

The character of social connection in law and literature: lessons from *Bleak House*

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Abstract

*This paper argues that law and society are disconnected in practice, and that this is attributable, in part, to law's disconnection from the arts and humanities in our schemes of formal education. When we draw out the legal yarn from its cultural fabric, we find that it is remarkably thin. It is especially inadequate to describe the complexity of human interconnection, and even lacks a language to express such commonplace connections as unmarried romantic cohabitation and non-profit clubs. To understand human interconnection and the law's connection to society, we must read the law 'in context' – as being one fabric, one textile, with other literatures – and we must read with an appropriate ethic. To that end, this paper reads the law in the context of Dickens's *Bleak House*, which has been called 'a novel of connections', and Forster's *Howards End*, which exhorts us to 'connect the prose and the passion'.*

1 Introduction

To study the law 'in context' is to recognise that the law is of one fabric, one 'textile', with its social, political, economic and historical setting; and to acknowledge that the texts of law are dependent upon other literary texts, and interwoven with them. The textile metaphor is especially pertinent to interdisciplinary inquiry, for it reveals that any given object of study can be seen as a tapestry in which disciplinary strands remain more or less distinct (sometimes obvious, sometimes obscured) as they contribute to the whole. In addition to these senses of 'contextual', the present study is intended to be *con*-textual in the further sense of encouraging texts to be read *with an appropriate ethic*. What I mean by this is that academic reading and writing ought to be conducted as a living mode of social connection, just as conversation is. It ought not to be conducted in a way that is so far abstracted from felt human emotion and the tangible reality of life as to be disconnected from it and unconcerned with it. In fact, academic scholarship can never be wholly detached from social life, because academics and their work inevitably constitute a part of social life. This may be especially true of scholarship on the subject of law, for it has been observed that 'law is intimately involved in *the constitution of social relations and the law itself is constituted through social relations*' (Merry, 1992, pp. 209–210). It is incumbent upon scholars to approach their writing and their reading with respect for the life that is inherent in these acts of communication. In the words of James Boyd White, our speech should be 'living speech' (White, 2006).¹ Theoretical language that is abstracted from the life we feel must be guarded against, constantly. There is always a danger inherent in the adoption of a theoretical standpoint that we will live up to the etymology of the label 'theorist' and become (or pretend that we have become) mere spectators on the theatre of life instead of performers in it. The

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1 For an excellent collection of essays on ethical reading, see George (2005).

point is that we should aspire to educate, for whereas a bad theorist merely offers a seat to observe the scene, a good educator seeks to move the observer to perform.² The error of disconnected, abstract theorisation was exemplified by Teubner when, writing on contract law, he argued that the 'law needs to be reconstructed as relational, but not in the usual communitarian sense of the word as a nice and warm cooperative relation between human beings, rather as a cool and impersonal relation of intertextuality' (Teubner, 2000, p. 400). That attitude to engagement with texts is exactly opposed to the ethic advanced here.³ It is not enough merely to observe, or scientifically to scrutinise, the interweaving of texts and the interconnection of people; it is necessary to cultivate a way of engaging that will more personally and compassionately connect the observer to the observed. I am not suggesting that we should all live together in a commune. I do not suffer from what Tushnet has labelled a 'fetishization of imagined connections' entailing 'a romantic yearning that one's political location be a place of unalienated connectedness' (Tushnet, 1991, p. 1540, note 98). It is precisely because connection may be harmful as well as beneficial that an appropriate ethic of connection must precede any attempt to connect.

The need to read with an appropriate ethic is particularly acute when we are reading texts in the hope that they will prompt us to improve the law's language of social interconnection and the quality of the law's (including the legal profession's) connection to society. In the course of this paper, it will become apparent that the law's yarn is a thin one so far as its discourse of social interconnection is concerned. I will argue that the law's dependence upon definitional abstraction (most clearly seen in the notion of the legal person) produces two significant deficits in legal language. The first is the law's failure to express the factual reality of social connection, even as it is found in such commonplaces as unmarried cohabitation and unincorporated association. The second is the law's failure to express, still less to employ or engender, an appropriate ethic of human connection. The purpose of this paper is to explore these deficits, and to seek possible solutions to them, through engagement with imaginative literature. I proceed on the assumption that the creative portrayal of the character of social connection in a novel, and especially through the characters of a novel and connections between those characters, is in significant respects accomplished with what the law lacks. I agree with Lionel Trilling that imaginative literature is 'the human activity that takes the fullest and most precise account of variousness, possibility, complexity, and difficulty' (Trilling, 1950, preface). Trilling is the author of a celebrated critical appreciation of E. M. Forster (Trilling, 1944), whose novel *Howards End* features later in this paper. Trilling's attitude to reading Forster has been summarised in this succinct phrase: 'we should read Forster to become more like him' (O'Hara, 1988, p. 80). This leads me to a further assumption on which this paper proceeds: that a reader's imaginative connection to creative literature can provide practice in the performance of ethical connection in real life and can thereby develop the reader's character. In the words of James Boyd White, '[w]e are responsible for the ways in which we attune ourselves to what we read, for how we judge it, and for who we become in relation to it' (White, 1988, p. 746). The assumption that literature provides practice in real life is probably unprovable empirically,⁴ and certainly it is rather optimistic,⁵ but optimism is the point. Legal language has a rather pessimistic view of human connection. We will see that the law tends to figure human social relations as pathology in need

2 On the educational ambition of interdisciplinary engagement of law and literature, see White (1985), Ward (1995) and Watt (2009).

3 For a damning critique of Teubner's abstract approach, see Campbell (2000, p. 443).

4 Neither is the assumption susceptible to empirical disproof. There is, on the other hand, compelling *anecdotal* support for the assumption (see, for example, Coles, 1989).

5 Richard Posner is less optimistic about the potential to develop the ethical content of a reader's character through engagement with creative literature. He asserts that '[i]mmersion in literature does not make us better citizens or better people' (Posner, 1997, p. 1).

of remedy. Arguably this is not the law's fault, but its function. It might be said that there is no call for law where social relationships are strong; as Black observed: 'the greater the relational distance between the parties to a dispute, the more likely is law to be used to settle the dispute' (Black, 1973, p. 134). Toni Massaro, citing Black, put it this way:

'we can share in only some lives, and relate to only some voices. We are part of some communities, but not others. I may be bigger than my single physical self, but I am not the world. Rather, my "self" may resemble the concentric circles that appear when a stone is tossed into a lake. The most distinct and powerful circles are clustered tightly at the source (my physical self). Ripples extend beyond that source, but these circles grow more attenuated as they extend from the source and, eventually, they disappear. This vanishing point – the limit of self and the exhaustion of connection – is often the beginning point for law.' (Massaro, 1989, pp. 2121–22)

