

1994

Law, Literature and Morality in the Novels of Charles Dickens

Larry M. Wertheim

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

Recommended Citation

Wertheim, Larry M. (1994) "Law, Literature and Morality in the Novels of Charles Dickens," *William Mitchell Law Review*: Vol. 20: Iss. 1, Article 3.

Available at: <http://open.mitchellhamline.edu/wmlr/vol20/iss1/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

LAW, LITERATURE AND MORALITY IN THE NOVELS OF CHARLES DICKENS

LARRY M. WERTHEIM†

“In Hell there will be nothing but law, and due process will be meticulously observed.”¹

I. INTRODUCTION	112
A. <i>Law and Morality</i>	112
B. <i>Law and Literature</i>	114
II. SOME PRELIMINARY OBSERVATIONS ON THE LAW IN THE NOVELS OF CHARLES DICKENS	115
III. LAW IN LITERATURE: THE DICKENS NOVELS	117
A. <i>The Pickwick Papers</i>	118
B. <i>David Copperfield</i>	122
C. <i>Bleak House</i>	125
D. <i>A Tale of Two Cities</i>	134
E. <i>Great Expectations</i>	136
IV. LAW AS LITERATURE: STANLEY FISH AND THE PICKWICK PAPERS	141
A. <i>Stanley Fish</i>	141
B. <i>The Pickwick Papers</i>	143
V. THE JURISPRUDENCE OF DICKENS’S NOVELS	150
VI. CONCLUSION	152

† Member, Holmes & Graven, Chartered, Minneapolis, Minnesota; Adjunct Professor of Law, William Mitchell College of Law, Saint Paul, Minnesota; Adjunct Professor of Law, Hamline University College of Law, Saint Paul, Minnesota. A.B. 1971, University of California, Berkeley; M.A. 1973, University of Wisconsin; J.D. 1976, University of Minnesota. I wish to thank Bonnie Wilkins for her insightful comments, many of which have been incorporated into this article.

[*Note.* Charles Dickens’s novels have been reproduced by various publishers. As a courtesy to the reader, we have included chapter numbers, in addition to page numbers, in citations.]

1. GRANT GILMORE, *THE AGES OF AMERICAN LAW* 111 (1977).

I. INTRODUCTION

A. *Law and Morality*

Lawyers and the profession they practice are held in extremely low esteem by the general public.² However, most participants in the legal system tend to regard their own lawyers with much higher respect.³ This discrepancy may largely be a function of the difference between the theoretical view of how society should function (“There are too many laws (or lawyers)”) and the more pragmatic view that legal service recipients hold of their ability to take advantage of the legal system (“He may be a shyster, but he is my shyster”). Nevertheless, low regard for lawyers and the law stems, in part, from the fact that society, unlike specific consumers of the law, places unrealistic expectations on lawyers and the law. Specifically, society has come to replace the concept of morality with the concept of legality. As a result, society depends on lawyers to achieve morality, something that Anglo-American law was never intended—and is ill-equipped—to do.

This article will not address the extent to which law is or should be based in morality. Rather, through analysis of the novels of Charles Dickens, this article explores the inadequacy of law as a means to achieve moral ends. One commentator recently explored the law’s capacity to effectuate social change, referring to the effort as a “hollow hope.”⁴ In particular, he suggested that law and lawsuits are not the proper tools to

2. See, e.g., Randall Samborn, *Anti-Lawyer Attitude Up*, NAT’L L.J., August 9, 1993, at 1. A national survey conducted in July 1993 indicates that just two percent of respondents, down from five percent in 1986, said they had the most respect for lawyers among ten identified professions. *Id.* One commentator attributes growing animosity toward lawyers to the burgeoning use of the legal system and the role of “lawyers as agents of equalizing change in society.” *Id.*

In 1973, the percentage of Americans with “great confidence” in law firms was 24 percent, compared with 18 percent in 1978 and 14 percent in 1988. Gary A. Hengstler, *The Public Perception of Lawyers: ABA Poll*, A.B.A. J., Sept. 1993, at 64. In 1993, only 8 percent of Americans had a great deal of confidence in law firms. *Id.*

3. According to a National Law Journal/West Publishing Co. poll, more people are using lawyers and they generally are satisfied with the legal services they receive. Samborn, *supra* note 2, at 1. Of those who have retained a lawyer during the past ten years, nearly two-thirds were satisfied with that lawyer’s performance, and 43 percent said they were very satisfied. Hengstler, *supra* note 2, at 61.

4. GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991).

achieve desired social ends.⁵ This article examines a similar “hollow hope” that laws and lawsuits can achieve morality and make moral actors of those upon whom the law acts. This “hollow hope” of morality is based on an unwise premise: that by merely following the dictates of the law one can achieve all the morality and moral behavior that one needs or for which one can ask. On the contrary, law—a system of coercive and socially-imposed rules⁶—and morality—largely a personal value system with coercive power⁷—are separate and distinct. This article cautions that we confuse the two at our peril. Dickens, an early commentator on lawyers and the law, clearly perceived and articulated the difference between law and morality. One may recover a valuable perspective on that difference through an examination of some of his novels.⁸

5. Rosenberg cogently argues that, contrary to the views of many lawyers and others, courts and litigation are not effective in producing significant social change. Based on empirical studies related to recent changes in civil rights, women's rights, and other areas, Rosenberg attributes the courts' lack of social impact on their dependence on political support to produce significant reform and their lack of implementation powers. *Id.* at 336-43.

6. The theory that law is a coercive system is based on 19th-century philosopher John Austin's model of law as a system of commands. W.L. MORRISON, JOHN AUSTIN 35 (1982). See also J. Peter Mulhern, *In Defense of the Political Question Doctrine*, 137 U. PA. L. REV. 97, 154 n.208 (1988-89) (discussing Austin's theory that the essence of law is coercion). While its definitions vary greatly, law is generally agreed to contain coercive elements. Christine A. Desan, *Expanding the Legal Vocabulary: The Challenge Posed by the Deconstruction and Defense of Law*, 95 YALE L.J. 969, 982 n.60 (1986) (discussing also the proposition that law must be understood as “a continuing articulation of social order”).

Law as a force, free from moral elements results in the concept that law is a “coercive force.” A.N. Yiannopoulos, *Two Critical Years in the Life of the Louisiana Civil Code: 1870 and 1913*, 52 LA. L. REV. 5, 21 n.86 (1992-93). One commentator noted that the “[c]ommon figure of the lawyer as a ‘hired gun’ attributed to the law a coerciveness that seems incompatible with its having any necessarily social or moral value.” Steven J. Burton, *Law as Practical Reason*, 63 CAL. L. REV. 747, 756-62 (1989).

7. Morality “substitutes for the official source and the organized sanction [of the law] as an appeal to the conscience to consider the impact of actions on others.” PHILIP SOPER, A THEORY OF LAW, 4 (1982). See BLACK'S LAW DICTIONARY 1008 (6th ed. 1990) (defining the term “moral” as “[c]ognizable or enforceable only by the conscience or by the principles of right conduct, as distinguished from positive law”); Desan, *supra* note 6, at 982 n.60 (“[s]ocial coordination, minus the coercive element, seems a workable description of morality or ethics”). See also Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 459-64 (1896-97) (discussing the differences between law and morality and cautioning confusion of the two principles).

8. Although beyond the scope of this article, the thesis proposed here is consistent with that expressed by others who have examined the way in which law has supplanted religion as the means by which we express and explore our most basic norms. One author has recently noted how legal culture and legal reasoning treat religion as unimportant and trivial. STEPHEN L. CARTER, CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION (1993). Others have commented on

B. *Law and Literature*

This article is a contribution to the recently rediscovered realm of law and literature, which addresses two primary approaches. The first, literature as law or law in literature, examines fictional texts that focus on law or lawyers. The second, law as literature, centers on the use of literary theory or literary technique to analyze legal texts.⁹

Most writings in law and literature tend to either use works of fiction on legal matters to address legal themes, or use legal texts and explore those texts using literary theories and techniques.¹⁰ While some essays on law and literature address both approaches, law in literature *and* law as literature,¹¹ typically a specific work under consideration is treated either as a work of fiction to be analyzed for its legal themes or as a legal text to be analyzed with literary techniques. Rarely, if ever, is a specific work examined from both the law in literature and the law as literature perspectives. This article intends to combine the two approaches of law in literature and law as literature by analyzing certain novels of Charles Dickens. In addition to exploring the legal themes incorporated in Dickens's novels, this article applies current literary theory to examine legal texts within one of the novels.

This article proposes that the law, lawyers, and legal texts are not particularly effective devices to achieve morality or moral results. Part II provides an overview of Charles Dickens's perspectives on the law of 19th century England. Part III presents a survey of the more "legal" novels of Dickens and examines how they demonstrate that law and lawyers not only fail to advance morality and justice, but, in fact, significantly undermine and obstruct moral decency. Part IV applies some of the literary theo-

the way in which the United States Constitution has, in effect, become scripture and, in some senses, our American religion. See Thomas C. Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1 (1984).

9. For general overviews of law and literature studies, see RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATIONSHIP* (1988); RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992). For an overview of the use of literary theory as applied to legal texts, see SANFORD LEVINSON & STEVEN MAILLOUX, *INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER* (1988). For a short introduction to the field of law and literature, see LARRY M. WERTHEIM, *Law and Literature: Literature as Law/Law as Literature*, BENCH & BAR OF MINNESOTA, Oct. 1992, at 16-20.

10. See Wertheim, *supra* note 9, at 18-19.

11. See POSNER, *supra* note 9; WEISBERG, *supra* note 9.

ries of Stanley Fish¹² to two legal texts in Dickens's first novel, *The Pickwick Papers*, demonstrating the indeterminacy of texts, legal and otherwise. While Fish himself does not expressly consider questions of morality, this section exposes the flimsy reed that supports morality when morality is based merely upon legal texts. Part V explores the "jurisprudence" of Dickens. Finally, the article concludes that neither the law (nor, for that matter, Dickens's novels) are the final sources of justice and moral behavior.

II. SOME PRELIMINARY OBSERVATIONS ON THE LAW IN THE NOVELS OF CHARLES DICKENS

To a greater extent than virtually any other novelist in the English-speaking language, Charles Dickens drew upon lawyers and the law as characters in and substance for his novels.¹³ From *The Pickwick Papers* to *The Mystery of Edwin Drood*, Dickens richly populated his novels with lawyers, trials, and the law. Dickens, although not formally trained as a lawyer, worked extensively as a law clerk, a court reporter, and a reporter for Parliament.¹⁴ At one time, he seriously considered studying for the bar.¹⁵

This familiarity with lawyers and their milieu permitted Dickens to depict lawyers and legal matters with deftness and assurance. However, his lack of legal training and his interest in lawyers and the law for the limited purposes of atmosphere and dramatic potential resulted in lackadaisical attention to technical rules of the law.¹⁶ In fact, Dickens only took interest in legal

12. Stanley Fish is Professor of English and Law at Duke University. Stanley Fish, *How Come You Do Like You Do? A Response to Dennis Patterson*, 72 TEX. L. REV. 57 (1993).

13. Richard Posner has briefly addressed the legal implications of some of the novels of Charles Dickens. See POSNER, *supra* note 9, at 128-29. Richard Weisberg, many of whose insights are very helpful, has addressed some of Dickens's novels more extensively. See WEISBERG, *supra* note 9, at 58-73. For other general discussions of the legal significance of the novels of Charles Dickens, see WILLIAM S. HOLDSWORTH, *CHARLES DICKENS AS A LEGAL HISTORIAN* (1972); Robert S. Glaser & Stephen H. Roth, *In the Matter of Heep, Jiggers, Tulkingtonhorn & Fogg: An Unjarmdyced View of the Dickensian Bar*, 29 RUTGERS L. REV. 278 (1976); Allen Boyer, *The Antiquarian and the Utilitarian: Charles Dickens vs. James Fitzjames Stephens*, 56 TENN. L. REV. 595 (1989); William W. Bleifuss, *Charles Dickens and the Law* (1950) (unpublished Ph.D. dissertation, University of Minnesota (Minneapolis)).

