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"LET NOT POOR NELLY DIE"

A study of orphans, Dickens and the Law

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INTRODUCTION

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Charles Dickens
Speech to the Administrative Reform Association
27 June, 1855.[1]

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castle - Tuberculosis was no respecter of status. The poor died early of overwork and overcrowding; the rich of over-eating and over-indulgence. Since men did not often marry until their late thirties or forties, many died before their children were very old. Mothers frequently died in childbirth. Poor or illegitimate children were often abandoned in the streets or left at the workhouse door with no clue as to their parentage.[6] With so many orphans around, Dickens could hardly have failed to be unaware of them as a special group in society, and he must have come into contact with very many as he rose from a poor debtor's son to become the fêted friend of the aristocracy. In his own childhood home, an orphan from the Chatham work-house did the heavy household duties and even accompanied Mrs Dickens and her young family when they went to live in the debtors' prison. (This girl was later to be characterised as the "orfling servant" of the Micawbers in David Copperfield) Dickens' six weeks in the blacking factory in 1824 when he was twelve years old seem to have bitten disproportionately deeply into his soul and he considered himself at this time totally abandoned by family and friends.[7] His experience seems to have given him a special insight into the emotional state of the orphan.

Orphans were also useful as characters since, being without the restraints of parents, they could be made to go into many different situations and classes of society without awkward plot manipulations. Oliver Twist, for example, is essentially and improbably a middle-class child despite the deprivation of his workhouse upbring, yet because he is an orphan, Dickens can send him into the underworld of Fagin and show us Oliver's middle-class horror at such a place without complex explanations. The fact that no parent or guardian is likely to be searching

for him heightens the tension of his imprisonment there after his recapture by Sykes.

Since they were often regarded as merely a nuisance, orphans were frequently prominent in some of the abuses of Victorian society which Dickens wished to expose - the workhouse, the courts, the education "system" and the work conditions of children. His popular novels brought home to many Britons the horror of some of these abuses and the need to press for reform.

Dickens himself had very close ties with the law. He worked as a law clerk from 1827 to 1832 and a number of his orphan characters pursue this occupation. Lawyers, both admirable and despicable are present in every book. A number of lawyers including the famous Sergeant Talfourd were among his close friends. In 1844 he applied for an injunction to stop the publishing firm of Lee and Haddock from publishing pirated versions of The Christmas Carol. Talfourd was his counsel and Knight Bruce,J. granted him his injunction and Dickens immediately plunged into six chancery suits - against the publishers, printer, booksellers and the "author". He wanted damages and costs from the publishers but they, after availing themselves of some procedural delays provided by the Court of Chancery, declared themselves bankrupt. The booksellers compounded their cases and paid costs but Dickens had to withdraw his suit against the publishers and pay £700 in costs.[8] Some of the frustration he felt over this venture into the courts of Chancery was worked out later in Bleak House.

Dickens also had a close association with the legislature, being a highly successful Parliamentary Reporter from 1832 to 1836. He thus saw the passage

through the House of Commons of Lord Althorp's Factory Act (1834) (the first piece of effective factory legislation), the Abolition of Slavery in the Colonies Bill (1832), the Reform Bill (1832) and the Poor Law Amendment Act (1834), all landmarks in British legislation. A radical in politics, he felt however that the legislative branch of the law was far too slow to correct abuses and for Members of Parliament he had nothing but contempt. He pillories them in book after book, showing Parliament as being one of the places in greatest need of reform. He was invited to stand for Parliament on a number of occasions but he refused on the grounds that he could do far more good outside Parliament.

The Victorians would seem to have had a curiously ambivalent attitude to orphans. A far more openly sentimental people than their twentieth century counterparts, they were easily moved by the plight of a child without a family, since a secure family structure lay at the heart of the whole middle-class view of society.[9] Dickens shared this characteristic, weeping copiously as he penned the deaths of his child characters. (In fact, Tennyson refused to stay with him since he found this sentimentality so irritating.) Dickens was "inundated with imploring letters recommending poor little Nell to mercy",[10] since the novel came out in weekly parts. Lord Jeffrey was discovered by a visitor in tears over her death. Waiting crowds at a New York pier shouted to an English ship "Is Little Nell dead?"