Indeed, it has been suggested that the law is not welcome in human relations before they have broken down, and that lawyers who introduce contracts preventatively are introducing them prematurely and tainting human relations with legality:

'Legal centralists assume that private law influences events not only after things go wrong, but also before they do ... One of my central factual premises, by contrast, has been that most people, wishing to minimize involvement with lawyers, structure their household arrangements beyond the shadow of private law ... [and that] Attorneys who contribute to the legalization of home relations ... debase the quality of life around the hearth.' (Ellickson, 2006, p. 328)

If the deficits in the law's language and ethic of social connection are inherent in the law's function, and in that sense not faults as such, they are nevertheless shortcomings in the law's social narrative which must be supplemented by other languages and literatures. James Boyd White has observed that when lawyers read and remake stories they are 'constantly at work seeking to integrate tension and inconsistency into a coherent whole' (White, 1985, p. 175). Since this is the case, it is important to educate lawyers (in law school and beyond) to appreciate tension and inconsistency, and to acknowledge the deficits, including the deficits of abstraction and lack of passion, which may accompany legal coherence. The hope of such an education is one reason why lawyers and law students can benefit from exposure to imaginative literature. Where the law tends to regard social relations narrowly and pathologically, a novel, in contrast, has the freedom to portray social relations, even in their accidental and harmful aspects, in a way that encourages appreciation of a more complex and holistic humanity. Whether the reader actually learns and lives out the ethical 'lessons' that such literature supplies is always, to a great extent, a matter of the reader's personal choice. I can only claim that there are lessons to be learned.

2 Dickens's 'novel of connections'

My search for a novel to supply an holistic portrayal of human interconnection leads me to focus on Charles Dickens's *Bleak House*,⁶ which the editor of the definitive modern text⁷ called 'a novel of connections' (Page, 1990). *Bleak House* is the natural choice because its primary concern is to cultivate appreciation for human connection in all its complexity, and its first focus is upon the fog of

6 Published in instalments between March 1852 and September 1853.

7 Charles Dickens, *Bleak House* (Harmondsworth: Penguin Books, 1971), edited by N. Page and introduced by J. Hillis Miller. For all references to novels in this paper I have (except where otherwise indicated) adopted Miller's convention of following each quotation from the novel with a reference, in parentheses, to the number of the source chapter.

misunderstanding that disconnects legal society from society at large.⁸ In the opening chapters, Dickens introduces us to a typically diverse and intriguing array of characters, from Sir Leicester Dedlock, scion of the country estate of Chesney Wold, to the orphan crossing-sweeper, Jo. We are even introduced to the apparently inconsequential doorman and messenger, the so-called ‘Mercury’; a character whose significance to the plot is greater than his humble employment might suggest. With these characters arrayed, in Chapter Seven Dickens asks the crucial question:

‘What connexion can there be between the place in Lincolnshire, the house in town, the Mercury in powder, and the whereabouts of Jo the outlaw with the broom, who had that distant ray of light upon him when he swept the churchyard-step? What connexion can there have been between many people in the innumerable histories of this world who from opposite sides of great gulfs have, nevertheless, been very curiously brought together!’

The cynic might say that Dickens posited the question ‘What connexion can there be . . .’ simply to tantalise his readers into reading on; but to present a mystery and to bait readers with the promise of a solution is, as E. M. Forster tells us, the behaviour of a lesser novelist – of a mere storyteller, in fact (Forster, 1927, chapter 2). Dickens does not need to dangle the mystery of a potential connexion in order to keep his readers’ attention. He keeps their attention through the intimacy of his characters and the intricacy of his plot. (‘Plot’ holds a superior place to mere storytelling in Forster’s hierarchy of the novelist’s art.) Indeed, in the very next line after the passage quoted, he writes that ‘Jo sweeps his crossing all day long, unconscious of the link, *if any link there be*’ [emphasis added]. The addition of the words ‘if any link there be’ may be said to demonstrate Dickens’s preference for plot over melodrama (Forsyth, 1985, p. 160). Let us say, then, that the most obvious answer to Dickens’ question, ‘[w]hat connexion can there be . . .?’, is ‘the plot’. Graham Storey offers a more subtle answer to the question, when he identifies ‘unreality, deadness, blindness, suspicion’ as the ‘main connecting-links of the novel’ (Storey, 1987, p. 49). Another answer is ‘connection’ itself. It is the very nature of connection that makes the ‘Mercury’ so significant, for he is the one who, consistent with his mundane duty, innocently conveys the lawyer Tulkinghorn to his meeting with Lady Dedlock at the outset of the plot, and thereby makes the first of many connections that will eventually lead to the deaths of both lawyer and lady. A related answer is that the inhabitants of the fictional world of *Bleak House* are connected by their author. This is not as trite a response as it might appear, for Dickens was a great force for social connection; reaching people and places that state institutions did not. In the early days of Dickens’s fame, a non-conformist preacher observed that in the poorest environs of the city there were three ‘social agencies’ at work: ‘the London City Mission; the novels of Mr Dickens; the

8 It may be useful to outline the plot of *Bleak House* as it relates to the key characters under consideration in this paper. The novel is narrated by two voices. One is the usual voice of an impersonal storyteller; the other is the voice of Esther Summerson. The novel tells the story of Esther’s journey from having no parents or stable home to the discovery of identity, security and a sense of self worth. She progresses under the patronage, secret at first, of the wealthy and affable John Jarndyce, the master of Bleak House and one of many parties with an interest in the interminable Chancery case Jarndyce and Jarndyce. John Jarndyce has two young wards, Richard Carstone and Ada Clare, who also have interests in the case. Harold Skimpole, who neglects his own wife and children, is another who enjoys the patronage of Jarndyce, and he affects childlike innocence to keep it. Lady Dedlock, who we discover is Esther’s mother, also has an interest in the case and it is in connection with that interest that she receives legal advice from her husband’s solicitor, Mr Tulkinghorn. Tulkinghorn suspects that Lady Dedlock has a dark secret in her past and works tirelessly to reveal it in the supposed interests of his client, Sir Leicester Dedlock of Chesney Wold. Sir Leicester dotes on his wife, Lady Dedlock. A solicitor’s clerk named William Guppy, having become infatuated with Esther, works independently of Tulkinghorn, but no less tirelessly, to connect Esther to the case. Madame Hortense, Lady Dedlock’s lady-in-waiting, having been relieved of her employment, joins in Tulkinghorn’s plots against her former mistress but ends up killing Tulkinghorn. Two further characters, Mrs Jellyby and the orphan Jo, are less central to the plot but are absolutely central, as we will see, to Dickens’s concern with social connection.

cholera'.⁹ Dickens brought a light into the London fogs; not 'that distant ray of light', but a torch carried up close.¹⁰ He shone it on Jo as he swept the churchyard step; just as, almost a decade earlier, he had illuminated Toby 'Trotty' Veck eating his tripe dinner on the doorstep in the second Christmas book, *The Chimes*.¹¹ In the preface to the first edition of *Bleak House*, Dickens was at pains to connect the worlds of fiction and fact. Having noted how one real-life Chancery judge had blamed the Court of Chancery's poor reputation on the prejudice of the general public, he stated (sardonically):

'as it is wholesome that the parsimonious public should know what has been doing, and still is doing, in this connexion, I mention here that everything set forth in these pages concerning the Court of Chancery is substantially true.'