14. Boyer, *supra* note 13, at 607-08; Glaser & Roth, *supra* note 13, at 279.

15. Glaser & Roth, *supra* note 13, at 279.

16. HOLDSWORTH, *supra* note 13, at 6; Boyer, *supra* note 13, at 613. See *infra* notes 35, 38, 40, 45, and 72 and accompanying text for examples of Dickens's inattention to technical rules of law.

technicalities when he could point to a particularly curious rule and use it for dramatic effect.¹⁷ For example, in *Oliver Twist*, Mr. Bumble is advised of the common law presumption that a wife who commits a crime in the presence of her husband is presumed to have done it under his coercion:

“If the law supposes that,” said Mr. Bumble, squeezing his hat emphatically in both hands, “the law is a ass—a idiot. If that’s the eye of the law, the law is a bachelor; and the worst I wish the law is, that his eye may be opened by experience—by experience.”¹⁸

In contrast to his apparent interest in the effect of law and lawyers on their clients and society in general, Dickens paid scant attention to the professional matters that concern lawyers. This lack of interest in the *work* of his characters, however, was not limited to lawyers. As George Orwell noted,

As soon as [Dickens] has to deal with trade, finance, industry or politics he takes refuge in vagueness, or in satire. This is the case even with legal processes, about which actually he must have known a good deal. Compare any lawsuit in Dickens with the lawsuit in *Orley Farm*, for instance.¹⁹

As this article will establish, Dickens exhibited a rather studied disregard for legal technicalities. This lack of attention to detail may be attributed to the furious rate at which Dickens produced his voluminous novels, which often were written—sometimes simultaneously—for weekly or monthly serialization.²⁰ Moreover, Dickens often edited his own monthly efforts at journalism.²¹

Even a cursory examination of his novels indicates that Dickens generally held a very negative view of law and lawyers. This should not, however, lead one to the conclusion that he regarded law and lawyers as a unique blight upon mankind. Rather, Dickens considered virtually all societal institutions as blighted. Contrary to his current reputation as a 19th century

17. HOLDSWORTH, *supra* note 13, at 6.

18. CHARLES DICKENS, *OLIVER TWIST* (Kathleen Tillotson ed., Penguin Books 1966) (1837-39), ch. 51 at 461-62.

19. GEORGE ORWELL, *A COLLECTION OF ESSAYS* 82 (1946). *Orley Farm* is a novel by Dickens’s contemporary, Anthony Trollope. ANTHONY TROLLOPE, *ORLEY FARM* (David Skilton ed., 1985) (1860-61). Trollope’s novel involves a perjury trial arising out of a prior lawsuit dealing with a disputed will codicil. In this novel, Trollope, who was not a lawyer, addresses in great detail various legal matter, including the very wisdom of the adversarial principle. *Id.* at x-xi.

20. *See generally*, NORMAN PAGE, *A DICKENS COMPANION* (1984).

21. *Id.* at 313.

reformer and despite his criticisms of numerous English institutions—the law, schools, Parliament, and the treatment of the poor, among them—Dickens was not as interested in reforming these institutions as he was in castigating them. As literary critic Edmund Wilson pointed out in his famous essay, *Dickens: The Two Scrooges*, “Dickens is almost invariably *against* institutions: . . . whenever he comes to deal with Parliament and its laws, the courts and the public officials . . . he makes them either ridiculous or cruel, or both at the same time.”²²

Dickens’s lack of interest in the reformation of legal as well as other institutions was similarly observed by George Orwell in his penetrating essay on Charles Dickens:

The truth is that Dickens’s criticism of society is almost exclusively moral. Hence the utter lack of any constructive suggestion anywhere in his work. He attacks the law [and other institutions] . . . without ever clearly suggesting what he would put in their places. . . . There is no clear sign that he wants the existing order to be overthrown, or that he believes it would make very much difference if it *were* overthrown. For in reality his target is not so much society as ‘human nature.’ . . . His whole ‘message’ is one that at first glance looks like an enormous platitude: If men would behave decently the world would be decent.²³

Thus, Dickens’s criticisms of law and lawyers should not be construed to define lawyers, as contrasted with other social actors, as particularly evil. Nor do his criticisms mean that the legal system, as contrasted with other social systems, particularly corrupts those who come into contact with it. Rather, the message is that the law and lawyers, like other institutions and their keepers, do not and cannot advance morality and human decency.

III. LAW IN LITERATURE: THE DICKENS NOVELS

This article will address Dickens’s treatment of law and lawyers in five of his novels: *The Pickwick Papers*, *David Copperfield*, *Bleak House*, *A Tale of Two Cities*, and *Great Expectations*. These are not the only Dickens novels that deal with law or lawyers nor, with the exception of *The Pickwick Papers* and *Bleak House*, are they centrally involved with law or lawyers. However, in each of these novels, either a lawsuit plays a central role or a lawyer or law

22. EDMUND WILSON, *THE WOUND AND THE BOW* 28 (1941) (emphasis in original).

23. ORWELL, *supra* note 19, at 51-52.

clerk is a principal character. Although this article examines the significant legal aspects of these novels, no attempt is made to catalog all legal matters or references to the law or lawyers in each of these novels.

A. *The Pickwick Papers*

The Pickwick Papers, originally published as *The Posthumous Papers of The Pickwick Club*,²⁴ was the first novel written by the then 24-year-old Charles Dickens. The novel is largely concerned with the progress of an action for breach of promise of marriage. Through his depiction of the lawsuit, Dickens highlights the venality of lawyers and the obstacles that the law imposes on the efforts of the novel's protagonist to act in a morally decent fashion.

The Pickwick Papers depicts the picaresque adventures of one Mr. Samuel Pickwick and his comrades in the Pickwick Club.²⁵ Although the novel contains numerous subplots and other episodes, the main story involves an apparent misunderstanding between Mr. Pickwick and his widowed landlady, Mrs. Bardell. Mrs. Bardell brings an action against Mr. Pickwick for breach of promise of marriage, seeking damages in the amount of fifteen hundred pounds as a result of this misunderstanding.²⁶

The lawsuit, *Bardell v. Pickwick*, is commenced by the issuance of a writ of attachment against Pickwick, as was customary under the procedure at the time.²⁷ Before consulting with his own counsel, Mr. Perker, Pickwick proceeds to the law offices of Dodson and Fogg, counsel for Mrs. Bardell. Dodson is "a plump, portly, stern-looking man, with a loud voice" and Fogg is a "pimple-faced, vegetable-diet sort of man, in a black coat . . . a kind of being who seemed to be an essential part of the desk at which he was writing, and to have as much thought or sentiment."²⁸

24. CHARLES DICKENS, *THE POSTHUMOUS PAPERS OF THE PICKWICK CLUB* (Robert L. Patten ed., Penguin Books 1966) (1836-37) [hereinafter DICKENS, *PICKWICK PAPERS*].

25. In the first chapter of the novel, Dickens refers to a "Pickwick Club" with officers and detailed minutes that was founded by Samuel Pickwick. *Id.* ch. 1. Dickens soon drops the pretense of a formal club and concentrates exclusively on the adventures of Pickwick and his friends.

26. The particulars of the conversation between Mr. Pickwick and Mrs. Bardell that led to the lawsuit will be discussed in detail *infra* Part IV. B.

27. DICKENS, *PICKWICK PAPERS*, *supra* note 24, ch. 18, at 325. A writ of attachment is a civil document used to enforce a court order or judgment. BLACK'S LAW DICTIONARY 1443 (5th ed. 1979).

28. *Id.* ch. 20, at 348.

At these offices, Pickwick learns that earlier that same day Fogg refused to accept a tender by a certain Ramsey, a debtor whom Fogg was suing, on the grounds that the tender did not include certain additional costs required by a declaration purportedly filed by Fogg. As soon as Ramsey leaves Fogg's office in disgust, Fogg has his clerk quickly go to court to file the not-yet-filed declaration, explaining that they will recover the additional costs and that they may as well get what they can out of Ramsey: "[I]t's a Christian act to do it . . . for with his large family and small income, he'll be all the better for a good lesson against getting into debt."²⁹ Pickwick and the reader infer from the Ramsey incident that these lawyers are totally lacking in any sense of ethics and, in fact, are not really human in any recognizable way.

When Dodson and Fogg meet with Pickwick, they advise the incredulous Pickwick that they are in fact seeking to recover fifteen hundred pounds on behalf of their client and proceed to serve Pickwick with the writ. Pickwick is outraged and calls their actions "disgraceful and rascally proceedings."³⁰ Rather than being offended by such insults, Dodson and Fogg ensure that their law clerks have witnessed Pickwick's potentially-libelous remarks. They go on to suggest that Pickwick might like to call them "swindlers" or "thieves" or might wish to assault one of them.³¹ Again, Dodson and Fogg are creatures who would suffer emotional and even physical abuse for the apparent purpose of fomenting additional causes of action of their own against Pickwick. Pickwick avoids further litigation by the vigilance of his wise valet, Sam Weller, who convinces his master to depart.

Pickwick subsequently is brought by his own lawyer, Mr. Perker, to meet with his litigator, Serjeant Snubbin.³² Serjeant Snubbin responds with indifference to Pickwick and his case, despite Pickwick's principled assertion that he prefers not to be represented by Serjeant Snubbin unless the Serjeant actually believes in Pickwick's innocence.³³

29. *Id.* ch. 20, at 345.

30. *Id.* ch. 20, at 350.

31. *Id.*

32. At the time, Serjeants had the highest rank in the legal profession and had a monopoly as pleader at the Common Pleas Bar. Therefore, Pickwick (and Mrs. Bardell) had to retain this particular rank of lawyer to represent them. *HOLDSWORTH, supra* note 13, at 66-67.

33. *DICKENS, PICKWICK PAPERS, supra* note 24, ch. 31, at 518.

With more than a touch of irony, the trial gets underway on February 14, St. Valentine's Day. At the outset, Mr. Perker explains to Pickwick that the size of the breakfast eaten by the foreman of the jury is "highly important," in that a hungry juror always finds for the plaintiff.³⁴ Dickens, consistent with a theme that reprises in many of his novels, advises the reader that justice will have very little to do with the outcome of the trial. The trial itself proceeds in a very stylized manner and Dickens, through artful use of irony, satire, and hyperbole, demonstrates that the trial provides little insight into the true nature of the dispute.³⁵ Moreover, the testimony elicited and the manner in which the questions are asked seems calculated to provide as little information as possible that would be helpful to a trier of fact.

After a short deliberation, the jury returns with a verdict for Mrs. Bardell in the amount of seven hundred fifty pounds, plus probable costs.³⁶ Pickwick, and the reader, believe that a total miscarriage of justice has occurred, and Pickwick announces to Dodson and Fogg, "not one farthing of costs or damages do you ever get from me, if I spend the rest of my existence in a debtor's prison."³⁷ Mr. Pickwick is a man of great moral principle, and, despite his significant personal wealth, he refuses to pay the judgment. To pay would make him a party to an immoral consequence. As a result, Dodson and Fogg have Pickwick sent to debtor's prison.³⁸

After Dodson and Fogg discover that imprisonment has not had its intended effect on so principled a man as Mr. Pickwick, they employ a different tactic. Mrs. Bardell had given Dodson

34. *Id.* ch. 34, at 552.

35. Neither Mrs. Bardell nor Mr. Pickwick, the parties to the litigation and the two individuals with the most relevant testimony to provide, testify. Dickens, however, takes no note of that fact nor the reason for their failure to testify. In fact, under the rules of that time, any witness with an interest in the outcome of the litigation was barred from testifying. HOLDSWORTH, *supra* note 13, at 132-35. It may be that, given the very existence of such a rule, the lack of testimony from the parties was not noteworthy. However, as one not normally reluctant to satirize any aspect of the law, Dickens's silence on this matter is curious.

36. DICKENS, PICKWICK PAPERS, *supra* note 24, ch. 34, at 576.

37. *Id.* ch. 34, at 576.

38. Dickens, with his customary inattention to the technical rules of law, does not explain why Mrs. Bardell was unable to execute upon Samuel Pickwick's considerable assets nor why Pickwick, an otherwise prosperous merchant, was imprisoned for debt. In fact, Pickwick apparently held his money in the form of securities, which, at the time, unlike real estate, could not be executed upon. HOLDSWORTH, *supra* note 13, at 140-43; POSNER, *supra* note 9, at 129; William Renwick Riddell, *Why Pickwick Was Gaoled*, 17 ILL. L. REV. 14, 20 (1922).

and Fogg a *cognovit*, or cognovit note,³⁹ for their costs that she is unable to pay.⁴⁰ Applying to their own client the same principles that they employ against opposing parties, Dodson and Fogg have Mrs. Bardell thrown in the same debtor's prison as Pickwick.⁴¹

Interestingly, Pickwick's attorney, Mr. Perker, is not shocked at the perfidy of his fellow lawyers. On the contrary, Perker, who had earlier expressed admiration for Dodson and Fogg's unprincipled trial tactics,⁴² now regards them as "the cleverest scamps I ever had anything to do with."⁴³ He and his law clerk reflect on Dodson's and Fogg's tactics as "one of the most beautiful and ingenious discoveries that the intellect of man had ever made."⁴⁴ Thus, even though Perker does not engage in conduct as immoral as Dodson's and Fogg's, it is not for lack of apparent desire.