Yet underneath this sentimentality Victorian adults harboured a hard-headed attitude to children. Children were valuable property, for they could advance the family fortune and continue the family name.[11]

Middle and upper class children could advance the family by advantageous marriage. In an age of patronage (the Civil Service was only opened to entry by competitive examination in the 1890s) family connections meant a great deal. Before the establishment of the welfare state, children were an insurance policy against poverty in old age. This applied even more to the poorer classes, whose children were set to work to help support the family at the earliest possible age. For more privileged children, childhood was a phase to be endured, and they were expected to be little adults in dress and behaviour as soon as possible (Yet dutiful to mamma and pappa even when they were grown-up).

Blackstone[12] listed three duties of parents to children - maintenance, protection and education - but neither legislation nor the common law provided a means of enforcing these duties. Until the nineteenth century, the rights of the father were paramount. He could, by a statute of Charles LL [13] appoint a guardian whose rights overrode those of the mother. "No common law court, until the change in the guardianship laws in the nineteenth century would intervene to extinguish a father's right to custody."[14] In 1886 the Guardianship of Infants Act[15] was passed, Section 2 of which gave a mother the right to be a guardian alone, or jointly with the father's nominee. If parents deliberately undernourished or mal-treated their children, there was no way the law could intervene. As Lord Eldon put it in the famous case involving custody of the Wellesley children[16] "You may go to the Court of the King's Bench for a habeas corpus to restore the child to its father; but when you have restored the child to the father, can you go to the Court

of the King's Bench to compel that father to subscribe even to the amount of five shillings a year for the maintenance of that child?...I do not believe there ever was a mandamus from the Court on such a subject. ... The courts of law can enforce the rights of the father, but they are not equal to the office of enforcing the duties of the father." It was not till 1889 in the so-called "Children's Charter"[17] that the legislature gave the courts the power to protect children from at least physical abuse by their parents. Section 1 reads "Any person... having the custody, charge or control of a child... who wilfully ill-treats, neglects, abandons or exposes such a child ... in a manner likely to cause such child unnecessary suffering or injury to it s health shall be guilty of a misdeameanour." The Act allowed for fines up to £100, and in the five years after 1889, there were 5,460 convictions.

The reason that lay behind this refusal to recognise any rights for children until the late nineteenth century lay in the belief that the stability of society rested on the stability of the family.[18] Any challenge to, or undermining of the authority of the paterfamilias was a direct challenge to the stability of society. Thus any offence or rebellion was seen as needing instant punishment for the child's own good. This was a direct consequence of the Puritan belief that children were born in sin and naturally wicked. The home which enshrined the cult of the family was seen to be the guardian of the whole British way of life. The reluctance to tamper with the family structure in any way, lest the whole fabric of society should crumble was the reason why any child legislation or family law was so slow in coming.

"The orphan is a major figure in Victorian mythology; the outcast without home, without family, without an anchor to society".[19] Because of this peculiar position, when legislation for children came, it tended to have to cope with the unwanted child like the orphan first since these children were the obvious casualties of society. So, workhouse children were the first to be offered (in theory, at least) free education in 1834[20] whereas other children had to wait until 1870[21] for this right. The first breach in the doctrine of the father's sole right to his children came with the change in guardian--ship laws.[22] Orphans were prominent amongst those sold to the mills in the North whom early factory legislation was designed to protect.[23]

The Victorians believed in charity as a religious duty and they gave righteously to a large number of organisations.[24] Laissez-faire philosophy led them to believe that relatives and friends should have the duty of caring for an orphan. If not, a voluntary charitable institution might take him, or the workhouse if all else failed. The State was seen as having the right to "interfere" only when all sources of voluntary aid had failed. Many a Victorian who had piously subscribed to this idea must have felt it come home to roost when he had to support or take into his own home a small relative whose parents had died. And that small relative must have often been treated with condescension and resentment, yet expected to be grateful for every morsel of cold charity that was given to him.

Dickens was the first novelist to make children the major characters of his novels.[25] Up till then, childhood had been merely an introductory stage to which the author devoted his opening few chapters. Perhaps one of Dickens' most valuable

contributions to improving the lot of children was to show them as individual personalities, worthy of having rights of their own. "English people were stirred (by his novels) to a degree that no mere narrative of suffering innocence and ill-used but honourable juvenility could have effected".. [26] The immense popularity of his novels with their insistence that a child's happiness was important, that children had ideas and feelings of their own, did a great deal to change Victorian attitudes to children. As a result of that change in attitude a revolution in the treatment of orphans, their work, their rights and their education was brought about.

THE DESTITUTE ORPHAN.