The word 'connexion' is not an accidental choice. It links the novel to life. The link is strengthened later in the preface, where the apostrophe '[m]ay we meet again!' exhorts his readers to imagine a real-life connection to the author (an exhortation that is repeated verbatim in the preface to *Little Dorrit* (1855–57)). Dickens always aimed for a personal connection to his readers (his indulgence in theatrical readings of his novels is further evidence of this); and it is clear that he also hoped that his readers would shine their own inquiring lights upon the doorsteps and public ways and crossing places and ask 'what connects me to the person I find there?'

Dickens was especially keen to connect high and low strata of society, precisely because the possibility of such connection was unjustly and institutionally denied by the established class divisions of Victorian England. John Jarndyce remarks that Esther and Sir Leicester Dedlock 'are the two last persons on earth I should have thought of connecting together' (43), but that is the point – Dickens wanted his readers to imagine connections which might have been considered unimaginable. Sir Leicester, a minor aristocrat, typifies those members of Dickens's society who denied the potential for meaningful connection across the classes. By his lights, 'the first station in which [people] happen to find themselves' is 'the station unto which they are called – necessarily and for ever' (28). When he branded Mr Boythorn a 'levelling person', we can be sure that he considered this to be the strongest of insults. We can also be sure (since Boythorn is clearly a favourite of his creator, right down to the fact that Dickens and Boythorn both had a pet canary which they regarded with childlike fondness) that Dickens is telling us that he would personally wear the 'leveller' label with pride. It is a further clue to Dickens's levelling credentials that he gives Esther and Leicester names which sound almost exactly the same.

We will see that the characters of *Bleak House* demonstrate many potential modes through which, and attitudes with which, one person may connect to another, but first I will supply some proofs for the claim that law lacks a language capable of expressing human connection in anything but the most simplistic abstract terms.

3 Law's disconnection

In *The Pickwick Papers* (1836–37), Dickens critiques the law's habit of abstraction (its habit of drawing out the legal thread from its cultural and social context), where he writes:

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- 9 Quoted in G. K. Clark's annotated edition of G. M. Young's 1936 publication *Portrait of an Age: Victorian England* (London: Oxford University Press, 1977), p. 69.
- 10 See, further, Schwarzbach (1979), especially chapter 6: 'Bleak House: Homes for the Homeless'; and Blount (1965).
- 11 *The Chimes: A Goblin Story of Some Bells that Rang an Old Year Out and a New Year In* (London, Chapman and Hall, 1844). *The Chimes* was published shortly after the New Royal Exchange received bells for its tower ('Bells and Chimes of the New Royal Exchange', *The Illustrated London News*, 2 November 1844). The hour bell was inscribed with a short list of names, one of which was an assistant to the Master of the Mercers' Company named 'Ebenezer Trotman' – a curious, accidental connection between the main characters of Dickens's first two Christmas books.

'The body! It is the lawyer's term for the restless, whirling mass of cares and anxieties, affections, hopes, and griefs, that make up the living man.' (45)

In fact, it is not 'the body', but the 'legal person', that the law prefers to employ as an abstract approximation of the whole human;¹² and it says something of its abstract nature to observe that the label 'legal person' applies as well to inanimate corporate entities as to living, breathing human beings. Given the law's inability to express the nuances of the individual human being, it is hardly surprising that legal language cannot adequately express the varieties of connections and associations that may exist *between* humans. This inadequacy is very clearly seen, as stated earlier, in the law's attempt to conceptualise such phenomena as cohabitation and unincorporated association. The 'legal person' abbreviation cannot be extended to produce an adequate concept of group or association, as Professor S. J. Stoljar (1973) observed:

'legal personality requires something to be either a person or not a person, the unincorporated body must end up as a non-person; and hence, for example, the traditional, but very false, statement that an unincorporated society does not exist in law.' (p. 189)

We have already acknowledged that not every social connection calls for a legal label. So, for example, there will be no intention to create legal relations 'where two parties agree to take a walk together, or where there is an offer and an acceptance of hospitality'.¹³ But difficulties arise where entitlement to property is at issue, for where connected people have interests in property, the law finds itself called upon to describe the connection between the people in order to understand their respective (shared or joint) interests in the property. One occasion for such difficulty is where property is given to a club or society or other non-profit unincorporated association. A corporate entity such as a commercial limited company can hold property almost as easily as a competent human being, but an unincorporated club or society is not a legal person and therefore cannot, according to the law's unrealistic theory, hold property. An unincorporated association will generally have past members, present members and future members, but which of them is the owner of the association's property? The law's default solution is to say that the members of the association for the time being are the absolute owners of the association's assets, but subject to a contractual obligation to hold the assets for the purposes of the association.¹⁴ 'Contract' is a fitting description of this solution, since it narrows or contracts the diverse social richness of human association into one of the most simplistic legal formulas for human connection: the bargain. The truth is that bargain is very likely the last thing that brings and keeps the members of a social association together. Contract does not explain how or why social associations are made; for the most part it merely provides a scheme for distributing the association's assets in the pathological contexts of dispute and dissolution.¹⁵

Something similar is true of the association we might call unmarried 'romantic cohabitation' (and it is true, one might add, of 'the family', 'the tribe', 'the church' and 'the gang' – every one of which is to a greater or lesser extent nonsensical to the law). In the years leading up to the publication in July 2000 of its Discussion Paper *Sharing Homes*,¹⁶ The Law Commission of England and Wales took its sharpest forensic scalpels to the task of defining cohabitation, but in the end (and to its credit) it had the humility to admit that such relationships are simply not susceptible to legal

12 For a wide-ranging critique of legal conceptions of personhood, see Naffine (2009).

13 *Balfour v. Balfour* [1919] 2 KB 571, *per* Lord Atkin at p. 578.