Pickwick, a moral man unlike any of the attorneys, is now faced with a moral dilemma. Dodson and Fogg are willing to release the imprisoned Mrs. Bardell, provide a statement absolving Pickwick, and admit that they had fomented the litigation if Pickwick will pay their costs of one hundred fifty pounds.⁴⁵ Pickwick is forced to compromise his principles and thus agrees to their terms. When he pays Dodson and Fogg, Pickwick again tells them that they are "a well-matched pair of mean, rascally, pettifogging robbers."⁴⁶ Dodson and Fogg again attempt to in-

39. DICKENS, PICKWICK PAPERS, *supra* note 24, ch. 46, at 746. A *cognovit* is a legal document similar to a confession which, because it acknowledges costs, enabled Dodson and Fogg to proceed summarily without having to sue Mrs. Bardell. *Id.*

40. *Id.* ch. 46, at 746. Again, Dickens fails to explain how lawyers retained on contingency can, without first recovering from the defendant, proceed against the plaintiff for what appears to be largely their own fees.

41. *Id.* ch. 46, at 746-47.

42. *Id.* ch. 34, at 556. Perker whispered to Mr. Pickwick, "Capital fellows those Dodson and Fogg; excellent ideas of effect, my dear sir. Excellent." *Id.*

43. *Id.* ch. 47, at 750.

44. DICKENS, PICKWICK PAPERS, *supra* note 24, ch. 47, at 751.

45. *Id.* ch. 47, at 753-54. In his customary disregard for the particulars of the law, Dickens suggests that Dodson and Fogg conditioned the release of Mrs. Bardell on the payment of the fees of both counsel for the plaintiff, themselves, *and* counsel for the defendant, Mr. Perker. *Id.* at 753. This is an apparent error by Dickens because the *cognovit* would only cover the costs of Mrs. Bardell's own counsel. Thus, Dodson and Fogg would have no interest in assuring that Pickwick paid his counsel. HOLDSWORTH, *supra* note 13, at 149; RIDDELL, *supra* note 38, at 24 n.24. In fact, later in the novel, Pickwick makes separate arrangements for payment of Perker's own fees. DICKENS, PICKWICK PAPERS, *supra* note 24, ch. 53, at 848.

46. *Id.* ch. 53, at 847.

duce Pickwick to assault them and threaten additional legal action.⁴⁷ Despite Perker's earlier prediction that their foul ways will precipitate their demise,⁴⁸ by the novel's end Dodson and Fogg continue to thrive in a very successful practice.⁴⁹

Throughout *The Pickwick Papers*, Dickens characterizes all lawyers as venal, to one degree or another, and portrays a legal process that bears no relationship to either justice or morality. In fact, the law and lawyers of Dickens's world are not simply amoral, but rather pose positive impediments to true moral action. Although the law, as Dickens interprets it, fails to achieve justice, it is the nonlawyer Pickwick who ultimately achieves a just end by compromising his principles to release Mrs. Bardell from prison. The unselfishness of this act is heightened by the fact that Mrs. Bardell, who admitted that her lawsuit was baseless, contributed to Pickwick's unnecessary suffering.

By Dickens's standards, Pickwick's chivalric moral code is far superior to the illusory moral code of either the lawyers who inhabit his novels or the law itself. Thus, Dickens advises that social justice is best served when one remains true to one's moral self and, like Mr. Pickwick, refuses to acquiesce to the demands of the legal system.

B. *David Copperfield*

The Personal History of David Copperfield,⁵⁰ written in 1849-50, is the most autobiographical of Dickens's novels. Although it does not as extensively address lawsuits or legal issues as some of his other works, the novel does contain well-drawn portraits of lawyers. Like *The Pickwick Papers*, the lawyers in *David Copperfield* are corrupt or mercenary; even those who demonstrate moral decency at the outset come to embody some of these evils by the end of the novel.

Like the young Charles Dickens who worked as a court reporter at the Doctors' Commons,⁵¹ David Copperfield is articulated

47. *Id.* ch. 53, at 847-48.

48. *Id.* ch. 47, at 755.

49. DICKENS, *PICKWICK PAPERS*, *supra* note 24, ch. 57, at 897.

50. CHARLES DICKENS, *THE PERSONAL HISTORY OF DAVID COPPERFIELD* (Trevor Blount ed., Penguin Books 1966) (1849-50) [hereinafter DICKENS, *DAVID COPPERFIELD*].

51. The Doctors' Commons, established in 1567, had ecclesiastical and admiralty jurisdiction. HOLDSWORTH, *supra* note 13, at 30. See generally, Daniel R. Coquillette, *Legal Ideology and Incorporation IV: The Nature of Civilian Influence on Modern Anglo-Ameri-*

to the law firm of Spenlow and Jorkins to become an attorney or "proctor." As David's friend explains:

[Doctors' Commons is] a little out-of-the-way place, where they administer what is called ecclesiastical law, and play all kinds of tricks with obsolete old monsters of acts of Parliament, which three-fourths of the world know nothing about, and the other fourth supposes to have been dug up, in a fossil state, in the days of the Edwards.⁵²

David's employer, Francis Spenlow, dressed like all Dickens's lawyers in black and stiff like a puppet, relies on his partner, the allegedly mercenary Jorkins, as his excuse to refuse any exercise in generosity.⁵³ David later learns that, in fact, Jorkins is a mild man whose role in the business "was to keep himself in the background, and be constantly exhibited by name as the most obdurate and ruthless of men. . . . The heart and hand of the good angel Spenlow would have been always open, but for the restraining demon Jorkins."⁵⁴

Spenlow's smugness and his opportunistic view of Doctors' Commons is consistent with his refusal to take responsibility for his own lack of generosity. Describing his profession as "the genteel profession in the world,"⁵⁵ Spenlow advises David that the best sort of professional business is a case of a disputed will in which a significant estate is at stake:

In such a case, he said, not only were there very pretty pickings, in the way of arguments at every stage of the proceedings, and mountains upon mountains of evidence on interrogatory and counter-interrogatory . . . but, the costs being pretty sure to come out of the estate at last, both sides went at it in a lively and spirited manner, and expense was no consideration.⁵⁶

Spenlow boasts that the Doctors' Commons is "the complete ideal of smugness,"⁵⁷ which allows lawyers to engage in protracted litigation. He concludes that "a man might lay his hand upon his heart, and say this to the whole world, 'Touch the Com-

can Commercial Law, 67 B.U. L. REV. 877 (1987). DICKENS, DAVID COPPERFIELD, *supra* note 50, ch. 23 n.1.

52. DICKENS, DAVID COPPERFIELD, *supra* note 50, ch. 23, at 403.

53. *Id.* ch. 23, at 411.

54. *Id.* ch. 23, at 410-12.

55. *Id.* ch. 26, at 447.

56. *Id.*

57. DICKENS, DAVID COPPERFIELD, *supra* note 50, ch. 26, at 448.

mons, and down comes the country!’”⁵⁸ Thus, Spenslow even resorts to patriotism to mask his motives and justify his own venality.

Like Dickens, David Copperfield leaves the legal profession to become an author and encounters an even more odious member of the profession—Uriah Heep. Heep is a red-haired, cadaverous-faced youth, with long, clammy, fish-like hands.⁵⁹ Prior to his becoming a lawyer, Heep worked as a law clerk for Mr. Wickfield whose daughter was David’s early love interest. Unlike the boastful Spenslow, Heep is constantly and irritatingly self-deprecating or, as he repeatedly says, very “umble.” Heep came from humble origins and studied hard to become a lawyer, but publicly disavows any implication that he seeks success as one. David soon realizes that Heep’s “umbleness” is merely the “de-testable cant of false humility.”⁶⁰

Behind his facade of humility, Heep, who has since become a lawyer, plots to usurp the weak Mr. Wickfield and take over his law practice by falsifying documents and embezzling funds. Heep hopes that his triumph over Mr. Wickfield will enable him to marry Mr. Wickfield’s daughter Agnes.

Heep engages one of the most famous Dickensian characters, Mr. Micawber,⁶¹ a close friend of David, to carry out his schemes. Micawber, although chronically insolvent, suffers from unfounded exuberance and optimism; he is always expecting something to turn up. But, once he becomes Heep’s law clerk, Micawber becomes secretive and conspiratorial. While due partly to the fact that Heep has used financial coercion to dominate Micawber, Dickens implies in no small way that this change in personality was the inevitable result of Micawber’s foray into the law. As Micawber tells David,

The discussion of some topics . . . is . . . incompatible with the functions now devolving on me. I would therefore take the liberty of suggesting that in our friendly intercourse . . . we draw a line. On one side of this line . . . is the whole range of the human intellect, with a trifling exception; on the other, is

58. *Id.* ch. 26, at 448.

59. *Id.* ch. 15, at 275.

60. *Id.* ch. 39, at 639.

61. The Micawber character is believed to be modelled on Dickens’s own father. PAGE, *supra* note 20, at 166. Micawber was convincingly portrayed by W.C. Fields in the 1930s film adaptation of the novel.

that exception; that is to say, the affairs of Messrs Wickfield and Heep, with all belonging and appertaining thereunto.⁶²

Thus, the law has the effect of twisting even good moral character and forcing those who toil therein to split their lives between the law on one hand and all other human development on the other.

Micawber ultimately exposes Heep's misconduct and denounces him as "the most consummate Villain that has ever existed . . ." and as "you HEEP of infamy."⁶³ Peace returns to the Wickfield household and the novel concludes with David marrying Agnes.

David Copperfield is less concerned with the actual practice of law than is *Pickwick*, but nonetheless involves lawyers and law clerks whose characters indirectly comment on Dickens's view of the nature of the law. Spenlow, a lawyer in the usual Dickensian mold, specializes in greed and is proud of it. Uriah Heep is perhaps more detestable because his villainy is concealed by a false humility that masquerades as typical lawyer-like modesty. But it is Micawber, one of Dickens's more likeable characters, who most poignantly illustrates the gap between law and morality when he develops a split personality upon entering the legal profession.

In both *The Pickwick Papers* and *David Copperfield* the law according to Dickens allows individuals with bad moral characters to exercise their evil with impunity. Through Micawber in *Copperfield*, however, Dickens asserts the notion that the law not only forces its practitioners into a Procrustean bed of secrecy, but even causes those with moral decency to lead morally-circumscribed lives. Thus, Dickens tells us that one can be moral or one can be a lawyer, but one cannot be both at the same time.

C. *Bleak House*

Charles Dickens's *Bleak House*,⁶⁴ regarded by many as Dickens's greatest novel, is also Dickens's most legal novel. The novel portrays typical Dickensian lawyers and hangers-on who are either mercenary or positively evil. In addition, the novel depicts the devastating effect of a lawsuit on the litigants. Those

62. DICKENS, *DAVID COPPERFIELD*, *supra* note 50, ch. 39, at 629.

63. *Id.* ch. 52, at 818-19.

64. CHARLES DICKENS, *BLEAK HOUSE* (Norman Page ed., Penguin Books 1971) (1853) [hereinafter DICKENS, *BLEAK HOUSE*].

who are virtuous are spared the vicissitudes of the litigation and survive largely intact, but those who are morally weak suffer, consumed in the end by the legal system.

A great part of the novel centers on the great Chancery⁶⁵ case of *Jarndyce v. Jarndyce* and the lawyers and litigants involved in that proceeding. Although the novel was written in the 1850s, like many of Dickens's novels it is set in an earlier time, in this case apparently the 1820s. This device allowed Dickens to depict abuses in the Chancery practice, many of which already had been the subject of public outcry and reform by the time the novel was published.⁶⁶

The first chapter of *Bleak House* opens with a lengthy description of the dense London fog which metaphorically envelopes Chancery. As noted literary critic Edmund Wilson remarked, "the fog stands for Chancery, and Chancery stands for the whole web of clotted antiquated institutions in which England stifles and decays."⁶⁷ In an allusion to Dante,⁶⁸ Dickens notes the warning often given to prospective Chancery suitors: "Suffer any wrong that can be done you, rather than come here!"⁶⁹

The case being heard is *Jarndyce v. Jarndyce*:

This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in *Jarndyce and Jarndyce*, without knowing how or why; whole families have inherited legendary hatreds with the suit. . . . [T]here are not three *Jarndyces* left upon the earth perhaps, since old Tom

65. Chancery was an English court that followed different principles than those governing courts of law and awarded equitable, rather than monetary, remedies. After the Judicature Acts, the Chancery courts were abolished. HOLDSWORTH, *supra* note 13, at 114-15, 143-48; POSNER, *supra* note 9, at 129-30.