I. The Poor Law

> "I believe there has been in England since the days of the Stuarts, no law so often infamously administered, no law so openly violated, no law so habitually ill-supervised"
>
> Dickens. "Instead of a Preface" Our Mutual Friend.

In Oliver Twist, Dickens penned some of his most famous satire on the results of the new system of Poor Law administration which had been introduced by the Poor Law Amendment Act 1834. This was almost the first significant alteration in the poor law since the time of ElizabethI and resulted from the total inability of the poor law system to cope with the widespread poverty of the early nineteenth century. The state was reluctantly forced to at least recognise the existence of abandoned and destitute children, among whom there were, of course, many orphans.

In the Middle Ages there was no need for state intervention since orphans were cared for by the manorial system. If an orphan had no friends or relatives to go to, he would be found a home with a childless or maternal villein. The Church also had an important part to play in caring for the destitute child, although by the end of the Middle Ages, monasteries were only interested in the rich orphan whose keep would swell their revenue. The Reformation and the rise of the middle-class broke up this community-centred society[27] and private charity became inadequate to cope with the rising numbers of displaced and destitute.

Early statues made no attempt to separate children from the rest of the poor. They simply divided the poor into two types - the impotent poor (the aged, the sick, the insane and the young) and the "valiant beggar and sturdy vagabond." For instance, a statute of 1388 (12 Rich II, C7) is for "the punishment of beggars able to serve and a provision for impotent beggars." In an attempt to curb the numbers wandering round the countryside begging, the act stipulated that anyone begging outside his own parish had to have a "pass" - a "letter testimonial." The distinction between the impotent poor and the "sturdy vagabond" continued right down till Victorian times and is crucial to an understand--ing of the poor laws. Society pitied and felt the need to aid those in the impotent poor category but they did not want to give anything to those who appeared capable of working but who apparently obstinately refused to do so.[28]

An Act of 1535 (27 Henry VIII C.25) mentions children for the first time. It introduced an element of compulsory charity to keep the "aged poor and impotent persons." Section 2 provided that "Children under 14 and above 5 that live in idleness and be taken begging may be put to service by the governors of towns and cities to husbandry, crafts or labours." Generally Tudor legislators were concerned in this way about the training of destitute children, and were particularly anxious that children should be taught a useful trade.(This aspect of legislation will be dealt with more fully under the section on work). Two Elizabethan Acts strengthened the compulsory nature of the poor law relief. 1562 (5 Eliz I C 3) gave magistrates, for each parish, the power to fine and imprison anyone who refused to pay their share of the poor rate. 1572 (14 Eliz I C 5)made the

relief a straight-out tax assessed by the magistrates for each parish. It also provided for a register of the poor to be kept.

There was some development of private charity. The Statute of Charitable Uses (1601) [28b] encouraged the individual to make private gifts, and so a series of schools and orphanages were established. Towns such as London, Ipswich and Norwich attempted to set up municipal schemes for the relief and training of poor children but these soon foundered through lack of finance.[29]

Towards the end of the Elizabethan Age, fear of widespread violence forced legislators to do something about the piecemeal nature of the legislation. Hordes of men, women and children roamed the countryside in increasing numbers. Gangs of city children, ragged and starving, roamed the streets, begging, robbing, insulting and assaulting. There is even a record of an Elizabethan Fagin[30] - one Wolton who kept a house for "the training of young cultpurses." The Statute of 1601 (43 Elizabeth I, C. 2) codified and re-organised all previous statutes on the poor law. The legislators tried hopefully to place the onus for children on their relatives - Section 7 placed the primary responsibility on "father or grandfather, mother or grandmother." Nevertheless, Section 1 ordered the parish to set aside "...competent sums of money ... for the putting out of (such) children to be apprentices." It was to be "lawful by the assent of two Justices of the Peace to bind any such children to be apprentices till such man - child shall come to the age of four and twenty years and such woman - child to the age of one and twenty years or the time of her marriage." (Section 5) The Act also set out clearly how the system was to be administered.