14 See, for example, *Re Recher's Will Trusts* [1972] 1 Ch 526, especially at pp. 538–39.

15 The relevant law is considered in *Re Horley Town Football Club* [2006] EWHC 2386 (Ch).

16 Law Com No 278.

definition; hence the publication of a mere 'Discussion Paper' instead of the anticipated report and reform proposals. It is significant, in the light of what was said above about the pathological attitude of the law's engagement with human association, that when the Law Commission eventually published proposals for the reform of cohabitation, the focus was expressly limited to practical solutions for dealing with relationship *breakdown*.¹⁷

If I am right that legal language is inadequate to describe human connection, a second and subsidiary argument might also hold good: that the law depends for its humanity, and for its substantial legitimacy, upon languages that it does not control. We may include in such 'languages' creative writing about human connection written by authors who have been moved by the phenomenon. When the book club meets to discuss the current novel, the law can shed no light on the subtle ties that connect the participants, but the novel might; and if it is a novel by Charles Dickens it very probably will. A third argument follows from the first two. It is the argument that, in addition to the many well-known explanations for Charles Dickens's obvious animosity to systems of laws and lawyers,¹⁸ there is also this explanation: that Dickens is critical of the law because the law's language and attitude with regard to connection is opposite to his own.

Dickens's question, 'What connexion can there be', echoes the New Testament question, 'Who is my neighbour?'. It may be significant that the biblical question was presented by a lawyer who appears to have been looking to escape personal obligations on technical, definitional grounds, but more significant is the parable that was offered in response.¹⁹ The *Parable of the Good Samaritan* identifies the highest quality of human connection between the least likely parties. The Jewish victim and his Samaritan rescuer were, to use that phrase from *Bleak House*, 'the two last persons on earth [we] should have thought of connecting together!'. Every lawyer knows what became of the biblical question, 'Who is my neighbour', when a well-intentioned Law Lord attempted to translate the answer into UK law. In *Donoghue v. Stevenson*,²⁰ Lord Atkin cited the parable in the course of formulating the so-called 'neighbour principle' as a basis for a new legal duty to act with careful regard for persons unconnected to the defendant by any direct contractual nexus;²¹ but whereas the biblical parable praised the behaviour of the Samaritan who went out of his way to assist a stranger who had been injured by robbers, Lord Atkin's version allows us to do what the priest and the Levite did, which is to walk by on the other side.²² Even today there is, in English law, no general duty requiring private individuals positively to assist strangers;²³ one is only obliged to take care not to harm them. In law we are all fundamentally estranged. I do not point this out from any desire to extend law's reach, but rather to increase law's humility by showing the need, in the law school and beyond, to look to non-legal literatures to assist us in the imagination of appropriate social interconnection.

17 The Law Commission of England and Wales, *Cohabitation: The Financial Consequences of Relationship Breakdown* (Law Com No 307), 31 July 2007.

18 Explanations include the fact that Dickens's father had been imprisoned for debt, and the fact that Dickens himself had suffered in chancery in the case of *Dickens v. Lee* (1844) 8 Jurist 18. See Jacques (1914).

19 Luke 10:25–37.

20 [1932] AC 562, House of Lords.

21 The possibility of a general duty of care not restricted to persons linked by a contractual nexus can be traced back to the judgment of Benjamin N Cardozo in the US case *MacPherson v. Buick Motor Co.*, 217 NY 382 (1916) New York Court of Appeals. Judge Cardozo was one of the earliest lawyers to see literature's potential to exert a humanising influence over law (see Cardozo, 1938–1939).

22 *Dorset Yacht Company Ltd. v. Home Office* [1970] AC 1004, *per* Lord Diplock at p. 1060F.

23 See, generally, Menlowe and McCall Smith (1993), Ratcliffe (1966) and Levit (2001).

4 The characters of *Bleak House* as exemplars of connection

It would be naive to suggest that any literary art, still less any individual author or individual novel, can wholly perfect what is lacking in the law's attempt to express the nuances of human connection and human association. A novel does, though, have intrinsically broad scope to achieve nuanced expression through the natures and complex interactions of its characters. A novel has the capacity to present examples of ethical character, and (if the character is attractive) to attract us to adapt our own behaviours to that of the exemplar; in short, '[s]ome stories exemplify the good characters we aspire to' (Menkel-Meadow, 2000, p. 814). The flip side, of course, is that a novel also has the capacity to exemplify the bad characters we should resist. We find in Dickens's *Bleak House* examples to follow and examples to avoid.

The following sections are labelled according to some of the major characters of *Bleak House*. Within the sections I will consider the extent to which these and other characters exemplify possible modes of connection, good and bad, and I will identify in their example some lessons for the law.

Esther Summerson

Esther Summerson is the supreme connector of *Bleak House*; she is the novel's great glue. In her role as co-narrator she 'must "trot" around, make friends with an astonishing number of people, and be in surprising places, to keep us informed' (Moseley, 1985, p. 36). It has been said that Dickens:

'establishes Esther Summerson and the omniscient narrator as observers of a city which ideally should be a coherent structure of human relationships, but actually is, like the law, a murky labyrinth of elusive and hidden connections.' (Burke, 1969, p. 659)

In fact, Esther is no mere observer. She teaches us how to connect selflessly and sacrificially. She shows care for the endless stream of hurt humanity she encounters, from orphan girls and boys to indebted men and downtrodden women. She catches smallpox when she shelters Jo and she risks impoverishment when she pays Harold Skimpole's debts. It might be said that she remains slightly disconnected from her fictional world on account of the omniscience and omnipresence that her position as co-narrator bestows upon her, but if she lacks anything in connection to the world of the novel she makes up for it through her connection to Dickens himself and her connection to the real world of Dickens's social concerns. As is well known, Dickens, ever mindful of his own childhood connection to the poor and downtrodden of the city, was a passionate campaigner for social reform. Numerous commentators have identified Esther with her creator, including one who calls her, cutely, 'Charlotte Dickens' (Sadrin, 1992).²⁴ In her compulsion to connect to other people and to do so out of compassionate concern, Esther demonstrates 'empathy' of the sort that entails 'imaginative experience of the situation of another' (Henderson, 1987, pp. 1579–82); what Timothy Peltason calls 'imagination as a power of sympathy' (Peltason, 1992, p. 690). We might add that she demonstrates it because Dickens demonstrates it.

The lesson for lawyers and legal educators is that imagination and sympathy, two elements which remain underdeveloped in the law, are key components of appropriate social connection. Arguably it is these elements that combine to make the 'golden rule' of the New Testament so humane. The golden rule – 'do unto others as you would have them do unto you'²⁵ – demands that connections be made through an ethic of imaginative empathy. There is something of this in John Rawls's suggestion that we should judge the justice of a law by imagining how it would appear if we were ignorant of our own personal interests and had to imagine instead that we might share the

24 See also Senf (1983) and Wilt (1977).

25 Luke 6:31.

interests of any other person subject to the law (Rawls, 1971), but one problem with Rawls's 'veil of ignorance' thought experiment is that it requires the imaginative *disconnection* of ourselves from our society and from our personal passion, when what is required is to cultivate the capacity to imagine passionate connection to real people.²⁶ Rawls claims that in the original position we are willing to 'see the situation of others from their point of view' (Rawls, 1971, p. 337). At first sight, this sounds like 'empathy' or 'imaginative sympathy' of the sort I described in the preceding paragraph, but 'others' is an abstract category of nameless entities, and those who have sought to defend the empathic or relational quality of Rawls's thought experiment (for example, McClain, 1992, pp. 1207–2088; Okin, 1989, p. 244) have not convinced this reader that Rawls's experiment is concerned with, or even that it can accommodate, actual relations with identifiable individuals. Rawls's imaginative ignorance achieves passive procedural justice of the sort that anonymity is designed to achieve for candidates considered at degree course examination boards, but it cannot supply the active and substantial justice that arises from personal relationship. Sharing the law's characteristic concern for pathology, Rawls's formalised fog of ignorance seeks to rule out negative general and particular prejudice, but in the process it also rules out much of the positive potential inherent in personal connection.