66. HOLDSWORTH, *supra* note 13, at 81, 114-15; Boyer, *supra* note 13, at 596, 622-24. For example, the requirement of excessive and expensive copying of legal documents and the requirement that the Lord Chancellor personally review all cases were abolished prior to the publication of *Bleak House*. POSNER, *supra* note 9, at 130.

67. WILSON, *supra* note 22, at 37.

68. "All hope abandon, ye who enter here." DANTE ALIGHIERI, *THE DIVINE COMEDY*, Canto III, line 9 (1320).

69. DICKENS, *BLEAK HOUSE*, *supra* note 64, ch. 1, at 51.

Jarndyce in despair blew his brains out at a coffee-house in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the Court, perennially hopeless.⁷⁰

Although it has meant death to many, the case itself has become a joke to the lawyers. In one of his rare depictions of actual courtroom proceedings, Dickens depicts the presentation of the lawyer, Mr. Tangle, before the Lord High Chancellor:

“Mlud,” says Mr Tangle. Mr Tangle knows more of Jarndyce and Jarndyce than anybody. He is famous for it—supposed never to have read anything else since he left school.

“Have you nearly concluded your argument?”

“Mlud, no—variety of points—feel it my duty tsubmit—ludship,” is the reply that slides out of Mr Tangle.

“Several members of the bar are still to be heard, I believe?” says the Chancellor, with a slight smile.

Eighteen of Mr Tangle’s learned friends, each armed with a little summary of eighteen hundred sheets, bob up like eighteen hammers in a pianoforte, make eighteen bows, and drop into their eighteen places of obscurity.

“We will proceed with the hearing on Wednesday fortnight,” says the Chancellor. For the question at issue is only a question of costs, a mere bud on the forest tree of the parent suit, and really will come to a settlement one of these days.⁷¹

During the course of the novel and the maddeningly slow progress of *Jarndyce v. Jarndyce*, the reader is introduced to a few of the lawyers and suitors involved in the case. John Jarndyce, a middle-aged bachelor and hero of the novel, is a reluctant party to the litigation. He describes the lawsuit as follows:

“A certain Jarndyce, in an evil hour, made a great fortune, and made a great Will. In the question how the trusts under that Will are to be administered, the fortune left by the Will is squandered away; the legatees under the Will are reduced to such a miserable condition that they would be sufficiently punished, if they had committed an enormous crime in having money left them; and the Will itself is made a dead let-

70. *Id.* ch. 1, at 52. In the early days of the Clinton Administration, reporter Maureen Dowd cited this passage suggesting that the problems surrounding attorney general nominee Zoe Baird were largely the result of the law’s tendency to feed on itself. Maureen Dowd, *A Lawyerly Search for a Good Lawyer*, N.Y. TIMES, Feb. 13, 1993, at 8. Baird withdrew her nomination when it was alleged that she failed to pay social security taxes for her domestic staff. *Id.*

71. DICKENS, *BLEAK HOUSE*, *supra* note 64, ch. 1, at 53-54.

ter. . . . Equity sends questions to Law, Law sends questions back to Equity; . . . When my great uncle poor Tom Jarndyce, began to think of it, it was the beginning of the end!"⁷²

In contrast, John Jarndyce's lawyer, Mr. Kenge,⁷³ takes pride in *Jarndyce* as "one of the greatest Chancery suits known . . . 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?"⁷⁴

In connection with *Jarndyce*, Chancery appoints John Jarndyce as the guardian of orphans Richard Carstone and Ada Clare. Richard, like John Jarndyce, is a potential beneficiary in the litigation. Richard Carstone ignores John Jarndyce's warnings about putting too much faith in the Chancery or hope in *Jarndyce*. Consequently, Richard is unable to settle on any profession. His indecisiveness and inability to take responsibility for choices resembles Chancery itself. Under the corrupting influence of Chancery, Richard gradually develops a groundless mistrust of John Jarndyce.

Richard Carstone's decline is assisted by his solicitor Mr. Vholes. In contrast to John Jarndyce who symbolizes life, Vholes signifies death with his black clothes, "his dead glove" and "something of the Vampire in him."⁷⁵ He is repeatedly referred to as a serpent or cannibal gorging himself on Richard Carstone.⁷⁶ Nevertheless, Vholes is "a very respectable man"⁷⁷ whose greed is justified by the demands of his three daughters and father who are dependent upon him. Vholes's apparent

72. *Id.* ch. 8, at 145-46. Although John Jarndyce refers to "a Will, and the trusts under a Will," another of the litigants, Richard Carstone, and his solicitor later refer to there being more than one Jarndyce will in dispute. *Id.* ch. 37, at 582 & ch. 60, at 877. If, in fact, there were more than one will, it is likely that the matter would have stayed in Probate until the true will was admitted and would not have even been heard in Chancery until that will was probated. Boyer, *supra* note 13, at 621. Again, Dickens turns a blind eye to lawyerly technicalities.

73. Mr. Kenge is called "Conversation Kenge" because he "appeared to enjoy beyond everything the sound of his own voice." *Id.* ch. 3, at 69.

74. *Id.* ch. 3, at 68. Another character, Sir Leicester Dedlock, as his name suggests, has no objection to an interminable Chancery suit since "[i]t is a slow, expensive, British, constitutional kind of thing." *Id.*, ch. 2, at 60. Thus, the immorality of Chancery is rationalized on the grounds that England deserves a ponderous legal system.

75. *Id.* ch. 44, at 673.

76. DICKENS, BLEAK HOUSE, *supra* note 64, ch. 39, at 607; ch. 60, at 876; ch. 65, at 924.

77. *Id.* ch. 39, at 603.

normality allows Dickens to announce that, "The one great principle of the English law is, to make business for itself."⁷⁸ Conversation Kenge, like Spenlow in *David Copperfield*, defends lawyers such as Vholes as being essential to the law and the entire English social system. Dickens equates that argument to one that says: "Make man-eating unlawful, and you starve the Vholeses!"⁷⁹

One of the lesser characters on the periphery of *Jarndyce* is William Guppy, first a law clerk and later a lawyer in the office of Mr. Kenge. Guppy unsuccessfully proposes marriage to Esther Summerson, a narrator of the novel and love interest of John Jarndyce, as if he were negotiating a contract for the purchase of hogs:

"What follows is without prejudice, miss?" said Mr. Guppy. . . .

"I don't understand what you mean," said I, wondering.

"It's one of our law terms, miss. You won't make any use of it to my detriment, at Kenge and Carboy's, or elsewhere. If our conversation shouldn't lead to anything, I am to be as I was, and am not to be prejudiced in my situation or worldly prospects. In short, it's in total confidence. . . .

[Guppy recounts to Esther his current salary and prospects, his mother and her modest annuity, and his own abode. He then continues,] "Miss Summerson! In the mildest language, I adore you. Would you be so kind as to allow me (as I may say) to file a declaration—to make an offer!"⁸⁰

Guppy's use of legal jargon suggests that lawyers, accustomed to speaking in legal settings, project a model of court procedure on the world at large and impose these same patterns of speech onto situations where they do not fit. Thus, attorneys make the world conform to their standards of how society should operate.⁸¹

78. *Id.*

79. *Id.* ch. 39, at 604-05. Dickens portrays Vholes, who defers to his clients' desires and interests and avoids giving hope of a favorable outcome, as the very model of professional conduct. *Id.*, ch. 37, at 590; ch. 39, at 607-11; ch. 60, at 877. Dickens suggests that otherwise highly estimable moral virtues, such as unquestioning service to a client, become a mask for self-interest in the legal system.

80. *Id.* ch. 9, at 174-75. Guppy's proposal resembles a recent *New Yorker* cartoon in which a young couple is having a romantic dinner and the man, holding up some papers, says, "I love you, Sharon, and these documents will advise you of certain rights you have in accordance with federal and state law, as well as variances and privileges you retain in the City of New York." *NEW YORKER*, Feb. 1, 1993, at 83.

81. David Morgan, *Nowhere to Hide: A Lawyer Faces His Nemesis in "Cape Fear"*, 78 A.B.A. J. 50, 52 (Feb. 1992). This tendency is also exemplified by the recent story of a

Another peripheral character, Jo, is a friendless crossing sweeper who lives in Tom-All-Alone's, a slum that fell into decay while having been tied-up in *Jarndyce*. Jo transmits smallpox from the slum to Esther Summerson, a symbol of the corruption Chancery has wrought. Lastly, there is Krook, who keeps a junk shop near Chancery and is nicknamed "the Lord Chancellor." Krook dies of spontaneous combustion, a metaphor for Dickens's desire for the destruction of the evils represented by Chancery.⁸²

A separate plot in *Bleak House* involves the aristocratic Sir Leicester Dedlock, his wife Lady Dedlock, and Sir Leicester's attorney, Mr. Tulkinghorn. Mr. Tulkinghorn, Dickens's most elite lawyer, is a bachelor and a lawyer "of what is called the old school."⁸³ More specifically, he is "an unopenable Oyster of the old school,"⁸⁴ the keeper of family secrets who "never converses, when not professionally consulted."⁸⁵

Lady Dedlock has a tangential interest in *Jarndyce* and, in the course of his representing her, Tulkinghorn stumbles upon and relentlessly pursues a secret scandal involving her past. During a later confrontation between the two of them, Lady Dedlock refers to "my secret."⁸⁶ Tulkinghorn corrects her and explains that the secret is no longer just her secret, but also is "my secret, in trust for Sir Leicester and the family."⁸⁷ Tulkinghorn's quest to uncover her secret leads to Lady Dedlock's death and ultimately his own.

One of the significant interpretive problems in *Bleak House* is the explanation of Tulkinghorn's motive for pursuing Lady Dedlock's secret. Because Sir Leicester does not ask Tulkinghorn to pursue this matter, and, in fact, is unaware of his actions until it is too late, one must consider whether pursuing Lady Dedlock and revealing her secret serves any of his client's needs. Alternatively, one can question whether Tulkinghorn

lawyer who sued his former fiancée for some \$40,000 that he spent wooing her. David Margolick, N.Y. TIMES, Sept. 11, 1992, at B1.

82. DICKENS, *BLEAK HOUSE*, *supra* note 64, ch. 32, at 511-12.

83. *Id.* ch. 2, at 58.

84. *Id.* ch. 10, at 184. Dickens used similar language in characterizing what is probably his most famous creation, Ebenezer Scrooge, whom he called "secret, and self-contained, and solitary as an oyster . . ." CHARLES DICKENS, *A CHRISTMAS CAROL* ch. 14 (Michael P. Hearn, ed., 1976) (1843).

85. DICKENS, *BLEAK HOUSE*, *supra* note 64, ch. 2, at 59; ch. 10, at 182, 184.

86. *Id.* ch. 48, at 715.

87. *Id.*

serves any professional interest or obligation of his own in his quest for her secret.

Lady Dedlock suggests that Tulkinghorn's actions are explained by the fact that he is "mechanically faithful without attachment" to Sir Leicester and that he is "indifferent to everything but his calling," which is the acquisition of secrets.⁸⁸ This implies that Tulkinghorn is completely a creature of his legal profession. Investigation of his wife's past indiscretions, however, was not likely to serve Sir Leicester; in fact, concealment was more likely to benefit him. Tulkinghorn admits even to himself that if the secret were disclosed, Sir Leicester would nonetheless remain with his wife and suffer personally as a result.⁸⁹ That is precisely what does happen after Sir Leicester discovers the truth.

It is difficult to fathom the motive for Tulkinghorn's preoccupation with Lady Dedlock's secret, particularly in light of his reluctance to disclose his discovery to Sir Leicester. Some commentators contend that the motive is misogyny—Tulkinghorn's hatred of women in general, and Lady Dedlock in particular.⁹⁰ Other critics have explained Tulkinghorn's behavior simply as his being a morally evil person.⁹¹ In this view, Tulkinghorn's conduct is unjustified because it is neither attributable to his legal calling nor his professional obligations to Sir Leicester.⁹² One might argue, however, that although his obses-

88. *Id.* ch. 36, at 567.

89. *Id.* ch. 41, at 636.

90. WEISBERG, *supra* note 9, at 70-72. See DICKENS, BLEAK HOUSE, *supra* note 64, ch. 16, at 276. "There are women enough in the world, Mr. Tulkinghorn thinks-too many; they are at the bottom of all that goes wrong in it, though, for the matter of that, they create business for lawyers." *Id.*, ch. 29, at 276. See also *id.*, ch. 29, at 457; ch. 41, at 637; ch. 42, at 642; Jeremy Hawthorn, BLEAK HOUSE 43, 78-79 (1987).