Justices of the Peace were to rate the parishes a weekly sum (Section 12) and this was to be collected and administered by the church-wardens and overseers who were accountable to the two Justices of the Peace (Section 1). They were to "... errect, build and set up in fit and convenient places of habitation ... convenient houses of dwelling for the said impotent poor" (Section 5). Through this Act, orphans were provided with food, clothing, accommodation, medicine and vocational training. "... there was nothing comparable again to this first Elizabethan concern for the poor child until the mid - nineteenth century" [31]

There were a number of factors which caused the scheme to break down in the latter half of the seventeenth century. One was the Civil War which caused considerable dislocation and greatly increased the number of poor, homeless and illegitimate. The Commonwealth had introduced Puritan ideas which had never really faded away even by Dickens' time. Children were seen as being in a state of sin from birth; the poor were poor because of their own wickedness. Thus the Elizabethan distinction between the impotent poor and the idle poor became blurred and the two categories were often treated similarly. Puritan precepts such as "Children are not too little to die, so they are not too little to go to hell" and "The Devil finds work for idle hands" meant that workhouse children ought to be useful as soon as possible in an attempt to lighten the millstone of sin which hung about their necks. Any Elizabethan ideas of benefits for the welfare of the children were quickly outweighed by the need for workhouses to make a profit. On an administrative level, the Elizabethan poor relief system fell into decay.

There was no central co-ordinating body and the poor law was administered at a local level by parish officials and Justices of the Peace. As there were over fifteen thousand parishes in England at the time, there was considerable local variation in the rates and type of relief available. The administrators and the Justices of the Peace (who were the only people who could be appealed to) were amateurs and"often corrupt, working the system to suit themselves and their love of power."[32]

The Settlement Act (1662 13 and 14 Charles II. C.12) restricted the mobility of the poor who could only get relief from the parish in which they were last resident for forty days. Magistrates did a brisk business in sending people back to their own parishes before they became a charge on someone else's (The Artful Dodger assumes that Oliver is tramping to London" by Beak's orders[33]." In Bleak House,[34] Jo the Crossing Sweeper's chief fear in his dying delirium is that he will be "moved on")

The late seventeenth and the eighteenth centuries were therefore a period when the poor orphan had to depend on the whim of the local parish, or, in a small number of cases, on private charities. A number of orphanages and schools were set up in this period[35] but could only cater for a very few of the children who so desperately needed help. Many of these institutions insisted on respectability - children had to be of decent (i.e. middle-class) parentage and were usually sponsored by someone. Donald Grist[36] describes the early "orphanage auctions" where guardians or friends paraded a child in a London Inn yard in an effort to persuade onlookers to sponsor him for a place in the orphanage. Dickens describes this patronage

in Dombey and Son when Mr Dombey rewards Mrs Toodles by nominating her son Robin for a place at the Charitable Grinders.

In the forty years before Dickens wrote Oliver Twist in 1838, England underwent a further social upheaval which made poor law reform essential. The Industrial Revolution made the North prosperous and relatively untroubled by poverty, but the agricultural South declined and suffered an increased burden of the destitute.

Rural industry declined, and the many craft industries (which often employed children under far worse conditions than the factories[37]) became obsolete as machinery was invented. Farming became mechanised and therefore less labour-intensive. Unemployment rose sharply, as did the cost of living especially after the Napoleonic Wars when there was a series of bad harvests. Because farmers were obliged to take workhouse labour, many had to lay off their workers (who then went on the parish) in order to pay the wages of the parish labour (which was usually unsatisfactory.)

In 1795, the Berkshire Magistrates adopted the Speenhamland System.[38] Instead of fixing a minimum basic wage for labourers, they introduced a method of relief in addition to wages. When the price of bread rose to a certain level, relief, sometimes in money, sometimes in kind (shoes and clothing or food) and sometimes in payment of rent was given according to the number of dependents a man had. This system of outdoor relief (as it was called) was administered through the workhouse system and had the demoralising effect of making a labourer, while still in full work, dependent on the parish.

It also illustrates clearly the power of local magistrates to regulate conditions. The Speenhamland System was adopted in a number of other areas in an attempt to stop the poor from flooding the workhouses. The system was open to abuse, and the Commission set up to study the Poor Laws in Feb. 1832 [39] found enough evidence of this to justify their worst fears. Labourers, they thought, were assured of a living without having to please a master. It paid to have as many children as possible. Young people married and then insisted that the workhouse accommodate them.[40]