Mr Tulkinghorn

The example of the chancery solicitor, Mr Tulkinghorn, serves to warn lawyers (and legal practitioners especially) against impersonal, prosaic and procedurally mechanistic modes of social connection.

Legal personality functions somewhat like a mask. It conceals the subtle nuances of the human face beneath an external form which at once reduces the complexities of the human whilst exaggerating those features which the law considers to be defining and most easily recognisable in the public forum. It should not surprise us that legal personality functions in this way, for the word 'personality' derives from the Latin *persona* which denotes the exaggerated masks used in ancient Greek drama. Those masks had wide holes at the mouth through (*per*) which the sound (*sono*) of the actor's voice was projected to the audience. Surely Dickens intended to identify Mr Tulkinghorn – the 'Talking-Horn' – with the mask of legal personality. There is no human face behind Tulkinghorn. He has fused with the mask of legal personality. He has become all law. To put it another way, we can say that he has become all sound and no soul. In a similar satirical vein, Jonathan Swift made lawyers the brunt of one of Gulliver's disparaging reports to the civilised Houyhnhnms. Gulliver complained that lawyers exist in a 'society' with a peculiar 'cant and jargon' of its own.²⁷ The complaint is a complaint against persona without humanity, of chant without song. The problem, to adopt (and adapt) a famous phrase from E. M. Forster's novel *Howards End* (1910),²⁸ is the problem of failure to connect prose to passion.²⁹ Tulkinghorn is Dickens's paradigm of emotional disconnection in *Bleak House* and Henry Wilcox is Tulkinghorn's counterpart in *Howards End*.³⁰ All the Wilcoxes 'avoided

26 For a feminist critique of the abstraction demanded by Rawls's experiment, see Matsuda (1986).

27 Swift (1726), Part IV: 'A Voyage to the Country of the Houyhnhnms', chapter V.

28 Quotations from the novel are followed, in parentheses, by the number of the source chapter.

29 For an argument that the novel invites a practical connection of ethics to law, see Williams (2006).

30 *Howards End* is a study of tensions within the middle classes of Edwardian England. The Wilcox family represents the wealthy merchant upper-middle class and the Schlegels represent the artistic and intellectual middle class. *Howards End* is a small but idyllic country house that epitomises traditional England. Henry Wilcox is the father of the Wilcox family but *Howards End* belonged to his wife, Ruth, and when she died she informally left it to her friend, the eldest of the Schlegel siblings, Margaret. This fact was concealed from Margaret and only revealed after her eventual marriage to Henry Wilcox. However, the most interesting and

the personal note in life' (11) and Henry more than most, but Margaret Schlegel, Henry's love, contemplates a way of easing 'the hard-going in the roads of Mr. Wilcox's soul':

'It did not seem so difficult. She need trouble him with no gift of her own. She would only point out the salvation that was latent in his own soul, and in the soul of every man. Only connect! That was the whole of her sermon. Only connect the prose and the passion, and both will be exalted, and human love will be seen at its height. Live in fragments no longer. Only connect, and the beast and the monk, robbed of the isolation that is life to either, will die.' (22)

Forster's novel explores the schism between the upper and lower reaches of the Edwardian middle class and anticipates its imminent collapse, but he does not attempt, as Dickens does, to connect the aristocracy to the poor. There are no aristocrats in the novel and Forster expressly states that the novel is 'not concerned with the very poor', for '[t]hey are unthinkable, and only to be approached by the statistician or the poet' (6). It may be that Forster's canvas is not as wide as Dickens's, but both authors attain the same depth in their depiction of the calamitous consequences of disconnecting passion from prose. At one point Henry Wilcox casually trots out some financial advice which, when it is relayed to the clerk Leonard Bast, lulls him into the error of leaving secure employment with one insurance house for less secure employment with another, where in due course he is made redundant. Henry Wilcox maintains that he cannot be blamed for Bast's error, but what Wilcox lacked was the imagination to look beyond his prosaic professional routine to consider how his advice might affect people one place removed from (and therefore by one degree connected to) the parties to the conversation. *Leon-ard Bast* is of course a 'bastard' in the thinnest of disguises. He introduces the irregularity of illegitimacy into the prosaically regulated world of Henry Wilcox. Bast's name is in part a reference to the child he will father out of wedlock, but, more potently, it is a reference to the social 'illegitimacy' of his attempt to rise up through the class divisions of society, a rise which he eventually achieves through his son (born to Helen Schlegel after his death and therefore born a nephew to Margaret Schlegel, who was by then the wife of Henry Wilcox). The child of Leonard and Helen inherits Howards End.

Returning to Tulkinghorn, we find that his behaviour is, in ethic, very similar to that of Henry Wilcox. It is true that Tulkinghorn imagined a connection between Lady Dedlock and the law-writer whose handwriting she had recognised on a chancery document, but this was merely Tulkinghorn acting in prosaic professional mode. He carried out his investigations to fulfil a dogmatic sense of duty to Sir Leicester, but he lacked the imagination to see (or to care) that, at one place removed from the solicitor–client relationship, Sir Leicester would have continued to love Lady Dedlock regardless of her past.

The examples of Tulkinghorn and Wilcox warn professionals, including lawyers, against the prosaic pursuit of clients' interests and the prosaic trotting out of advice. They also warn that unnaturally disconnected passion has a tendency to reconnect to its source with unnatural force. Mr Wilcox is dramatically reunited with his estranged passion when, at his daughter Evie's wedding, he encounters a lady called Jacky amongst the 'guests'. She is a former lover of his who is by now the wife of Leonard Bast. Tulkinghorn is reconnected to his own estranged passion in even more dramatic fashion. He is killed by Madame Hortense, who is the embodiment (again, a female embodiment) of that passion he had removed from himself. Joseph I. Fradin (1966) observes that:

'As Tulkinghorn is all restraint, Hortense is all frustrated passion and unrestraint; she is the destructive dimension of what is repressed in Tulkinghorn's personality. "Allegorically," Tulkinghorn is killed by what he represses, the emotional, instinctual part of his nature.' (p. 104)

tragic trajectory in the novel is that followed by the lower-middle-class clerk, Leonard Bast. Howards End proves to be the location for Leonard's end – a violent death at the hands of Charles Wilcox, Henry's son, on account of Leonard's audacity in having an affair with Margaret's sister, Helen.