91. A.E. DYSON, DICKENS BLEAK HOUSE: A CASEBOOK 242, 252-54 (1969) (suggesting that Tulkinghorn's lack of clear motivation is evidence of his incarnate evil); Hawthorn, *supra* note 90, at 42, 79.

92. Tulkinghorn uncovers the initial clue to Lady Dedlock's past during a conversation that took place as part of his representation related to *Jarndyce*. Lady Dedlock expresses unexpected distress while she examines the handwriting of an unknown law-writer. DICKENS, BLEAK HOUSE, *supra* note 64, ch. 2, at 61-62. Although Tulkinghorn does not directly disclose Lady Dedlock's secret to anyone, not even his primary client, Sir Leicester, he does use his knowledge to harass and oppress Lady Dedlock. Arguably, the distress she showed was a privileged attorney-client communication or information obtained as a result of a privileged communication, which Tulkinghorn was ethically barred from using in any manner adverse to Lady Dedlock. Thus, his entire investigation breached his ethical obligation to Lady Dedlock. Throughout the novel, however, Tulkinghorn acts as if his sole client was Sir Leicester and his ancestral family.

sion with Lady Dedlock's secret is not strictly part of his professional obligations, his compulsive tendency to track down every last piece of a puzzle without regard to consequences—either to the lawyer or client—is simply behavior that all too commonly occurs within the profession.

Returning to the novel's other plot, *Jarndyce vs. Jarndyce* finally wends its way to conclusion. Richard Carstone, now under the influence of Vholes, is slowly consumed by the litigation. As he physically declines, Carstone becomes convinced that his benefactor, John Jarndyce, is an enemy to his interests. Like many litigants, Carstone suspiciously reasons that because he himself is tainted by the litigation, John Jarndyce is also tainted by it. Carstone concludes that his benefactor's indifference to the litigation is merely an effort to induce others, himself in particular, to refrain from protecting their rights.

A new Jarndyce will is then discovered which, if accepted, promises to end the lawsuit favorably for Carstone. When *Jarndyce* next comes before the court, however, the validity of the new will becomes moot because, to the great merriment of the bar, the litigants learn that the estate has been entirely eaten up in costs. As Vholes leaves Richard, he gives "another gasp as if he had swallowed the last morsel of his client."⁹³ Like Krook, "the Lord Chancellor" who earlier fell a victim of Spontaneous Combustion, Carstone dies of consumption—consumed by Chancery.⁹⁴ Despite the devastation this case has wreaked, Dickens titles the chapter reporting the end of *Jarndyce* the "Beginning the World."⁹⁵ Only after the useless litigation has ended, and taken its toll on the innocent litigants and some of the not so innocent hangers-on, can the real business of the world—leading morally decent lives—begin.

The *Jarndyce* case represents Dickens's most sustained attack on lawyers and the legal system. Interestingly, unlike his approach to *Pickwick v. Bardell*, Dickens does not point to any incorrect ruling in *Jarndyce* which is fatal to justice, but rather blames

93. *Id.* ch. 65, at 924. Even Conversation Kenge is unrepentant regarding this "Monument of Chancery practice." *Id.* "If the public have the benefit, and if the country have the adornment, of this great Grasp, it must be paid for in money or money's worth, sir." *Id.*, ch. 65, at 923.

94. Earlier, a character remarks about Richard that "there's combustion going on here! It's not a case of Spontaneous, but it's smoldering combustion it is." *Id.* ch. 39, at 612.

95. *Id.* ch. 65.

the unfortunate result on Chancery's inability to make *any* ruling, right or wrong.

Dickens's view of the legal system is not without redeeming qualities; neither does he fault lawyers for all the law's shortcomings. Dickens recognizes, for example, that protracted litigation frequently is the result of a client's unwillingness to settle.

In another of several subplots, Sir Leicester and Lawrence Boythorn, a friend of John Jarndyce, are embroiled in suits and countersuits for trespass over a right-of-way between their adjoining properties. Both Sir Leicester and the otherwise gentle Boythorn become apoplectic about each other. They wage a running battle of assaults, batteries and lawsuits against each other. At one point, Tulkinghorn endeavors to resolve the dispute by compromise and approaches Sir Leicester:

"The only question is," pursues [Tulkinghorn], "whether you will give up anything."

"No, sir," replies Sir Leicester. "Nothing. *I* give up?"

"I don't mean anything of importance. That, of course, I know you would not abandon. I mean any minor point."

"Mr Tulkinghorn," returns Sir Leicester, "there can be no minor point between myself and Mr Boythorn. If I go farther, and observe that I cannot readily conceive how *any* right of mine can be a minor point, I speak not so much in reference to myself as an individual, as in reference to the family position I have it in charge to maintain."

Mr Tulkinghorn inclines his head again. "I have now my instructions," he says. "Mr Boythorn will give us a good deal of trouble—"⁹⁶

Sir Leicester cuts off Tulkinghorn with a reminder that in previous times a "levelling person" such as Boythorn would have been tried, convicted and hung.⁹⁷

Although Dickens acknowledges that intractable clients often are most guilty of perpetuating litigation,⁹⁸ he also recognizes that litigation satisfies a societal need, at least in the contexts of social discourse and conflict resolution. As the novel ends, Sir Leicester and Boythorn continue to wage their legal warfare. Despite their common suffering (Leicester has lost Lady

96. *Id.* ch. 12, at 214.

97. DICKENS, *BLEAK HOUSE*, *supra* note 64, ch. 12, at 214.

98. Wholes's willingness to be an instrument for Richard Carstone's paranoia and intransigence is merely a more tragic example of the dynamics evident in the Tulkinghorn-Sir Leicester relationship.

Dedlock and, as a youth, Boythorn was romantically rejected by Lady Dedlock's sister), they are unable to communicate with one another except through their litigation. "So the quarrel goes on to the satisfaction of both."⁹⁹

Nevertheless, although Dickens concedes law's modest social utility, the law and lawyers of *Bleak House* largely hinder the efforts of those attempting to lead virtuous lives. Like Pickwick, the morally strong John Jarndyce remains true to his moral self only by ignoring the lawsuit. Conversely, by accepting the premises—and the promises—of the law, the morally weak, like Richard Carstone, are destroyed. Parasitic lawyers like Vholes and, to a lesser extent, Kenge are permitted to indulge their rapacity. Even highly respected lawyers such as Tulkinghorn are free to pervert their calling. And the less amoral or greedy, like Guppy, stand to lose their ability to communicate even their passion once constrained by the practice of law.

Like Dickens's portrayal of the legal profession, *Jarndyce v. Jarndyce* feeds upon itself. Only when Chancery is metaphorically destroyed after the case consumes itself can the rest of the world begin to lead morally responsible lives.

D. *A Tale of Two Cities*

Dickens's *A Tale of Two Cities*,¹⁰⁰ although essentially concerned with the French Revolution, involves two trials and two lawyers. The trials, like the one in *The Pickwick Papers*, have little connection to truth or justice, and the lawyers are virtuous only to the extent that they reject the traditional roles of their profession.

One lawyer is the bullying Mr. Stryver, a minor character who, as his name implies, is a grasping careerist. The other lawyer, his associate Sydney Carton, is one of the novel's protagonists. We meet both lawyers at the beginning of the novel as they defend Charles Darnay, a French aristocrat who has renounced his title and who is being unjustly tried for treason at The Old Bailey in 1780. The trial consists largely of posturing by the prosecuting attorney and the obviously perjured, but effective, testimony of paid informers who identify Darnay as a traitor. Carton, who does little to mask his boredom during the proceedings, inter-

99. *Id.* ch. 66, at 929.

100. CHARLES DICKENS, *A TALE OF TWO CITIES* (George Woodcock ed., Penguin Books 1970) (1859) [hereinafter DICKENS, *A TALE OF TWO CITIES*].

rupts Stryver's desultory cross-examination of a government witness by tossing him a note. At Carton's direction, Stryver points to the uncanny resemblance between Carton and the defendant, thereby impeaching the witness's identification. Carton lapses back into boredom except to notice the presence of Lucie Manette, a witness for Darnay. Darnay is acquitted as a result of Carton's insight and quick thinking.

Stryver is yet another of Dickens's overbearing and greedy, but not very talented, lawyers. The mysterious Sydney Carton, on the other hand, is different. The "idlest and most unpromising of men," Carton is Stryver's "great ally" and is referred to by Dickens as "the jackal" for his services to Stryver.¹⁰¹ Just as Micawber was used by Uriah Heep in *David Copperfield*, so is Sydney Carton used by Stryver. Although the source of his moroseness and apathy is never expressly identified, Carton, like Richard Carstone in *Bleak House*, is dissipating his life in the law by lack of purpose. In Carton's case, his dissipation is aided by drink. Another character, remarking on Carton's disreputable look, says, "I'd hold half a guinea that *he* don't get no law-work to do. Don't look like the sort of one to get any, do he?"¹⁰² Given Dickens's customary hostility to law-work, this is high praise masquerading as criticism.

Both Stryver and Carton are romantically attracted to Lucie Manette. Stryver is quickly rejected largely because he is a boor. Although Lucie is attracted to Sydney Carton, she is committed to Charles Darnay. Carton is torn between his respect and love for Lucie and his hatred for his rival, Darnay, whom Lucie marries.

After the outbreak of the French Revolution, Charles Darnay is tried by the Terror¹⁰³ for the crimes of his aristocratic relatives whose titles he had previously renounced. The French revolutionary court convicts Darnay and sentences him to death. Sydney Carton, acting out of his unselfish love for Lucie and a desire to give meaning to his life, saves Darnay from the guillotine. Capitalizing again on his physical resemblance to his rival, Carton goes to the scaffold in Darnay's place in a Christ-like act

101. *Id.* Bk.II, ch. 5, at 117.

102. *Id.* Bk.II, ch. 3, at 107.

103. The Reign of Terror was the mechanism by which the revolutionary government sought in 1793 to eliminate its enemies by means of execution. See generally *THE COLUMBIA HISTORY OF THE WORLD*, 766, 767 (1987).

of purposefulness and resurrection. The novel concludes with Carton's stirring melodramatic declaration, perhaps the most famous lines in Dickens:

"It is a far, far better thing that I do, than I have ever done; it is a far, far better rest that I go to than I have ever known."¹⁰⁴

The gap between law and morality is never so powerfully depicted as it is in *A Tale of Two Cities*. Sydney Carton epitomizes the futility of the legal system. If what poses as justice can be meted out as arbitrarily as it was to be at Darnay's first trial, why should Carton—or anyone else, for that matter—take any real interest in the law.¹⁰⁵ By the novel's end, however, Carton's dissipation is replaced by the high moral character that Dickens extols as society's salvation.

Of all the lawyers that populate his novels, Carton is clearly Dickens's most favored, but only because Carton possesses none of the attributes one would expect of a "good" lawyer in the typical Dickensian mold. More important, however, is the fact that Carton commits the most unselfish—and least lawyerlike—moral act possible: by sacrificing himself he achieves for Darnay the justice that eluded him in the courts.

E. Great Expectations

Charles Dickens's *Great Expectations*¹⁰⁶ is of particular interest in the present context. Through his portrayals of Mr. Jaggers, one of his more realistic lawyers, and Jaggers's law clerk, Wemmick, Dickens effectively reiterates the dichotomy between virtue and the law.

Jaggers, a cynical, bullying lawyer, is hired by an undisclosed benefactor to administer funds for Pip, the novel's hero. Jaggers, a very successful criminal lawyer, suffers the compulsive habit of vigorously washing his hands with scented soap after each encounter with a client, likely symbolizing his distaste for his clients' filthy lives or the filthy acts he must perform as their lawyer. Jaggers is adversarial in all of his relationships. While dining with Jaggers, Pip notices that "[h]e cross-examined his very wine when he had nothing else in hand . . . and cross-ex-

104. DICKENS, *A TALE OF TWO CITIES*, *supra* note 100, Bk.III, ch. 15, at 404.

105. RUTH GLANCY, *A TALE OF TWO CITIES: DICKENS'S REVOLUTIONARY NOVEL* 81 (1991).

106. CHARLES DICKENS, *GREAT EXPECTATIONS* (Angus Calder ed., Penguin Books 1965) (1861) [hereinafter DICKENS, *GREAT EXPECTATIONS*].

amined the glass again, until I was as nervous as if I had known the wine to be telling him something to my disadvantage."¹⁰⁷

When Jaggers comes to a country inn to first advise Pip of his "great expectations," Mr. Wopsle, the parish clerk, is relating a newspaper account of a murder trial to Pip and Pip's brother-in-law and friend, Joe Gargery. Jaggers cannily avoids offering his opinion of the accused's guilt while pressing Pip and Wopsle for their view. Once they commit, Jaggers continues,

"But now I'll ask you a question. Do you know, or do you not know, that the law of England supposes every man to be innocent, until he is proved—proved—to be guilty?"