A series of agricultural riots finally brought home to the legislators the need to do something, and in February 1832 a nine member commission was set up to investigate the poor law and make recommendations.[41] They were "... directed to make diligent and full enquiry into the practical operation of the laws for the relief of the poor in England and Wales... To report whether any and what alterations and amendments or improvements may be beneficially made in the said laws... and how the same may be best carried into effect". The leading spirit on the Commission was Edwin Chadwick, one of the most devoted disciples of Jeremy Bentham. Thus, Benthamite principles came to infuse the new legislation. All institutions were to be judged by their utility and pruned and regulated accordingly so that they were useful and efficient. In this was "the greatest good of the greatest number" would be achieved. Ideally Bentham believed that if there were free trade, there would be no poverty since there would be work for all. It is easy to see how, in the face of such an appealing and eminently practical - sounding doctrine, the distinction between the two types of poor was largely forgotten, and the impotent poor were classed with the huge mass of unemployed,

The Commissioners were not impressed by the existing workhouse. "In by far the greatest number of cases it is a large almshouse in which the young are trained in idleness, ignorance and vice; the able-bodied maintanined in sluggish sensual indolence; the aged and more respectable exposed to all the misery that is incident to dwelling in such a society...." [42] They made three chief recommendations which were embodied in the 1834 Poor Law Amendment Act (4 and 5 WilliamIV C76). To ensure uniformity, they insisted on the "workhouse test". This meant that to obtain relief, an applicant had to be inside the workhouse. This theoretically (although never in practice) cut out the outdoor relief scheme which the Commissioners believed to be at the heart of all that was wrong with poor relief. Section 7, however, gave discretion to J.P.'s to award outdoor relief to persons wholly unable to work. To stop paupers from flooding the workhouse, the "less eligibility" test was proposed. Relief was to be lower than the minimum standard of living of the labourer. To administer the system, a central board of professional administrators (called Commissioners) was set up, with power to appoint Assistant-Commissioners in the field. At a local level parishes were to be joined together into unions (Section 26) and the workhouses were to be run by an elected Board of Guardians (Section 38). An overseer dealt with the day-to-day administration.

Dickens was reporting in the House of Commons when the 1834 Poor Law Amendment Act was passed. It was unlikely that he could forsee at the time the consequences of the Act, but certainly by the time he was writing Oliver Twist in 1838, some of the problems had become obvious. In Dickens' eyes,

the most iniquitous was the way the impotent poor, especially children were treated harshly under the "less eligibility" principle which should never have been applied to them. The Commissioners had devoted a total of only four pages out of a lengthy report to the aged, the sick, the insane, and the children. They did suggest that children should be separated and educated, but economic necessity usually rode roughshod over that principle.

In the opening pages of Oliver Twist, Dickens sums up the Poor Law Commissioners in scathing terms. "The members of this board were very sage, deep, philosophical men; and when they came to turn their attention to the workhouse they found out at once what ordinary folks would never have discovered - the poor people liked it! It was a regular place of public entertainment for the poorer classes; a tavern where there was nothing to pay; a public breakfast, dinner, tea and supper all the year round; a brick and mortar elysium where it was all play and no work. "Oho!" said the board, looking very knowing; "we are just the fellows to set this to rights; we'll stop it all in no time." So they established the rule that all poor people should have the alternative (for they would compel nobody, not they) of being starved by a gradual process in the house or a quick one out of it."[43] Mr Bumble in his capacity as a parish official no longer necessarily, by virtue of his office, had any hand in the supervising of the workhouse - Section 38 had provided for a Board elected by the ratepayers. However he and his kind lingered on in very many parishes as Oliver Twist shows. A representitive of the autocratic corrupt local official which the legislation eventually outmoded, he is the butt of some of Dickens' most savage sarcasm and wit, and by the end of the novel has been tumbled from his self-appointed pedestal and disgraced.

Both the physical and psychological effects of the workhouse are clearly shown "...he (Oliver) was badged and ticketed, and fell into his place at once - a parish child - the orphan of a work-house - the humble, half-starved drudge - to be cuffed and buffetted through the world - despised by all and pitied by none." The degradation and indignity of the workhouse would have been something that most Victorians would not have considered.

Oliver is farmed out to Mrs Mann, something that a large number of workhouses did with young children. Mrs Mann is shown as making a profit by inadequately feeding and clothing the "twenty or thirty juvenile offenders against the poor laws" placed in her care. She manages to evade the half-hearted enquiries about the children's deaths and illnesses made by local authorities. The scene of the workhouse meal where Oliver asks for more and is regarded as a criminal, is too famous to need recounting. The dark hole where he was thrown for punishment was quite common as a place of correction in many workhouses.

