

# Encountering Charles Dickens: The Lawyer's Muse<sup>1</sup>

By Michael P. Malloy\*

*This article explores the themes of the practical impact of law in society, the life of the law, and the character of the lawyer (in both senses of the term), as reflected in the works of Charles Dickens. I argue that, in creating memorable scenes and images of the life of the law, Charles Dickens is indeed the lawyer's muse. Dickens – who had worked as a junior clerk in Gray's Inn and a court reporter early in his career – outpaces other well-known writers of “legal thrillers” when it comes to assimilating the life of the law into his literary works. The centrepiece in this regard is an extended study and analysis of *Bleak House*. The novel is shaped throughout by a challenged and long-running estate case in Chancery Court, and it is largely about the impact of controversy on the many lawyers involved in the case. It has all the earmarks of a true “law and literature” text - a terrible running joke about chancery practice, serious professional responsibility issues, and a murdered lawyer.*

**Keywords:** Charles Dickens; Law and Literature; the Life of the Law.

## Introduction

In a seminar focused on the *Law and Literature* movement,<sup>2</sup> it is almost impossible to ignore Charles Dickens. He is in many respects the chronicler of law and lawyers. So many iconic images of the life of the law are of his devising. Think of Sidney Carton and Mr. Stryver — the jackal and the lion — as they sit through the night preparing briefs in *A Tale of Two Cities*.<sup>3</sup> Think of Mr. Jaggars, arranging seminal events in *Great Expectations*, while he obsessively washes his hands of the results.<sup>4</sup> Or think of the stinging variety of lawyers and law-related movers and shakers that stride across the pages of *Bleak House*, surely the *roman à clef* of the lawyerly caste.

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<sup>2</sup>On the Law and Literature movement, see Wertheim (1994) at 115.

<sup>3</sup>Dickens, *A Tale of Two Cities*, ch. 11.

<sup>4</sup>Dickens, *Great Expectations*, ch. 26 (“[H]e would wash his hands, and wipe them and dry them all over this towel, whenever he came in from a police-court or dismissed a client from his room”).

This article explores the themes of the practical impact of law in society, the life of the law, and the character of the lawyer (in both senses of the term), as reflected in the works of Charles Dickens. I would argue that, in creating memorable scenes and images of the life of the law, Charles Dickens is indeed the lawyer's muse. Dickens – who had worked as a junior clerk in Gray's Inn and a court reporter early in his career – outpaces other well-known writers of “legal thrillers”<sup>5</sup> when it comes to assimilating the life of the law into his literary works. The centerpiece in this regard is *Bleak House*, a novel shaped throughout by a challenged and long-running estate case in Chancery Court, *Jarndyce v. Jarndyce*. Dickens threads together two narrative lines. One theme is a first-person narrative of Esther Summerson and those around her who are impacted by the possible inheritance, but the other theme is largely about the impact of the controversy on the many lawyers involved in the case. It has all the earmarks of a true “law and literature” text - a terrible running joke about chancery practice, serious professional responsibility issues, and a murdered lawyer.

### Encountering the Lawyers

There can be little doubt that the law and its impact is an important theme in the literary works of Charles Dickens. As one scholar has noted:

He created nearly 40 different lawyer characters in his various novels, ‘all sharply defined and individualized,’ as well as countless other forms of legal life, including law clerks, magistrates, judges, law writers, law stationers, bailiffs, court clerks, law students, copy clerks, and clients. His novels include detailed descriptions of a variety of law offices and most of the courts of his time, as well as commentary (mostly critical) on legal procedures and practices, punishment, prisons, and cases. The various aspects and personages of the legal system are extremely well represented in Dickens' novels. Well represented, that is, in terms of numbers, if not in terms of attitude. For Dickens was concerned with the abuses of the law; his novels satirize its judges and lawyers, as well as its delays, injustices, inconsistencies, pretensions, irresponsibility, hyper technicality, unwieldy procedure, and insensitivity to the human toll it exacted.<sup>6</sup>

To some extent, however, this description of Dickens' treatment of lawyers and the law may overlook some of the subtle aspects of his presentation of the character of the lawyer. It may seem obvious what his attitude is towards lawyers and the life of the law. Yet at the same time, it is difficult to come to grips with Dickens, for both cultural and logistical reasons. Like Shakespeare, his works are almost too firmly embedded in our culture for us to approach him freshly and directly. Somehow, we seem to know him already — and have already made up our minds about him. Everyone knows “It was the best of times, it was the worst

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<sup>5</sup>See, e.g., Grisham (1991) *The Firm* (featuring a series of “accidental” deaths of associates who preceded the protagonist at the law firm that employs him); Rosenberg (2014) *Death on a High Floor* (involving a dead senior partner, stabbed in the back); Turow (1986) *Presumed Innocent* (featuring a lawyer murder suspect and serious professional responsibility issues).