"Sir," Mr Wopsle began to reply, "as an Englishman myself, I—"

"Come!" said the stranger, biting his forefinger at him. "Don't evade the question. Either you know it, or you don't know it. Which is it to be?"

. . . .

"Now!" said he. "Do you know it, or don't you know it?"

"Certainly I know it," replied Mr Wopsle.

"Certainly you know it. Then why didn't you say so at first? Now, I'll ask you another question;" taking possession of Mr Wopsle, as if he had a right to him. "*Do you know that none of these witnesses have yet been cross-examined?*"

Mr Wopsle was beginning, "I can only say—" when the stranger stopped him.

"What? You won't answer the question, yes or no? Now, I'll try you again." Throwing his finger at him again. [sic] "Attend to me. Are you aware, or are you not aware, that none of these witnesses have yet been cross-examined? Come, I only want one word from you. Yes, or no?"

Mr. Wopsle hesitated, and we all began to conceive rather a poor opinion of him.

[Jaggers then gets Wopsle to admit that the newspaper acknowledged that the defendant had reserved its defense.]

. . . "And now I ask you what you say to the conscience of that man who, with that passage before his eyes, can lay his head upon his pillow after having pronounced a fellow-creature guilty, unheard?"

107. *Id.* ch. 29, at 263-64.

We all began to suspect that Mr. Wopsle was not the man we had thought him, and that he was beginning to be found out.¹⁰⁸

One commentator has cited this passage as evidence of Jaggers's noble, albeit bullying, defense of the "superb tradition" of the presumption of innocence in the "moot court" of a country inn.¹⁰⁹ It is noteworthy, however, that by the time he wrote *Great Expectations*, Dickens was impatient with the niceties of English criminal procedure such as the criminal's rights against self-incrimination.¹¹⁰

Dickens apparently is lambasting a more important target than Pip's and Wopsle's ignorance of this cherished English value. Dickens raises the defense of the presumption of innocence in the context of Jaggers's brutal and excessive cross-examination. This suggests that Jaggers's use of the "presumption of innocence" as a means of humiliating Wopsle is representative of lawyers' use of principles to hide immoral acts. Thus, even meaningful principles become distorted because lawyers are unable to resist using adversarial skills to dominate the rest of society. Like Tulkinghorn's compulsive search for answers in *Bleak House*, Jaggers's lawyerly habit of contentiousness distorts the otherwise noble principles of his profession.

Jaggers then explains to Pip and Joe the nature of Pip's "great expectations" and he asks if Joe would be willing to release Pip from his indenture as an apprentice blacksmith. Joe, happy for Pip's good fortune, agrees to unconditionally release him. Jaggers repeatedly raises the question of whether Joe will require "compensation" for his release of Pip. Joe replies that Pip is free to seek his fortune and acknowledges that money could not compensate Joe "for the loss of the little child—what come to the forge—and ever the best of friends!"¹¹¹ Jaggers responds:

"Now, Joseph Gargery, I warn you this is your last chance. No half measures with me. If you mean to take a present that I have it in charge to make to you, speak out, and you shall have it. If on the contrary you mean to say—" Here, to his great amazement, he was stopped by Joe's suddenly working round him with every demonstration of a fell pugilistic purpose.

108. *Id.* ch. 18, at 160-62.

109. WEISBERG, *supra* note 9, at 62-63.

110. PHILIP COLLINS, *DICKENS AND CRIME* 190 (1962).

111. DICKENS, *GREAT EXPECTATIONS*, *supra* note 106, ch. 18, at 168.

“Which I meantersay,” cried Joe, “that if you come into my place bull-baiting and badgering me, come out! Which I meantersay as sech if you’re a man, come on! Which I meantersay that what I say, I meantersay and stand or fall by!”¹¹²

Jaggers suspects that Joe is seeking to establish grounds for a later claim. Joe, to the contrary, interprets Jaggers’s probing as a challenge to the sincerity of Joe’s expressed beliefs about Pip. This confrontation symbolizes the clash between the cynical viewpoint of the lawyer Jaggers—who believes that everyone has his price¹¹³ and is capable of verbal deception—and the moral decency of the inarticulate Joe who says what he means and means what he says.

Jaggers deals in secrets as did Tulkinghorn in *Bleak House*,¹¹⁴ unlike Tulkinghorn, however, Jaggers is loath to know of things he does not wish to know. When Pip attempts to tell about his knowledge of his benefactor, Jaggers instructs Pip, “Don’t tell me anything: I don’t want to know anything: I am not curious.”¹¹⁵ Jagger’s refusal to know reflects his lawyerly reluctance to be incriminated by knowledge of and failure to report the presence of Pip’s benefactor, a transported convict who has returned to England.

Jaggers steadfastly refuses to flatly admit or confirm the true facts regarding the less incriminating matter of the parentage of Estelle, Pip’s love-hate interest. As he tells Pip, “I’ll put a case to you. Mind! I admit nothing.”¹¹⁶ Jaggers proceeds to recount Estelle’s parentage as an “imaginary” case and prefaces virtually every sentence with the phrase “Put the case that . . .”¹¹⁷ At one point in the conversation, Pip acknowledges Jaggers’s assertion by stating “I understand you perfectly.”¹¹⁸ Jaggers is quick to modify that understanding by reminding Pip that “I make no admissions.”¹¹⁹ Jaggers’s unwillingness to disclose secrets even when disclosure may be prudent reflects his need to preserve

112. *Id.* ch. 18, at 168-69.

113. Stanley Tick, *Toward Jaggers*, 5 DICKENS STUDIES ANNUAL 133, 144 (1976).

114. DICKENS, *GREAT EXPECTATIONS*, *supra* note 106, ch. 33, at 289. “Mr. Jaggers,” said [Pip], “. . . has the reputation of being more in the secrets of that dismal place than any man in London.” *Id.*, ch. 33, at 289.

115. *Id.* ch. 40, at 350.

116. *Id.* ch. 51, at 424.

117. *Id.* ch. 51, at 424-25.

118. *Id.* ch. 51, at 425.

119. DICKENS, *GREAT EXPECTATIONS*, *supra* note 106, ch. 51, at 425.

lawyerly “deniability” by speaking in the form of thinly-veiled hypotheticals.¹²⁰

Wemmick, a purely business-minded man, works as Jaggers’s law clerk. He repeatedly gives Pip advice about getting ahead and stresses the importance that Pip “[g]et hold of portable property.”¹²¹ However, Wemmick, like Micawber in *David Copperfield*, epitomizes the split-personality that many lawyers develop, a fact he acknowledges by stating that “the office is one thing, and private life is another.”¹²² For example, when Pip inquires at the office whether he should give five hundred pounds to help his best friend, Herbert Pocket, Wemmick tells Pip that he could more profitably “pitch your money into the Thames.”¹²³ Yet, when the same proposal comes up at Wemmick’s home, Wemmick tells Pip, “This is devilishly good of you.”¹²⁴ Wemmick’s and Micawber’s double lives—one part in law and the other in moral decency—are the best that a lawyer can achieve in Dickens’s view of the world (short of the ultimate sacrifices of a Sidney Carton).¹²⁵

Although the wheels of justice are not so positively impeded by lawyers and the law in *Great Expectations* as they are in his preceding novels, Dickens nonetheless asserts his view that the law dehumanizes, if not outrightly corrupts, those who embrace it. Jaggers is a lawyer *par excellence* whose lawyerly habits of excessive advocacy, cynicism, secretiveness, and lack of curiosity mark him as a man who, while not as venal as Dickens’s other lawyers, is not really human. Wemmick, like Micawber, symbolizes the split that occurs in moral people who must live part of their lives in the morally-circumscribed world of the law.

In the novels that have been examined, Dickens’s lawyers range from the more or less evil (Tulkinghorn, Vholes, Uriah

120. Weisberg’s generally favorable assessment of Jaggers is certainly an arguable position. See *supra* note 109 and accompanying text. Edmund Wilson has contrasted Vholes, “an affable lawyer who is really unscrupulous,” with Jaggers, “a kindly lawyer who pretends to be unfeeling.” WILSON, *supra* note 22, at 64. However, it is difficult finding the supposed kindness behind Jaggers’s impressive pretense.

121. DICKENS, *GREAT EXPECTATIONS*, *supra* note 106, ch. 24, at 224.

122. *Id.* ch. 25, at 231.

123. *Id.* ch. 36, at 310.

124. *Id.* ch. 37, at 314.

125. Unlike lawyers such as Guppy in *Bleak House* who have lost the capacity to differentiate between law and real life, Wemmick and Micawber know that there is a difference, powerless as they may be to bridge the gap. However, at least one commentator regards Wemmick’s double life as a sham that masks his true venality. See BERT G. HORNBACK, *GREAT EXPECTATIONS: A NOVEL OF FRIENDSHIP* 50-52, 80 (1987).

Heep, Dodson, and Fogg), to the mere careerist (Stryver, Spenslow, Kenge, Perker, Guppy, and Jaggers), to those who manage to maintain some virtue by a form of professional schizophrenia (Micawber and Wemmick), and, finally, to those who must give up law (David Copperfield) or even their life (Sidney Carton) to achieve true virtue. As to the clients who come into contact with the law, those who, like Thoreau, passively resist the blandishments and enticements of the law (Pickwick and John Jarndyce) will retain and even enhance their virtue, while those who succumb to the lure of litigation (Richard Carstone and Mrs. Bardell) will suffer greatly as a result. Thus, in Dickens's eyes, virtue and morality are not advanced by the law and, in fact, worsen as a consequence.

IV. LAW AS LITERATURE: STANLEY FISH AND THE PICKWICK PAPERS

The previous section dealt with lawyers and the law in the novels of Charles Dickens. This section analyzes some of the legal texts in one of these novels, *The Pickwick Papers*, by applying the current literary theory of Stanley Fish.

A. *Stanley Fish*

Stanley Fish¹²⁶ has written extensively on literary theory and, to a lesser extent, the use of literary theories in analyzing legal texts.¹²⁷ Fish generally belongs to the reader-response and deconstructionist schools of literary theory.¹²⁸ What follows is a brief and admittedly uncritical exposition of some of Fish's theories and a consideration of some of those theories in the context of *The Pickwick Papers*.

126. Before turning his skills to law, Fish was (and continues to be) a noted literary critic. See JOHN M. ELLIS, *AGAINST DECONSTRUCTION* 116 (1989) (discussing Fish's work as a literary critic). As a leading scholar of the English Renaissance, Fish's earlier work focused primarily on 17th-century English poetry. See generally STANLEY E. FISH, *SURPRISED BY SIN: THE ROLE OF THE READER IN PARADISE LOST* (1967).

127. See generally STANLEY FISH, *IS THERE A TEXT IN THIS CLASS?: THE AUTHORITY OF INTERPRETIVE COMMUNITIES* (1980) [hereinafter FISH, TEXT]; STANLEY FISH, *DOING WHAT COMES NATURALLY: CHANGE, RHETORIC, AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES* (1989) [hereinafter FISH, NATURALLY]; STANLEY FISH, *THERE'S NO SUCH THING AS FREE SPEECH . . . AND IT'S A GOOD THING* (1994).

128. As broad overgeneralizations, reader-response theory looks at how literary works are received by the reader or "what a text does" and deconstructionism explores the indeterminacy of texts and how a text tends to dismantle itself. FISH, TEXT, *supra* note 127, at 3.

Fish argues that literary and legal texts are never determinate in the sense that there is always, or ever, one constant, certain, and correct meaning for any particular text.¹²⁹ Rather, Fish argues that all meaning, even if understood by the reader or hearer as the unambiguous, literal meaning, is obtained by interpretation which, in turn, is constrained by the reader's or hearer's "interpretative community."¹³⁰ As Fish argues:

[T]here is no such thing as literal meaning, if by literal meaning one means a meaning that is perspicuous no matter what the context and no matter what is in the speaker's or hearer's mind, a meaning that because it is prior to interpretation can serve as a constraint on interpretation.¹³¹

According to Fish, meaning can only be found in the reader's interpretation of the text. That reading, however, is not subjective because it is constrained by the interpretative assumptions of the reader's interpretative community.