The exposure of the plight of children in the workhouses by people like Dickens aroused the nineteenth century philanthropists. They exerted pressure to have the workhouse altered. The Poor Law itself contained the seeds of it s own reform, in the central system of administration which gradually allowed a uniform and efficient system to be applied throught the country.

II <u>Outside The Workhouse</u>.

"I have lounged about the streets, insufficiently and unsatisfactorily fed. I know that, but for

the mercy of God, I might easily have been, for any care that was taken of me, a little robber or vagabond"

Dickens. Autobiographical Fragment.[44]

There were a huge number of destitute children who did not receive even the minimal care provided by the workhouse. Poor law officials were obliged to take anyone who was brought to their notice, but they were not obliged to go out and seek needy children. The Poor Law was not established in the towns where there was widespread resistance to it be--cause it was unsuited to the demands of urban as opposed to rural poverty.[45] What then could abandoned or runaway pauper children do? The law certainly did nothing positive for them - it merely convicted for vagrancy without considering the cause of that problem.

By the mid-nineteenth century, a number of religious groups and quasi-religious groups such as that of Dr Barnado had opened institutions which made a determined effort to educate and care for destitute children. Increasingly, these places attempted to create a home-like atmosphere, and various systems such as boarding-out, residential country schools, fostering and cottage homes had all been experimented with by the time of Dickens' death in 1870.

Nevertheless, early reformers such as Barnado record horrible descriptions of children whose only method of existence was to wander the streets, begging for a living, sleeping in archways, doorways or on roof-tops. Dickens himself described in Household Words how he gave a shilling to "five bundles of grey rags" who were sleeping on the pavement

outside the workhouse. Little Nell and her grandfather try begging in the country (usually with little success) although Dickens is reluctant to show his gentle heroine importuning for too long and quickly devises more "honest" means for her to earn a living. Oliver Twist too tries to beg on his way to London and an "old lady... took pity on the poor orphan and gave him what little she could afford and more".

As has been mentioned, from the time of Richard II onwards statutes did their best to discourage begging and generally provided for anyone found begging to be returned to their home parish workhouse.

Some orphan children employed themselves in doing small services for people in the hopes of being flung a coin as a reward. In Bleak House, we have the epitome of the destitute orphan in the figure of Jo the Crossing Sweeper, clearing a street crossing of the mud and filth that could besmirch the clothes of the people crossing. Occasionally, one of these (such as Mr Snagsby) would give him a coin for his work. Jo is described thus: - "Name, Jo. Nothing else that he knows on. Don't know that everybody has two names. Never heard of sich a think... Spell it? No. He can't spell it. No father, no mother, no friends. Never been to school. What's home? Knows a broom's a broom and knows it's wrong to tell a lie..."[46] Jo's "home" is also described. "Jo lives - that is to say, Jo has not yet died - in a ruinous place known to the like of him, by the name of Tom-All-Alones. It is a black, dilapidated street, avoided by all decent people; where the crazy houses were seized upon, when their decay was far advanced, by some bold vagrants, who, after establish--ing their own possession, took to letting them out

in lodgings... These ruined shelters have bred a crowd of foul existence that crawls in and out of gaps in the walls and boards; and coils itself to sleep in maggot numbers where the rain drips in; and comes and goes, fetching and carrying more fever and sowing more evil in it s every footprint than Lord Coodle and Sir Thomas Doodle and the Duke of Foodle and the fine gentlemen in office down to Zoodle shall set right in five hundred years - though born expressly to do it."[47] This passage indicates clearly not only the conditions in which many orphans lived, but also Dickens' belief that the legislature will never bestir itself to do anything about it. It is also part of the novel's irony that private charity, in the form of Mrs Jellyby devotes it's time to working for the natives of Borrioboola - Gha when there are the likes of Jo in England.

Those who were old enough or lucky enough, could get some form of menial work. Charley, the thirteen-year old in Bleak House who is left by her father's death to be the breadwinner for a family of three, is able to obtain work doing laundry, even though she has to have special pattens made to enable her to reach the tub. The dirty work in Victorian households was very dirty indeed, and even the lower middle-class and wealthier working class had a skivy to do the worst jobs. As so often in Dickens, Charley's virtue is rewarded but there must have been many imbued with a similar sense of duty who struggled to make a subsistence living from uncertain drudgery.