There is still hope that William Guppy, the aspiring solicitors' clerk of *Bleak House*, will learn the necessity of connecting passion to prose in way that is sympathetic to others. It cannot be denied that Guppy is rather too similar to Tulkinghorn in his methodical but (paradoxically) unthinking dedication to discovering what he calls the 'chain of circumstances', and that Guppy inappropriately pursues Esther and proposes marriage to her in the way one imagines Tulkinghorn would propose marriage (with all due legal form and solemnity), but there is hope for Guppy, for all his offences, because he manages to maintain a connection to his personal passion.

Harold Skimpole

If Mr Tulkinghorn warns against the danger of disconnection from other people which follows from the disconnection of one's own person from one's personal passion, then Skimpole serves to warn against the equal and opposite danger: the social disconnection that can result from the overindulgence of personal passion.

If Harold Skimpole were alive in the current period of financial crisis, we can be sure that his thoughts would dwell upon the so-called 'credit crunch'. Not because of widespread loss of livelihoods and savings and homes, but because the very phrase 'credit crunch' is so exquisitely poetical and comprises such an efficient blend of alliteration and onomatopoeia. We know that he would have thought this way, because Skimpole was an exact representation of the minor Victorian poet Leigh Hunt; and Hunt thought this way (Fogle, 1952). Without naming Hunt, Dickens admitted to great pride in the exactness of Skimpole's likeness to a real-life person. There can be no doubt that the person in question was Hunt. Dickens went on to claim that only the pleasant aspects of Skimpole were based on Hunt, yet it seems clear that the undesirable aspects – the scrounging, the ingratitude, the hypocrisy, the dilettantism, the false modesty – all accurately represented Hunt's character. Why did Dickens indulge in such an acerbic attack? The answer lies, I suggest, in the fact that Skimpole fails to connect to others in the way that Dickens desires that we should connect. Skimpole's failure to connect is different to the law's failure, but just as disastrous. Where the law cannot see the complex beauty of human connection, Skimpole sees only the beauty of the connection and nothing of the humans connected by it. The Court of Chancery blew the brains out of old Tom Jarndyce and slowly crushed the life out of Richard Carstone, but Skimpole revels in the aesthetics of juridical torture and (perversely and egotistically) connects himself to the Court of Chancery by imagining that the institution might exist for his aesthetic delight. Even worse is when he reaches the same conclusion about the institution of slavery:

'Take an extreme case. Take the case of the slaves on American plantations. I dare say they are worked hard, I dare say they don't altogether like it. I dare say theirs is an unpleasant experience on the whole; but they people the landscape for me, they give it a poetry for me, and perhaps that is one of the pleasanter objects of their existence. I am very sensible of it, if it be, and I shouldn't wonder if it were!' (18)

Skimpole does not connect with people as people. Instead, he skims his living and his pleasures off them. Dickens's judgement on this species of parasitic social connection is decisive: in the calm interstitial space between the end of the plot and the end of the novel, he kills Skimpole off. For an author who desires to connect the world of the novel with the world beyond, Skimpole cannot be permitted to remain.

The fate of Mr Tulkinghorn calls us to pursue passionate law; a law that feels and imagines social connection and does not make connections routinely, procedurally and scientifically. The fate of Skimpole, in contrast, speaks against the error of pursuing an artist's passion to make connections without a responsible regard for the practical consequences of that pursuit. There is a third, quite different, error to be wary of, which is the error (or twinned errors) of ignoring possible connections and refusing to allow connections to be made. This error is exemplified by John Jarndyce. Jo the

crossing-sweeper and Guppy the clerk were able to connect Esther and her mother by their facial likeness, even though Jo had only seen Lady Dedlock through a veil (31) and Guppy had only seen her portrait (7); and yet John Jarndyce, who knew both women well, and had all the facts to hand to indicate a possible connection between them, apparently saw nothing. John Jarndyce is a character committed to disconnection. This is most clearly seen in his avowed disconnection from the suit of Jarndyce and Jarndyce. He observes the progress of the suit, but he refuses any emotional connection to it. This is wise, but his tendency to disconnect is also seen in his refusal to acknowledge the bonds of debt created by his frequent acts of financial generosity (it is intimated that he would rather leap out of a window and run away than be given credit for the credit he extends to others; Miller, 1971, p. 32; Finn, 2003, pp. 41–42). It is a testament to Esther's immense connective power that even the ageing bachelor John Jarndyce cannot remain wholly at arm's length where she is concerned, so that he finds himself proposing to her – albeit more with prose than passion.

Mrs Jellyby

Dickens's casual side-swipe at Mrs Jellyby's support for the suffragette's movement was petty and unnecessary, and provoked the ire of John Stuart Mill (Mill, 1854), but Dickens's assault upon her vice of 'telescopic philanthropy' lands a palpable hit. The complaint against 'telescopic philanthropy' is that it involves the grant of aid to those in distant lands at the expense of the destitute at the door. We are told that Mrs Jellyby's eyes 'had a curious habit of seeming to look a long way off. As if . . . they could see nothing nearer than Africa!' (4). When John Jarndyce asks for Esther's opinion of Mrs Jellyby, it is undeniably Dickens's voice that we hear when she expresses the view that 'it is right to begin with the obligations of home, sir; and that, perhaps, while those are overlooked and neglected, no other duties can possibly be substituted for them' (6). The orphan crossing-sweeper, Jo, is cited as a victim of the policy of 'telescopic philanthropy'. He suffers, we are informed, because he is 'wholly unconnected with Borrioboola-Gha' and therefore is 'not one of Mrs. Jellyby's lambs':

'he is not softened by distance and unfamiliarity; he is not a genuine foreign-grown savage; he is the ordinary home-made article.' (47)

Jo's problem is that he is 'wholly unconnected' to any place, and almost wholly unconnected to anybody. In the words of Gillian Beer, 'Jo is the missing link in the plot of intrigue, the unknown and unknowing witness' (Beer, 1999, p. 141). At the crossroads, where people connect and their footsteps and destinies cross, Jo sweeps away all signs of their connection, until ultimately he is utterly disconnected from life.