In other words, Fish contends that no text merely "means" what it "says," but rather each reader believes in a particular meaning on the basis of the interpretative assumptions the reader brings to the text. We only know what the text says because we believe in our interpretation. Thus, when reading a text we are only "doing what comes naturally."¹³² Fish provides an amusing anecdote to illustrate his theory:

As a frequent flyer, I have been amused by the efforts of airlines to police their lavatories. In particular, I've noticed the now almost desperate search for a sign whose wording will make absolutely and explicitly clear what should and should not be flushed down the toilet. The latest (and doomed) effort goes something like this: "Only toilet paper and tissue should be deposited in the toilet." How long will it be, I wonder, before flight attendants and maintenance [persons] begin to find bodily waste, liquid and solid, deposited in the most inconvenient places, if only by wags who recognize and testify to the folly of thinking that language can be made so explicit as to preclude interpretation. Of course, one could add feces and urine to the list of proper things to deposit, but that would only fuel the game, not stop it. What stops the game when it is stopped (as it almost always is) is not the explicitness of words, but the tacit assumptions (concerning

129. FISH, TEXT, *supra* note 127, at 303-21.

130. *Id.* at 322.

131. *Id.* at 4.

132. *Id.* at 302.

what toilets are for, and, on an even more basic level, what is and is not waste in a post-agricultural society) within which the words immediately take on an unproblematic (though interpretively produced) shape.¹³³

Neither, asserts Fish, does the intent of a text constrain interpretation. Intent is just another name for interpretation:

There is only one way to read or interpret, and that is . . . [by] intention. But to read intentionally is not to be constrained relative to some other (nonexistent) way of reading. . . . Words are intelligible only within the . . . context of intentional production [i.e. a set of interpretative assumptions], some . . . [prejudgment] as to what kind of person, with what kind of purposes, in relation to what specific goals in a particular situation, is speaking or writing. . . . In those cases in which meanings seem immediately available without recourse to anything but the words themselves [the common sense meaning], it is because the intentional structure—the . . . [assumptions] that limit the meanings words can have before they are produced—is so deeply in place that we are not aware of it and seem to experience its effects directly¹³⁴

Fish finally contends that a standard of truth is never available independent of a set of beliefs. That “does not mean that we can never know for certain what is true but that we *always* know for certain what is true (because we are always in the grip of some belief or other [interpretative assumptions]), even though what we certainly know may change if and when our beliefs change.”¹³⁵

B. *The Pickwick Papers*

With that modest introduction to Stanley Fish, this article will apply his theories to certain legal texts in *The Pickwick Papers*. The outcome of this analysis supports Fish’s theories as well as Dickens’s proposition that the law is not a very effective tool for realizing morality and moral goals.

As discussed above, much of *The Pickwick Papers* is devoted to the suit by Mrs. Bardell, Samuel Pickwick’s landlady, against Mr. Pickwick for breach of promise of marriage. Mr. Pickwick’s apartments are in the house of Mrs. Bardell, a widow, who lives there with her young son. On the day in question, Mr. Pickwick

133. *Id.* at 302.

134. FISH, *NATURALLY*, *supra* note 127, at 295 (emphasis omitted).

135. FISH, *TEXT*, *supra* note 127, at 365 (emphasis in original).

is pacing about with a great deal of obvious impatience, while Mrs. Bardell is dusting the apartment. The following conversation then occurs:

"Mrs. Bardell," said Mr Pickwick, . . .

"Sir," said Mrs. Bardell.

"Your little boy is a very long time gone."

"Why it's a good long way to the Borough, sir," remonstrated Mrs. Bardell.

"Ah," said Mr. Pickwick, "very true; so it is."

Mr. Pickwick relapsed into silence, and Mrs. Bardell resumed her dusting.

"Mrs. Bardell," said Mr. Pickwick, at the expiration of a few minutes.

"Sir," said Mrs. Bardell again.

"Do you think it a much greater expense to keep two people, than to keep one?"

"La, Mr. Pickwick," said Mrs. Bardell, colouring up to the very border of her cap, as she fancied she observed a species of matrimonial twinkle in the eyes of her lodger; "La, Mr. Pickwick, what a question!"

"Well, but *do* you?" inquired Mr. Pickwick.

"That depends—" said Mrs. Bardell, approaching the duster very near to Mr. Pickwick's elbow, which was planted on the table— "that depends a good deal upon the person, you know, Mr. Pickwick; and whether it's a saving and careful person, sir."

"That's very true," said Mr. Pickwick, "but the person I have in my eye (here he looked very hard at Mrs. Bardell) I think possesses these qualities; and has, moreover, a considerable knowledge of the world, and a great deal of sharpness, Mrs. Bardell; which may be of material use to me."

"La, Mr. Pickwick," said Mrs. Bardell; the crimson rising to her cap-border again.

"I do," said Mr. Pickwick, growing energetic, as was his wont in speaking of a subject which interested him, "I do, indeed; and to tell the truth, Mrs. Bardell, I have made up my mind."

"Dear me, sir," exclaimed Mrs. Bardell.

"You'll think it very strange now," said the amiable Mr. Pickwick, with a good-humoured glance at his companion, "that I never consulted you about this matter, and never even mentioned it, till I sent your little boy out this morning—eh?"

Mrs. Bardell could only reply by a look. She had long worshipped Mr. Pickwick at a distance, but here she was, all at

once, raised to a pinnacle to which her wildest and most extravagant hopes had never dared to aspire. Mr. Pickwick was going to propose—a deliberate plan, too—sent her little boy to the Borough, to get him out of the way—how thoughtful—how considerate!

“Well,” said Mr. Pickwick, “what do you think?”

“Oh, Mr. Pickwick,” said Mrs. Bardell, trembling with agitation, “you’re very kind, sir.”

“It’ll save you a good deal of trouble, won’t it?” said Mr. Pickwick.

“Oh, I never thought anything of the trouble, sir,” replied Mrs. Bardell; “and, of course, I should take more trouble to please you then, than ever; but it is so kind of you, Mr. Pickwick, to have so much consideration for my loneliness.”

“Ah, to be sure,” said Mr. Pickwick; “I never thought of that. When I am in town, you’ll always have somebody to sit with you. To be sure, so you will.”

“I’m sure I ought to be a very happy woman,” said Mrs. Bardell.

“And your little boy—” said Mr. Pickwick.

“Bless his heart!” interposed Mrs. Bardell, with a maternal sob.

“He, too, will have a companion,” resumed Mr. Pickwick, “a lively one, who’ll teach him, I’ll be bound, more tricks in a week than he would ever learn in a year.” And Mr. Pickwick smiled placidly.¹³⁶

Mrs. Bardell, sobbing, tells Mr. Pickwick, “I’ll never leave you,” flings her arms around Pickwick’s neck, and faints in his arms.¹³⁷ At that moment, Pickwick’s friends and Mrs. Bardell’s son enter. The boy, believing that his mother has been attacked, assails Pickwick with blows. After the boy is restrained and Mrs. Bardell recovers and is led downstairs, Pickwick expresses to his friends his incomprehension of why the lady acted as she did. He explains, “I had merely announced to her my intention of keeping a man servant.”¹³⁸ At that point, Samuel Weller, a young attendant who Pickwick had met earlier, enters the room, and Pickwick and his new servant go on to new adventures.¹³⁹

136. DICKENS, PICKWICK PAPERS, *supra* note 24, ch. 12, at 230-32.

137. *Id.* ch. 12, at 232.

138. *Id.* ch. 12, at 234.

139. *Id.* ch. 12, at 234-35.

This conversation ultimately results in the case of *Bardell v. Pickwick*.¹⁴⁰ Toward understanding how that litigation came to be, this article will now focus on the conversation as a text, or transcript, of the communications between the parties that forms the basis for the breach of promise suit.

From the perspectives of both the reader and Mr. Pickwick, the meaning of Mr. Pickwick's words seems clear and utterly unambiguous. Pickwick's statements regarding (i) two living as cheaply as one, (ii) the confidence that Pickwick has in the qualities and carefulness of the person who Pickwick has in mind, and (iii) the advantages to Mrs. Bardell and her son of companionship while Pickwick is in town all refer unambiguously to the servant Pickwick is about to retain. In addition, any other statements made by Pickwick, such as his resolve in making his decision or his sending away her son, are not inconsistent with that meaning. Finally, both Mr. Pickwick and the reader know that Pickwick has never expressed any romantic interest in Mrs. Bardell.

For these reasons, Pickwick and the reader cannot conceive that anyone could properly comprehend his words as anything but an attempt to discreetly advise Mrs. Bardell that another person, will be lodging in her house, let alone that one could interpret them as a proposal and promise of marriage. From the reader's perspective, the humor lies in "knowing" Pickwick's literal meaning, but suspecting that an irrational character might take a different understanding or, more aptly, a misunderstanding.

Nevertheless, from Mrs. Bardell's perspective, or interpretive community, Mr. Pickwick's words unambiguously refer to his desire and proposal to marry her. In fact, Pickwick's words can have no other meaning when interpreted from the perspective of a widow who has silently admired him from a distance. Moreover, rather than being a unique, irrational perspective, this interpretative community's interpretation is just as defensible to itself as that of any other interpretive community's own literal reading of the text. As the text indicates, Pickwick (i) speaks of the ability of two living as cheaply as one, (ii) looks "very hard" at Mrs. Bardell when he speaks of the qualities of the person who he has in mind, (iii) sent away her child to speak to her on this subject, and (iv) speaks to her of the companionship to herself

140. *Id.* ch. 34, at 552.

and her son “[w]hen he is in town.”¹⁴¹ Mrs. Bardell’s interpretative community understands the literal meaning of Pickwick’s words as an unambiguous proposal of marriage.

As Fish explains, every interpretative community’s interpretation of a text is the literal interpretation and no text can be interpreted independent of some interpretative community.¹⁴² This literal interpretation, however, will vary with the particular interpretative community. As Fish simply states, “there always will be a literal reading, but (1) it will not always be the same one and (2) it can change.”¹⁴³ Even reading this text as a comic novel, where it is expected that one character will misunderstand another character, represents a type of literal reading. As Fish points out:

If we expect a text to be ambiguous, we will in the act of reading it imagine situations in which it means first one thing and then another (there is no text with which this cannot be done), and those plural meanings will, in the context of that situation, be that text’s literal reading.¹⁴⁴

Beyond literary theory, this passage from *The Pickwick Papers* casts doubt on the validity of the “objective” meaning doctrine of the rules of contract formation. That doctrine provides that, when interpreting communications that might form a contract, the offer and acceptance must be construed from the “objective” perspective of a third party and not from the “subjective” understandings of either the offeror or the offeree.¹⁴⁵ Thus, an offeror’s understanding is no defense to a breach of contract claim if an “objective” third party would understand the offer in the same way the offeree had.¹⁴⁶

The Pickwick Papers suggests that some of our most basic notions of “ordinary meaning” are suspect and that the contract law doctrine of objective, as contrasted to subjective, intent may not be as reliable as once thought. If that is case, what is the objective meaning or literal meaning of Pickwick’s words to Mrs. Bardell? From Pickwick’s interpretative community, the literal or

141. DICKENS, *PICKWICK PAPERS*, *supra* note 24, ch. 12, at 231.

142. FISH, *TEXT*, *supra* note 127, at 277.

143. *Id.* at 277.

144. *Id.*

145. E. ALLAN FARNSWORTH, *FARNSWORTH ON CONTRACTS* § 3.6 (1990).

146. *Id.*; SAMUEL WILLISTON, *WILLISTON ON CONTRACTS* § 4:1 (Richard A. Lord ed., 4th ed. 1990). *But see* ARTHUR LINTON CORBIN, *CORBIN ON CONTRACTS* § 106 (1952) (stating that the law of contract cannot be explained by either an objective or subjective theory of contract formation alone).

ordinary meaning of his words entails only his landlady's approval for acquiring a new servant. From Mrs. Bardell's interpretive community, on the other hand, the literal or ordinary meaning of Pickwick's words only suggests a proposal of marriage.

There is simply no principled way to choose between the two interpretations based solely on internal consistency or on the grounds that the assumptions of one interpretive community outweigh the assumptions of the other interpretive community. Furthermore, a reader within yet another interpretive community may arrive at a literal or ordinary meaning of Pickwick's words that differs from either Mr. Pickwick's or Mrs. Bardell's interpretation. Thus, an objective or literal meaning in the sense of a meaning that is not both constrained by and based on the assumptions of an interpretive community does not exist. The objective intent doctrine of contract formation assumes that one can choose an interpretation that is independent of and prior to interpretation.¹⁴⁷ As Fish and *The Pickwick Papers* demonstrate, a reader is forced to interpret and cannot rely on anything the reader may have read before his interpretation because any interpretation will be a function of the reader's interpretive community.