<sup>6</sup>Markey (2002) at 692.

of times [...]” and “It is a far, far better thing [...]” – the beginning and the end of *A Tale of Two Cities*, and we know the central plot device – the melancholic lawyer who gives his life in exchange for that of the husband of the woman he loves. And so, we think we know the book. What vanishes from sight — if it ever was within sight — is the gritty, edgy realism of the scenes of lawyers at work, scenes which could just as well have been written yesterday. Familiarity may breed inattention or misunderstanding. For example, one commentator has criticised Dickens for neglecting the professional implications of the actions of lawyers in his novels, arguing that “[i]n 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.”<sup>7</sup> And yet, a closer look at *Bleak House*, reveals one narrative theme that is taken up entirely with the professional behaviour of lawyers and the ethical implications of that behaviour.

With inattention comes an unwarranted assumption that a Dickens work can be summed up in a headline, but the details may escape us. Consider the June 2011 Supreme Court decision in *Stern v. Marshall*,<sup>8</sup> a long-running bankruptcy case in which a widow — herself now deceased — claimed that her stepson had tortiously interfered with her expectancy of inheritance or gift from her deceased husband. Chief Justice Roberts begins his opinion for the Court as follows:

This “suit has, in course of time, become so complicated, that [...] no two [...] 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;” and, sadly, the original parties “have died out of it.” A “long procession of [judges] has come in and gone out” during that time, and still the suit “drags its weary length before the Court.”

Those words were not written about this case, see C. Dickens, *Bleak House*, in 1 Works of Charles Dickens 4–5 (1891), but they could have been. This is the second time we have had occasion to weigh in on this long-running dispute between Vickie Lynn Marshall and E. Pierce Marshall over the fortune of J. Howard Marshall II, a man believed to have been one of the richest people in Texas [...]<sup>9</sup>

Roberts seizes upon one image from *Bleak House* — perhaps the only image that resonates in our cultural memory – a crude lawyer’s joke about an estate case that takes so long to resolve that the entire estate is consumed in fees and costs. This joke does indeed provide a continuing narrative thread, the spine of the novel, but there is so much more to the story, so much more stimulating to our understanding of lawyers and the processes of the law.

There have been in fact many cases over the course of time that seem to rehearse this central, cynical joke from *Bleak House*. Indeed, the novel itself is referred to or quoted in literally hundreds of judicial decisions in U.S. jurisdictions alone. Consider, for example, *Scales v. United States*,<sup>10</sup> an older U.S. Supreme

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<sup>7</sup>Wertheim (1994) at 116.

<sup>8</sup>564 U.S. 462 (2011).

<sup>9</sup>*Ibid* at 468.

<sup>10</sup>360 U.S. 924 (1959).

Court case decided in 1959, involving the constitutionality of indictments under the Smith Act for “knowingly [...] advocate[ing] [...] or teach[ing] the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States.”<sup>11</sup> The Court was rescheduling argument in the case, and in a separate opinion Justice Clark observed

Much has been said of late of the law's delay, and criticism has been heaped on the courts for it. This case affords a likely Exhibit A. It looks as if Scales' case, like *Jarndyce v. Jarndyce*, will go on forever, only for the petitioner to reach his remedy, as did [the dying Jarndyce heir] Richard Carstone there, through disposition by the Lord.<sup>12</sup>

Ironically enough, the following year the Supreme Court rescheduled the case yet again.<sup>13</sup>