It is far from obvious at first, but on closer examination it seems clear that the nature of Dickens's objection to Mrs Jellyby is at root quite similar to the nature of his objection to Mr Tulkinghorn. His main criticism of both is that, as they calmly sort through their papers and pursue their professional purposes, they make connections in a prosaic and unthinking way that lacks passion. The etymology of 'jelly' is frozen or ice-like.³¹ We might think that the frenetic Mrs Jellyby is intended to represent the constantly moving busyness of a jelly. Perhaps, but the text contains clues to suggest that Dickens also intended to emphasise that her constant activity is icy to the touch. On Esther's first visit to the Jellybys it is said to be a cold evening and we are told that there was no hot water in the house. On a later visit, Esther is greeted by a passionless lecture on the relative insignificance of Mrs Jellyby's daughter compared to Africa. Mrs Jellyby asks:

"can I permit the film of a silly proceeding on the part of Caddy (from whom I expect nothing else) to interpose between me and the great African continent? No. No," repeated Mrs. Jellyby in a

31 From the Latin *gelare* 'to freeze'.

calm clear voice, and with an agreeable smile, as she opened more letters and sorted them. “No, indeed.” (23)

It is significant that Esther remarks upon ‘the perfect coolness’ of her reception when she made that visit. Dickens uses the word ‘coolness’ on the occasion of another visit to the Jellyby house, when we are told that ‘[t]he guests were few, but were, as one might expect at Mrs. Jellyby’s, all devoted to public objects only’. The guests included a ‘very contentious gentleman, who said it was his mission to be everybody’s brother but who appeared to be on terms of coolness with the whole of his large family’ (30). Dickens is here using the nameless guest to emphasise the emotional coldness of Mrs Jellyby as seen in her vice of telescopic philanthropy.

Dickens’s critique of telescopic philanthropy was not directed at the law, it was directed at a trend in Victorian philanthropy, but it can be read more broadly as a critique of the general vice of using one’s duty to remote and abstract categories of people as an excuse for overlooking one’s duty to individuals closer to home. Mrs Jellyby’s commitment to ‘Africans’, whilst very proper in itself, causes her to overlook the poor at her door, and even to overlook the welfare of her own children. Versions of the same vice can be found in various places in the law. Indeed, Rousseau (1762) identifies it as a standard process of law:

‘When I say that the object of laws is always general, I mean that law considers subjects *en masse* and actions in the abstract, and never a particular person or action.’ (book II, chapter 6)

There is a clear instance of this vice in the English law of trusts, where one finds that trustees are required to place the beneficiaries’ collective financial interest in the trust fund ahead of individual beneficiaries’ ethical concerns regarding the nature of the chosen investments.³² Nobody would suggest that investment policy can respond to the opinions of every individual beneficiary, but even if ninety-five percent of the beneficiaries oppose investment in, say, the arms trade, the trustees would still be required to invest in order to achieve the only thing that (all other things being equal) the beneficiaries can be presumed to be unanimously interested in, which is wealth maximisation. If socially responsible investment cannot be shown to be financially worse than socially irresponsible investment, then ethical investment is permitted, but morals cannot be placed ahead of money. There can be few things more socially damaging than a legal requirement that trustees (of sometimes massive funds) should be required to place wealth maximisation for the abstract category ‘trust beneficiaries’ ahead of the socially responsible investment desired by numerically and proportionately significant subgroups of real people. In its attention to the presumed needs and desires of impersonal categories of people at the expense of the patent needs and desires of identifiable individuals, this aspect of trusts law is not so very different to the problem of telescopic philanthropy. Indeed, it is fair to say that the vice of ‘telescopic *legality*’ is present wherever the law prefers the supposed best interests of an abstract collective category over the real interests of a social group that is close to hand.

5 To fall and land

We have seen that the characters of *Bleak House* offer numerous responses to Dickens’s question, ‘What connexion can there be . . . ?’. We will now turn to consider two further responses. The first is ‘accident’ (the word derives, as does the legal ‘case’, from the Latin *cadere* ‘to fall’) and the second is ‘land’ or location. Human society is connected by, and to a great extent constituted by, serendipity and shared space. This fact is significant to the present study because the novelist’s response to the connective

32 *Cowan v. Scargill* [1985] Ch 270. For further analysis and critique of the problem of ‘social’ or ‘ethical’ investment of trust funds, see Docking and Pittaway (1990), Lord Nicholls of Birkenhead (1995) and Nobles (1992). For a US perspective, see, for example, Langbein and Posner (1980).

power of accident and shared space differs markedly from the law's response. The law has some success in describing the societies and social connections made by intentional acts (such as we find in formal constitutions and formal contracts), but the law tends to see accidents in pathological terms – in terms of injury (breach of juridical duty) and harm caused. Viewed contextually (that is, in terms of our textile metaphor), the network or 'knot-work' of our social life is formed as much by accident as by acts of intent. Sometimes our associations are formed 'reverently, discreetly, advisedly, soberly',³³ as in the case of marriage (where we are even said to 'tie the knot'), but more often than not our social networks, even some of the strongest, are created accidentally when the threads of different lives cross and tangle. The law has little to say about the positive dimension of accidental connections, and it would be naive to think that a language designed to express regulation might be adequate to express the unruly nature of accidental connections. In contrast to the law, creative literatures such as the poem, novel and dramatic script have great licence to explore and express the complexities of accidental connection, and to acknowledge its positive aspect. The screenplay to *Crash*,³⁴ written by Paul Haggis and Robert Moresco, is a good example. It opens with a collision between two automobiles, and a voice-over:

'Any real city, you walk, you're bumped, brush past people. In LA, no one touches you . . . We're always behind metal and glass. Think we miss that touch so much, we crash into each other just to feel something.'

Dickens's novels are also deeply appreciative of serendipity. Of course it serves an author very well to emphasise the ubiquitous power of the accidental, for he or she has to construct a plot and in the process to conceal as far as possible the fact that accidents in the world of the novel originate in the author's design. When the narrator of *Bleak House* observes that the characters have 'been very curiously brought together' (7) and when John Jarndyce remarks that Esther and Sir Leicester Dedlock 'are the two last persons on earth I should have thought of connecting together!' (43), it is hard to say whether this is a technique to conceal the inventive process or an artistic expression of genuine wonder that such connections are concealed everywhere in life and only wait to be revealed. The same can be said of the passage in *Little Dorrit* where Miss Wade observes that '[i]n our course through life we shall meet the people who are coming to meet us, from many strange places and by many strange roads' (2). These words would not look out of place in the screenplay to *Crash*. In fact, they may have some connection to a somewhat earlier work: Oliver Goldsmith's *The Vicar of Wakefield* (1766), which was a favourite of Dickens. At one point Goldsmith calls the reader to 'a reflection on those accidental meetings, which, though they happen every day, seldom excite our surprize but upon some extraordinary occasion' (39).