A similar manifestation of the "literalness" of language occurs during the trial.¹⁴⁸ Serjeant Buzfuz, counsel to Mrs. Bardell, attempting to prove Pickwick's villainy, addresses the jury regarding some documentary evidence:

"And now, gentlemen, but one word more. Two letters have been passed between these parties, letters which are admitted to be in the hand-writing of the defendant, and which speak volumes indeed. These letters, too, bespeak the character of the man. They are not open, fervent, eloquent epistles, breathing nothing but the language of affectionate attachment. They are covert, sly, underhanded communications, but, fortunately, far more conclusive than if couched in the most glowing language and the most poetic imagery—letters that must be viewed with a cautious and suspicious eye—letters that were evidently intended at the time, by Pickwick, to mislead and delude any third parties into whose hands they might fall. Let me read the first:—'Garraway's [a famous coffee-house], twelve o'clock. Dear Mrs. B.—Chops and Tomata

147. See *supra* notes 145-46 and accompanying text.

148. DICKENS, *PICKWICK PAPERS*, *supra* note 24, ch. 34, at 552.

saucy. Yours, PICKWICK.' Gentlemen, what does this mean? Chops and Tomata sauce. Yours, Pickwick! Chops! Gracious heavens! and Tomata sauce! Gentlemen, is the happiness of a sensitive and confiding female to be trifled away, by such shallow artifices as these? The next has no date whatever, which is in itself suspicious. 'Dear Mrs. B., I shall not be at home till to-morrow. Slow coach.' And then follows this very remarkable expression. 'Don't trouble yourself about the warming-pan.' The warming-pan! Why, gentlemen, who *does* trouble himself about a warming-pan? When was the peace of mind of man or woman broken or disturbed by a warming-pan, which is in itself a harmless, a useful, and I will add, gentlemen, a comforting article of domestic furniture? Why is Mrs. Bardell so earnestly entreated not to agitate herself about this warming-pan, unless (as is no doubt the case) it is a mere cover for hidden fire—a mere substitute for some endearing word or promise, agreeably to a preconcerted system of correspondence, artfully contrived by Pickwick with a view to his contemplated desertion, and which I am not in a condition to explain? And what does this allusion to the slow coach mean? For aught I know, it may be a reference to Pickwick himself, who has most unquestionably been a criminally slow coach during the whole of this transaction, but whose speed will now be very unexpectedly accelerated, and whose wheels, gentlemen, as he will find to his cost, will very soon be greased by you!"¹⁴⁹

Aside from its being a marvelous display of lawyerly argument ("which I am not in a condition to explain"),¹⁵⁰ this speech presents another graphic display of the nonliteralness of words. To Pickwick's interpretive community and that of most readers, these brief letters, while not totally explicable, represent only mundane correspondence between a tenant and his landlady with no reference to romantic attachments, covert or otherwise. Yet, the reader also simultaneously understands that, as part of the comic conventions of this novel, other characters such as Serjeant Buzfuz will misunderstand the letters. This misunderstanding provides further humorous effect.

However, applying Fish's theories to the explication of Serjeant Buzfuz, an interpretive community could understand the correspondence to literally refer to secret romantic missives from Mr. Pickwick to Mrs. Bardell. Such an interpretation does

149. *Id.* ch. 34, at 562-63.

150. *Id.* ch. 34, at 563.

not preclude the literalness of such a reading to an interpretive community. Instead, the reader's almost universal understanding illustrates "the conditions of intelligibility that limit the meanings words can have before they are produced."¹⁵¹ The very ability of Serjeant Buzfuz to cogently argue his interpretation indicates that such an interpretive community was possible and not entirely disjunct from "normal" discourse.¹⁵² Thus, while readers know for certain that the letters are not evidence of romantic involvement, that knowledge is a function of the reader's beliefs that may change over time.

Stanley Fish does not directly concern himself with questions of morality. Nevertheless, his theories directly challenge the determinacy of texts, legal and otherwise, and argue that one cannot rely on any morality inherent in written laws since any inherent morality originates from the reader's interpretive community. One cannot know with certainty that future interpretations of laws and texts one now regards as moral will continue to be so interpreted in the future.¹⁵³ Thus, one cannot ultimately rely on the law to embody or implement one's moral beliefs. Rather, one can only rely on interpreters whose interpretive assumptions appear to be moral to arrive at moral readings. In other words, society cannot substitute moral laws for moral actors who will interpret those indeterminate laws.

V. THE JURISPRUDENCE OF DICKENS'S NOVELS

The problematic nature of trying to ascribe the term "jurisprudence" to the fictional writings of a nonlawyer who is more interested in the settings of the law than the technical rules of law is obvious. Nevertheless, given the significant amount of attention that Dickens devotes to the law and lawyers, speaking of "Dickens's jurisprudence" is particularly useful when discussing his view of the role that law plays in society in general.

151. FISH, NATURALLY, *supra* note 127, at 295.

152. Serjeant Buzfuz's speech was adopted by Dickens from a contemporary lawsuit brought by George Norton against the Prime Minister, Lord Melbourne, for criminal conversation. In that case, counsel for the plaintiff made a similar, albeit less comprehensive, argument concerning three apparently mundane notes between the parties. HOLDSWORTH, *supra* note 13, at 68-69; Glaser & Roth, *supra* note 13, at 283.

153. Fish notes that "interpretation is the source of texts, facts, authors, and intentions" and argues that if anything is certain, it is that interpretations will change. FISH, TEXT, *supra* note 127, at 16.

Dickens was not overly interested in specific legal reforms.¹⁵⁴ Whenever he addressed specific abuses in the legal process, such as in *Bleak House*, he typically dated the events in the novel several decades earlier. He also ignored the fact that specific procedural or substantive problems he was deriding had already been abolished or significantly reformed.¹⁵⁵ Nevertheless, Dickens delivers an important, albeit simple, message about the distinction between morality and the law.

In his essay on Dickens, George Orwell remarked on the fact that, despite Dickens's exceedingly negative portrayal of lawyers and the law, Dickens is beloved by the bar:

[O]ne knows without needing to be told that lawyers delight in Serjeant Buzfuz. . . . Dickens seems to have succeeded in attacking everybody and antagonizing nobody.¹⁵⁶

Why do lawyers—at least those who care to read him—love an author who only seems to castigate them? Ultimately, the significance for lawyers is that Dickens allows everyone, even those who do not practice the moral decency that he preaches, to contemplate his moral pronouncements. As Orwell later pointed out,

[I]n his own age and ours [Dickens] has been popular chiefly because he was able to express in a comic, simplified and therefore memorable form the native decency of the common man. . . . Nearly everyone, whatever his actual conduct may be, responds emotionally to the idea of human brotherhood. Dickens voiced a code which was and on the whole still is believed in, even by people who violate it.¹⁵⁷

Thus, Dickens appeals to the lawyers' ideal of human brotherhood, despite the fact that Dickens (and, in their more reflective moments, probably many lawyers) believed that the practice of law frequently violated that same ideal.

Dickens believed that the way to achieve justice was not better laws or better lawyers, but good acts by good people. No good was, or could be, achieved in Chancery or in *Jarndyce v. Jarndyce*. Those who put their faith in Chancery, such as Richard Carstone, were consumed by the law. Rather, the only good achieved in the novel was through acts of good men such as John Jarndyce who repudiated all possible involvement and benefit

154. See *supra* text accompanying notes 22-23.

155. See *supra* note 66 and accompanying text.

156. ORWELL, *supra* note 19, at 49.

157. *Id.* at 103.

from the lawsuit. He achieved justice by helping people personally rather than relying on the law.

Similarly, despite the attorneys and court in *Pickwick Papers*, or possibly *because* of them and their machinations, Samuel Pickwick could not obtain justice in the legal system. Rather, justice only resulted when the moral Pickwick took a moral posture. He refused to accommodate himself to the dictates of the law at significant personal risk and discomfort.

In *A Tale of Two Cities*, justice triumphed at Charles Darnay's first trial only because of the quick wit and fortuity of identical appearance of Sydney Carton. In Darnay's second trial before the revolutionary French tribunal, justice triumphed because Sydney Carton, a previously immoral man, decided to make an unselfish choice to sacrifice his own life to save his rival's life. This moral choice explicitly draws our attention to the gap between law and morality which has become one of Dickens's trademarks.

Finally, the same theme can be elicited from the legal texts exhibited in Dickens's novels. As the analysis of texts in *Bardell v. Pickwick* indicates, texts are not so perspicuous that they can be depended upon to maintain a constant meaning or to consistently achieve good or moral results. Texts will be interpreted by readers based upon the assumptions derived from each reader's interpretive community and this may or may not result in moral readings. The only assurance that the law will not cause injustice, then, comes when these texts are interpreted by moral individuals, not from a belief in determinate texts.

VI. CONCLUSION

Dickens wrote his novels at a time when many lawyers and legal institutions were inherently conservative and buttressed the welfare of the few at the expense of the many.¹⁵⁸ His views of the law and lawyers thus reflect a humanistic and popular hostility to such institutions. In contrast, the law and lawyers in the United States today are perceived by many (and by lawyers themselves)

158. See, e.g., Mitchell C. Stein, *Law and Legitimacy in England, 1800-1832: Bringing Professor Hay and Thompson to the Bargaining Table*, 68 B.U. L. REV. 621, 640 (1988) (noting that the presence of an ultra-conservative English judiciary in the first half of the 1800s inured to the benefit of the ruling class); see also Stephen B. Presser, *The Original Misunderstanding: The English, the Americans, and the Dialectic of Federalist Constitutional Jurisprudence*, 84 NW. U. L. REV. 106, 122-25 (1989) (discussing the Conservative movement's influence on the judiciary).

as being in the vanguard of social change and human betterment.¹⁵⁹ Dickens's views on social concerns, in contrast to those on law and lawyers, therefore are likely to strike a responsive cord in modern-day American liberals. However, his discordant and unfavorable view of the law and lawyers is an important reminder to those who sympathize with his social views to avoid placing excessive reliance on the efficacy of the law and lawyers as vehicles for human betterment. Dickens's view is also a reminder to not overlook the important role of simple morality and moral decency in human affairs.

Dickens's novels exemplify the belief that, at best, the law is a crude tool for achieving moral behavior and social justice. Overemphasis on the law tends to falsely ennoble the law as the final statement of morality. Thus, emphasis on the law at the expense of moral decency results in the view that if certain conduct is legal, then that conduct is moral and if legal obligations are fulfilled, then moral obligations are fulfilled. Moreover, emphasis on the law tends to overestimate the efficacy that a change in the law has on society.¹⁶⁰

The question remains as to how one determines moral decency. In the absence of law as a guide, must one fall back on individual or purely subjective determinations of morality? Dickens propounded his view of moral decency in his novels, culminating in the famous example of the morally transformed Ebenezer Scrooge.¹⁶¹ While morality cannot be circumscribed by the often fantastic world of Dickens's novels, his works provide a source for definitions of justice and behavior that are not

159. See, e.g., Stephen L. Carter, *Bork Redux, or How the Tempting of America Led the People to Rise and Battle for Justice*, 69 TEX. L. REV. 759, 769 n.49 (1991) (citing data suggesting that lawyers as a group are more liberal than the general public on virtually every issue); Paul Brest, *Who Decides?*, 58 S. CAL. L. REV. 661, 664-65 (1985) (citing studies reported by H. McClosky & A. Brill, *DIMENSIONS IN TOLERANCE* (1983) wherein lawyers were shown to be more civil libertarian than members of the general public, as well as those considered to be among the "opinion elite").

This view, more prevalent among younger lawyers and those who still consider themselves as "liberal," is a largely the function of the role of the Warren Court in the late 1960s and early 1970s. During these years the courts were generally sympathetic to the views of liberals. See Joseph L. Rauh Jr., *Historical Perspectives: An Unabashed Liberal Looks at a Half-Century of the Supreme Court*, 69 N.C. L. REV. 213, 233 (1990) ("It was great fun to appear before the Warren Court. Maybe this was because I always had the feeling the Chief Warren Court was the answer to liberal prayers").

160. See generally ROSENBERG, *supra* note 4.

161. CHARLES DICKENS, *A CHRISTMAS CAROL*, ch. 5, at 199-218 (Michael P. Hearn ed., 1976) (1843).

merely reflections of positive law or the morals of the marketplace. As such, Dickens's novels remain timely and relevant when considering the interaction between morality and the law and the impact of this interaction on the pursuit and achievement of justice.