References to *Bleak House* have continued unabated in state courts as well. Consider the 2015 decision *Gordon v. National Railroad Passenger Corporation*,<sup>14</sup> in which the Delaware Court of Chancery – yes, a *chancery* court – dismissed a 25-year-old property case. The plaintiffs had sought damages and an injunction requiring the defendants to remove the contaminated soil that they had placed on the plaintiffs' property. Most of the court's discussion, and six of its seven footnotes, are references to *Bleak House*. Vice Chancellor Glasscock, who wrote the decision – surely a Dickensian name if ever there was one – had started out many years before as a judicial master organizing such cases for trial. He observes that the case “would not be considered young, even in the glacially-paced Chancery Court made infamous in English fiction.”<sup>15</sup> Over the course of the litigation, Glasscock tells us, “[a] long procession of Chancellors has come in and gone out. [...]”<sup>16</sup>

It seems to have become almost a judicial rule to acknowledge *Bleak House* whenever the paperwork and documentation begins to pile up in a case. The precedent for this is the book itself, which includes scenes of the lawyers coming to the chancery court armed with hundreds of pages to support their arguments.<sup>17</sup> Likewise, in the 2021 case *Trustees of General Assembly of Lord Jesus Christ of Apostolic Faith, Inc. v. Patterson*,<sup>18</sup> involving a lengthy dispute over a receivership imposed on church property, Judge Marston wryly observed:

Given the incredibly complicated nature of this action—as exhibited by the thousands and thousands of pages provided to this Court to decide the instant motion, and the scores of Judges who have rendered opinions and orders and held hearings in other

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<sup>11</sup> 18 U.S.C. § 2385.

<sup>12</sup> *Scales*, 360 U.S. at 926 (footnote omitted).

<sup>13</sup> *Scales v. United States*, 362 U.S. 945 (1960).

<sup>14</sup> --- A.3d ---, 2015 WL 1775547 (Del. Ch. 2015).

<sup>15</sup> *Ibid.* (footnote omitted, citing *Bleak House*).

<sup>16</sup> *Ibid.* (quoting *Bleak House*).

<sup>17</sup> Dickens, *Bleak House*, ch. 1.

<sup>18</sup> --- F. Supp. 3d ---, 2021 WL 1061215 (E.D. Penn. 2021).

related cases over the decades—we would be remiss if we failed to liken the matter before this Court to that in *Bleak House*.<sup>19</sup>

Twelve years into litigation in a bankruptcy case, Judge Frank, presiding over *In re National Medical Imaging, LLC*,<sup>20</sup> also seems compelled to mention that

Since 2009, the volume of litigation between the parties is truly epic, and considering the length of time that has already passed and the potential for ongoing litigation, a comparison to the iconic, fictional case of *Jarndyce v. Jarndyce* comes to mind.<sup>21</sup>

These repeated references apparently operate in a closed loop. Judge Frank explains to the reader, in a footnote, that “*Jarndyce v. Jarndyce* is a fictional case that threatened ‘to go on forever.’”<sup>22</sup> He then cites *Scales v. United States*, in support, itself citing *Bleak House*.<sup>23</sup>

While these references illustrate the pervasive impact of Dickens as the lawyer’s muse, many of these allusions are somewhat superficial. The novel has much to tell us about the personal and professional effects of extended litigation on the lawyers involved, and this is not just a matter of how much paper is consumed. Yet in one case after another, that seems to be the only aspect of the *Jarndyce* case that the judges remember. For example, Judge Deller, writing the decision in a 2021 bankruptcy case, *In re Zimmer*,<sup>24</sup> in which creditors objected to the proof of claim against the estate filed by the Internal Revenue Service, observes

The record reflects that the Morris Creditors are no strangers to this bankruptcy case, having previously filed a dizzying array of motions, objections, responses, replies, and similar papers. In fact, given the dizzying array of filings, this Court observed that the litigation contained within this bankruptcy case is ‘reminiscent of the infamous case of *Jarndyce [sic] v. Jarndyce* as described in the Charles Dickens’ novel *Bleak House*[...]’<sup>25</sup>

On the other hand, some judges appear at least to have appreciated the dark humour of the situation described by Dickens, when the *Jarndyce* case eventually implodes under the weight of unending costs and fees. In *VirnetX Inc. v. Apple Inc.*,<sup>26</sup> a patent infringement case spanning more than a decade, Judge Schroeder quotes at length from *Bleak House*, as follows:

We asked a gentleman by us, if he knew what cause was on? He told us *Jarndyce* and *Jarndyce*. We asked him if he knew what was doing in it? He said, really no he did

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<sup>19</sup>*Ibid.*

<sup>20</sup>627 B.R. 73 (E.D. Penn. 2021).