The main plot of our 'novel of connections', *Bleak House*, begins with happenstance:

'It happens that the fire is hot where my Lady sits and that the hand-screen is more beautiful than useful, being priceless but small. My Lady, changing her position, sees the papers on the table – looks at them nearer – looks at them nearer still – asks impulsively, "Who copied that?"' (2)

It is when Lady Dedlock faints after recognising the handwriting of her former lover, Captain Hawdon, that Tulkinghorn first suspects a secret connection and embarks upon his mission to discover it. If Hawdon had not had such distinctive writing and had not written that document and if the fire had been smaller or her lady's hand-screen larger, the connections behind the characters in *Bleak House* would not have been revealed. Without accident, we would also have lost the plot of *Howards End*, for the first acknowledged connection between Leonard Bast and the Schlegels was

33 These words are taken from the Anglican marriage ceremony as it was in Dickens's day.

34 Directed by Paul Haggis, 2004. The 2004 film should not be confused with *Crash* (David Cronenberg, 1996), which concerns sexual fetishism for automobile accidents (Cronenberg's film is based on J. G. Ballard's 1973 novel of the same name).

Helen Schlegel's accidental appropriation of Leonard Bast's umbrella when they both attended a music lecture on a rainy day. Before that, there were only unacknowledged connections, including their shared love of music and the shared space of the room in which the music lecture had been delivered.

This brings us to the subject of land; of shared social space. Land connects the living to the living, the living to the dead and the living to those yet to be born, and yet we have seen that the law struggles to express the nature of shared space in such commonplaces as clubs and cohabitation. The legal (or equitable) concept of 'the trust' has had some success in describing the sharing of land, even across generations,³⁵ but the law is generally most competent when it comes to describing human–spatial interfaces in the pathological proprietary language of 'exclusivity' and 'trespass'. What the law lacks in expressing the connective potential of land, the novel and other imaginative literatures to some extent supply. For Dickens and Forster, location is a participant in the plot (indeed, it is the title character of both *Bleak House* and *Howards End*) and it stimulates imaginative connection every bit as much as their human creations. Dickens's question began, we should recall, not by inquiring into the connection between people, but by asking '[w]hat connexion can there be between the place in Lincolnshire, the house in town'. *Bleak House* is replete with connective spaces of a ghostly or transcendental kind. In addition to *Bleak House* itself (haunted by the memory of Tom Jarndyce), such spaces include the Ghost Walk at Chesney Wold, the pauper's graveyard and Krook's 'rag and bottle shop'. The last is an especially potent location for imaginative connection, for it is here that Esther passes poignantly close to her unknown father shortly before his death (Burke, 1969, p. 670; Miller, 2001, p. 54), connecting with him only in shared space and in the imagination of writer and reader. Physical place is the ultimate agency of human connection, since we are powerless to escape it. It is not insignificant that one of the most poignant and enduring metaphors of social interconnection is geophysical: 'No man is an island, entire of itself; every man is a piece of the continent, a part of the main' (Donne, 1624).

6 Conclusion

The first chapter of *Bleak House* is infused with the extended metaphor of fog. At the heart of the fog we find the throne of the Lord High Chancellor in the Court of Chancery in Lincoln's Inn and it is here that Dickens reveals the heart of his message concerning law, society and 'connexion'. We are told that the Lord Chancellor is 'directing his contemplation to the lantern in the roof, where he can see nothing but fog' while 'the uninitiated from the streets . . . peep in through the glass panes in the door' to see nothing but fog (the fog is said to 'hang heavy' even in the court). Human society looks in and can see only the fog of law; the law looks out and can see only the fog of human social life, hanging like a thick curtain woven from the threads of lives accidentally connected. It has been said that Dickens was cynical about the potential for any institutions of law to connect appropriately with people subject to the law, as Fradin (1966) writes:

'It would be ludicrous to neglect the solid basis of *Bleak House* in traditional "social criticism." Tom-All-Alone's, Chancery suits, crossing sweeps hounded to death, bricklayers' babies dying of starvation, politicians stupidly perpetuating themselves in power at whatever cost to the community,

35 It has also had some notable failures, such as *City of London Building Society v. Flegg* [1988] 1 AC 54, House of Lords. In this case a son lived with his wife and her parents in a house acquired, in significant part, with the parents' money. Even though the son and his wife held the house on trust for themselves and the parents, they were able to mortgage the house to a lender without the parents' knowledge or consent and the lender was in due course able to take possession of the house regardless of the parents' equitable interest in the land. This process, called 'overreaching', is statutorily embedded to ensure that mortgagees and other purchasers have priority over occupiers whose names do not appear on the legal title. Appropriately enough, the property in this case of intergenerational abuse by legal abstraction was called 'Bleak House'.

gentlemen aristocrats decaying and letting the land decay with them – and a poisonous fog connecting all: surely Dickens' imagination was stimulated by social fact. But to do justice to Dickens' vision one must see that what *Bleak House* is finally about transcends social criticism. For while the novel may call for social action, it at the same time everywhere denies the possibility that any action arising from corporate society will better man's condition . . . By an act of private vision, by the denial of the social will, we may save ourselves; by individual acts of responsibility and love we may sometimes save others. Such would seem to be the "message" of *Bleak House*.' (p. 109)³⁶

There is a great deal of truth in this; and yet, even as the fog blinds the court to society and society to the court, it is of the greatest significance that each side is straining to see the other. It may be going too far to say that Dickens believed that there could one day be a positive connection between human society and the institutions of law, but he knew that some form of connection is inevitable and that any form of connection must be superior to connection through a cold, grey and impersonal fog. The connection he proposes is the connection of personal passion to public and professional prose. How is this to be achieved in practice? It will be achieved by appreciating the law's basic incompetence to define individual humans and the nature of human social association, and to use this understanding to produce greater humility and restraint in the drafting and enforcement of laws designed to regulate, supervise and even to prohibit certain forms of human association. It will also be achieved by resistance to the law's habit (which I have called the habit of 'telescopic legality') of preferring the presumed best interests of easily defined, but abstract, collective categories over the expressed interests of tangible social associations not recognised by law. It will also be achieved by the cultivation of professional ethics of a sort that are not solely concerned to avoid technical conflicts of interest, but are just as interested in achieving human connection between lawyer and client, or at least imaginative connection between the lawyer and the client's whole interest in the case. The responsibility to cultivate these ethics, and to keep the tapestry of law, society and the humanities intact, lies heavily upon those of us who are legal scholars and legal educators. Karl Llewellyn (1930) once observed that 'the basic order in our society, and for that matter in any society, is not produced by law', but by 'the process of education' (p. 112). I would refine this by saying that social order is always to a significant extent produced by law, and law is always to a significant extent produced by legal education. It follows that a better (more humane and more contextual) legal education entails hope for a better society.

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36 Compare Robert L. Patten's suggestion that the moral of Dickens's *The Pickwick Papers* is 'that one must act on the basis of a determined optimism, and practice charity towards all' (from the preface to the 1972 Penguin English Library edition. p. 30).

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