appears outwardly to others and to herself. By the end of the novel, her formal appearance is no longer a concern; substance has conquered form.

William Guppy, as a representative of the world of Chancery, is interested in Esther's form over her substance. He proposes marriage to her early on in the novel, but later retracts his proposal following Esther's disfigurement. Woodcourt, himself a figure of equity, accepts Esther in her post-illness state, seeing her substance and not merely her form. Incidentally, Woodcourt can also be seen as Dickens's ideal of a professional, and his profession, medicine, an ideal of a profession to act as a contrast to the practitioners in Chancery. The ideal of reform that Dickens envisages includes a professional ideal – self-sacrificing practitioners who administer the law as a doctor administers medicine.

The maxim 'Equity will not suffer a wrong to be without a remedy' is repeatedly embodied by Esther, notably in her insistence to take Joe in when he is sick despite the danger to herself and the protestations of Skimpole. Even the more severe maxims of equity such as 'he who seeks equity must do equity' is embodied by Esther – she eventually rebukes Skimpole and orders him not to associate with Richard because his abuse of their friendship.

The call for institutional reform that Esther embodies can be seen in this way as something of a more traditional conception of equity which is conscience based and flexible – in stark contrast to both what the Chancery court had become and the proposal of fusion that the utilitarian reformers championed. Dickens represents Chancery as corrupting on its suitors to set up this contrast – to say that what Chancery really ought to be doing is the business of Equity in a principled sense and for its own sake rather than for the sake of 'making business'.

⁸² Watt, above n 76, at 48.

IV. Part Three: Assessing Bleak House's Contribution to Chancery Reform

The measure of success of any law reform narrative must be the extent to which its story of an imagined future is realised. In this case, however, such a measure is problematic. The nature of Dickens's critique sets it apart from ordinary reformist narratives in that its first step is moral reform at the individual level – a project for all times and all places.

Considering the process of reform set out in Part One, it is difficult to say that *Bleak House* in itself had a measurable direct influence on the actual reforms to Chancery that occurred. The wheels of change were very much in motion by the time it was published, and if *Bleak House* had never been written the ultimate outcome of fusion twenty years later would have occurred just the same. If the novel can be seen as a call for a revival of a more traditional approach to juridical equity then in this respect it was on the wrong side of history.

But *Bleak House* certainly had a significant cultural impact, and the law is not insulated entirely from the social and cultural spheres. Unprecedented numbers of people read Dickens's books, which were published at a time where the steam powered printing press had made written material far more accessible than ever before. The serialisation of the novel meant even some working class people could afford to access copies. *Bleak House* became Dickens's most commercially successful novel to date, with sales reaching 35,000 copies per monthly instalment.⁸³

This large cultural presence suggests that the novel must have been partly successful at least in its goals of exposing the problems of Chancery and of advocating for equity at the individual level. Good fictional literature has the ability to lastingly affect its readership – and it is on this micro, individual level that the novel was able to propagate its alternative equitable ideal.

⁸³ Jacob Korg "Introduction" in *20th Century Interpretations of Bleak House* (Prentice-Hall Inc, Englewood Cliffs, 1968) at 1.

It could be argued that this is mere moral reform – that *Bleak House* was only successful and that the novel as a medium can only ever be successful – at the level of individual morality and not the law. But the legal community is just that, a community of individuals. Dickens has long been read and discussed closely by members of the legal profession, and there is reason to believe that in the case of *Bleak House* this started happening early on. The novel’s success in infiltrating the legal and political communities and affecting attitudes therein is perhaps best represented in the opposition it faced from one of Dickens’s fiercest detractors. The jurist, politician, and utilitarian legal reformer James Fitzjames Stephens staunchly opposed Dickens in the public sphere throughout much of his career. On *Bleak House* he bemoaned the “very pernicious political and social influence” which Dickens was able to command by his representations of government and legal institutions.⁸⁴ The blatantly moralistic agenda Dickens shows for the law in *Bleak House* and the satirical style he used to further it were perceived as threatening to the agendas of reformers such as Stephens.

Not all of the response was hostile, however. Sir Gerald Hurst KC said of *Bleak House* that it:⁸⁵

[C]ontributed 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 amongst those classical works of fiction... which have helped practically to make a better England.

Dolin writes that *Bleak House* became a reference point not only for discussions about the reform of chancery, but about legal reform more generally, and was for example used in a pamphlet advocating for reform of the law relating to women’s issues.⁸⁶

⁸⁴ Boyer, above n 25, at 605.

⁸⁵ In Dolin, above n 44, at 78.

⁸⁶ In Dolin, above n 69, at 16.

V. Conclusion

When viewed in its legal-historical context, *Bleak House* is clearly capable of bearing the reformist meaning which has here been attached to it. Its handling of Chancery contains the two key elements that make up a law reform narrative: a representation of things as they are, and an imagining of things as they could be. Dickens fully employs his prerogatives as an artist in doing the first, offering a clearly fictionalised and ‘mythologised’ version of the institution of Chancery in order to develop his critique. More than just an institution with problems, Chancery is presented as a corrupting force – both morally bankrupt and morally bankrupting, and as such is shown to be in need of far more than just the procedural tinkering which many of the reforms to the court had hitherto focused on.

In the second Dickens clearly also uses the techniques available to him as a writer, offering Esther as a character which embodies a traditional ideal of equity which Chancery needed to emulate in order to be deeply reformed. More importantly, though, the novel’s reformist solution operates at the level of the individual – inviting its readers to participate in the reform by being themselves reformed. The novel extracts the problems of Chancery out from behind their institutional screen and shows them to be deeply human problems, part of the greater human condition that is the artistic field’s purview. This humanising of the problem and solution too countered the spirit of reform, going against the optimism of the utilitarian faith in rational, legislation-based reform solutions.

It is herein that analysis of *Bleak House* as a law reform narrative reveals the unique contribution that fictional literature can make to law reform issues. Although quantifying the impact of literature on the legal issues they address is next to impossible, the capacity of literature to impact on its individual consumers is unmistakable. In literature abstract and academic legal issues can be humanised and made real to wider audience. Imaginative solutions to legal problems can be mooted unrestrained and, as in this case, implemented through their impact on readers.

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