<sup>21</sup>*Ibid.*, at 83 (footnote omitted).

<sup>22</sup>*Ibid.*, at 83 n. 4.

<sup>23</sup>*Ibid.*

<sup>24</sup>624 B.R. 92 (W.D. Penn. 2021).

<sup>25</sup>*Ibid.*, at 95.

<sup>26</sup>--- F. Supp. 3d ---, 2021 WL 1941740 (E.D. Tex. 2021).

not, nobody ever did; but as well as he could make out, it was over. "Over for the day?" we asked him. "No," he said; "over for good."  
[...] Perhaps, at last, the same is true of *VirnetX v. Apple*.<sup>27</sup>

What is often missed, however, is the personal and professional character of the lawyers on display in Dickens' novels, and particularly in *Bleak House*. The strained circumstances in which they operate appear, in most of them, to have warped their character, providing us with "nearly every bad lawyer type possible. Every lawyer Dickens created manifests at least some negative characteristics; and some are thoroughgoing scoundrels."<sup>28</sup> That observation certainly seems to be corroborated by the lawyers in *Bleak House*.

We have, for example, Mr. Tulkinghorn, a drab, tight-lipped attorney who advises Sir Leicester Dedlock and his wife on a variety of legal matters. Tulkinghorn is working on Lady Dedlock's case in the High Court of Chancery concerning her marriage dowry, but he is also collecting information about her background, apparently with a view to exercising influence over her, and indirectly over Sir Leicester.<sup>29</sup> He is aided in these efforts by Mr. Snagsby, a meek, obese law stationer, serving him because he expects it will prove to be remunerative to him.<sup>30</sup> However, Tulkinghorn's selfish intrusion and obsession with the power that knowledge brings<sup>31</sup> will eventually lead to his murder.<sup>32</sup> Dickens slowly leads us to the realisation that "Mr. Tulkinghorn's time is over for evermore; [...] from night to morning, lying face downward on the floor, shot through the heart."<sup>33</sup>

We later meet William Guppy, one of the law clerks in Kenge and Carboy, the firm that represents Mr. John Jarndyce, one of the claimants in Chancery. Mr. Guppy is a man of modest means but a keen eye for detail.<sup>34</sup> That eye will gradually unravel the mystery of Lady Dedlock's former life and Esther's parentage,<sup>35</sup> while he himself will also fall in unrequited love with Esther.<sup>36</sup> However, when Esther eventually asks Guppy to drop his investigation into her parentage, Guppy agrees honestly and honourably.<sup>37</sup> When Tulkinghorn tries to pressure Guppy into revealing what he knows, Guppy refuses outright,<sup>38</sup> a brave action for a young clerk trying to make his way in the world. Still, Tulkinghorn knows or suspects enough of the story to threaten Lady Dedlock with his knowledge.<sup>39</sup>

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<sup>27</sup>*Ibid.*

<sup>28</sup>Markey (2002) at 693.

<sup>29</sup>Dickens, *Bleak House*, ch. 2.

<sup>30</sup>Dickens, *Bleak House*, ch. 10.

<sup>31</sup>See, e.g., Dickens, *Bleak House*, ch. 12 (in which Tulkinghorn begins to hint at the knowledge he has gained of Lady Dedlock's past).

<sup>32</sup>Dickens, *Bleak House*, ch. 48.

<sup>33</sup>*Ibid.*

<sup>34</sup>Dickens, *Bleak House*, ch. 7.

<sup>35</sup>Dickens, *Bleak House*, ch. 29.

<sup>36</sup>Dickens, *Bleak House*, ch. 9.

<sup>37</sup>Dickens, *Bleak House*, ch. 38.

<sup>38</sup>Dickens, *Bleak House* ch. 39.

<sup>39</sup>Dickens, *Bleak House*, chs. 40-41.

Then there is the portly Mr. Kenge, of Kenge and Carboy, who is genuinely concerned with the needs of those who depend upon him, and not just for legal advice.<sup>40</sup> His concern is not only with respect to Mr. Jarndyce's interests, but also with the well-being of Esther Summerson, an apparent orphan, and with the young Jarndyce cousins Ada and Richard, all three of whom are under the patronage of Mr. Jarndyce. In contrast, we have Mr. Vholes, a solicitor's clerk who is assisting Richard in his efforts to gain an inheritance in the Jarndyce case for his own financial advantage.<sup>41</sup> When those efforts begin to appear unavailing, Vholes will hound the impoverished Richard for his fees.<sup>42</sup>

When at last a definitive, genuine last will is discovered and presented in Chancery, it turns out that "the whole estate is found to have been absorbed in costs."<sup>43</sup> All of the efforts of each of the litigants and all of the lawyers comes down to this conclusion. The battle over the estate, stretching out over generations, fizzles out only when the money is gone. There are various pairings of lovers that blossom into future happiness, in true Dickensian fashion. And the lawyers? Presumably, they move on to the next file on their desks. Except, of course, for Tulkinghorn. The reader's discovery of his death is staged by Dickens in an almost cinematic style. Each time I read it, I imagine the camera panning across the setting until it settles upon Tulkinghorn:

Has Mr Tulkinghorn been disturbed? His windows are dark and quiet, and his door is shut. It must be something unusual indeed, to bring him out of his shell. Nothing is heard of him, nothing is seen of him [...]

For many years, the persistent Roman [in a ceiling fresco] has been pointing, with no particular meaning, from that ceiling. It is not likely that he has any new meaning in him to-night. Once pointing, always pointing – like any Roman, or even Briton, with a single idea. There he is, no doubt, in his impossible attitude, pointing, unavailingly, all night long. Moonlight, darkness, dawn, sunrise, day. There he is still, eagerly pointing, and no one minds him. [...]

He is pointing at a table, with a bottle (nearly full of wine) and a glass upon it, and two candles that were blown out suddenly, soon after being lighted. He is pointing at an empty chair, and at a stain upon the ground before it that might be almost covered with a hand. These objects lie directly within his range. An excited imagination might suppose that there was something in them so terrific, as to drive the rest of the composition, not only the attendant big-legged boys, but the clouds and flowers and pillars too – in short, the very body and soul of Allegory, and all the brains it has – stark mad. It happens surely, that everyone who comes into the darkened room and looks at these things, looks up at the Roman, and that he is invested in all eyes with mystery and awe, as if he were a paralysed dumb witness.

So, it shall happen surely, through many years to come, that ghostly stories shall be told of the stain upon the floor, so easy to be covered, so hard to be got out; and that the Roman, pointing from the ceiling, shall point, so long as dust and damp and spiders spare him, with far greater significance than he ever had in Mr Tulkinghorn's time, and with a deadly meaning. For, Mr Tulkinghorn's time is over for evermore;

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<sup>40</sup>Dickens, *Bleak House*, ch. 3.

<sup>41</sup>Dickens, *Bleak House*, ch. 37.

<sup>42</sup>Dickens, *Bleak House*, ch. 51.

<sup>43</sup>Dickens, *Bleak House*, ch. 65.

and the Roman pointed at the murderous hand uplifted against his life, and pointed helplessly at him, from night to morning, lying face downward on the floor, shot through the heart.<sup>44</sup>

His death is one of the highlights of the riotous and colourful panoply of events in *Bleak House*, and it is difficult to dispel that image from one's mind. The resolution of this mystery will take a while, because there are many potential suspects. When we discuss this scene, I like to tell my students that at least it proves that a lawyer has a heart.

## Conclusion

John J. Osborn,<sup>45</sup> the author of *The Paper Chase*, a novel about the law school experience, once said that *Bleak House* is “probably the most important literary work about the law.”<sup>46</sup> What it shows us about the practical impact of law in society, even if exaggerated for effect, is memorable. What it shows us about the life of the law, and how it can shape the character of a lawyer for better or worse is an important reminder that professional responsibility is not just an abstract principle, but something that follows us home. It is in creating such memorable scenes and images of the life of the law that Charles Dickens indeed becomes the lawyer's muse.

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<sup>44</sup>Dickens, *Bleak House*, ch. 48.

<sup>45</sup>Osborn (1971).

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