Of course, many of the "street arabs" turned to crime, organised or spontaneous. Fagin's gang in Oliver Twist was no novelist's invention - one "tutor" of such a school claimed to have trained

five hundred boys to be thieves in twenty years.[48] Children who from the earliest years had little or no moral training and who had a choice between stealing or starving could not be blamed for doing so. Dickens hesitates to place any of his "good" children characters in such a situation. Thus Oliver, despite his deprived upbringing in the workhouse clings obstinately to what Dickens would have us believe is an innate, middle-class idea of right and wrong and refuse to steal. In view of what we now know about the influence of environment, this may ring a little false to modern readers. (There is an even greater implausibility in the character of Jo, the Crossing-Sweeper) The impact of the Artful Dodger and his friend Charley Bates (who take great pride in their pickpocketting work) is somewhat softened by their being made lovable comics. The Artful Dodger, however, gets his just deserts from society by being transported. Charley Bates is allowed to repent (assisted by Mr Brownlow, a benefactor whom very few young criminals would have) and becomes a successful grazier.

Of course, many of these child thieves ended up like the Artful Dodger and Oliver in court. One boy records how he was begged by another to commit crimes so that they could be caught and sent to prison where they would be better treated than walking the streets.[49] In 1861, the death penalty was abolished for lesser crimes. The statutes of 24 and 25 Vict., C.94 - 99 abolished the death penalty for some forms of aiding and abetting indictable offences, larcency, malicious injury to property, forgery, offences relating to the coin, and offences against the person. In 1868 public executions were abolished (31 Vict C.24). Girls were forced early into prostitution, often taught in the workhouse by older prostitutes. This was not considered a fit

subject for Victorian readers and Dickens leaves it strictly alone. (Any heroines who were "fallen women" - Lady Dedlock, Oliver's mother, little Emily - all died unpleasant deaths, repenting of their sin). Mrs Gaskell, who tried to paint a sympathetic picture of a woman who had an illegitimate child in her novel Ruth was so bound by the mores of her society that she would not let her own daughters read the book.

By the end of the century, reformatories were well established in an effort to separate children from adult ciminals. This work was started by the Reformatory Schools Act, 1854 (17 and 18 Vict., C.74) where magistrates could send any boy found begging or "not having any home or settled place of abode" to one of these schools for "education and training". These broke up the schools of crime like Fagin's by ensuring that a child had something other than a life of crime to turn to when he was released.

THE GENTEEL ORPHAN.

There were basically two groups of orphans - those who were destitute (and lived on the streets or on state charity) and those who clung to some shred of gentility and respectablity. This latter group contained everyone from the respectable working class (such as Pip in Great Expectations or Little Emily in David Copperfield) up to the aristocracy. Self-help was really the only sort of assistance for this group. Gentility could be conferred by two things - birth and money. Thus, those who were poor but of good birth (like little Nell) tried desparately to avoid the slide into the abyss of the workhouse. Those who were not well-born (like Estella in Great Expectations, illegitimate daughter of a gypsy and a convict) could be lifted into the genteel class by the acquisition of money. This group could depend only on the state of the family fortunes or the benevolence of friends, relations and guardians. If sufficent money was at stake, the courts had a role to play.

I. Friends, Relations and Guardians:
The only type of guardian recognised by law in Dickens' day was the guardian by nature, which was almost invariably the father for legitimate children, (the mother was guardian by nature for illegitimate children only). At common law, the father could pass his rights over his children on to a testamentary guardian. Since the courts, as outlined in the introduction, would not interfere with the rights of the father, they would not interfere with the rights he passed on to his testamentary appointee. Thus, whether an orphan was treated well or shamefully abused depended solely on luck. The only exceptions were where money or property was involved.[50]

The novels are often not clear whether a character has a guardian who has been appointed under a will, or just someone who has assumed responsibility. Esther Summerson in Bleak House is lucky to obtain the benevolent John Jarndyce as her guardian under the terms of her godmother's will and Mr Snodgrass is equally lucky to be the ward of Mr Pickwick. His bride, Arabella Allen, is not so lucky, being appointed the ward of her feckless brother Ben, whose only interest in her seems to be to marry her off to his friend, Bob Sawyer, and so get his hands on her money.

Most orphans were probably just looked after by friends, relations or benefactors. Legal adoption was not made possible until the Adoption of Children Act 1926 (U.K.). So that when Dickens tells us that Mr Brownlow adopted Oliver, he means that Mr Brownlow made Oliver his heir. Indeed it was common for parents or relations to abandon their children to a workhouse, training school or benefactor until they were old enough or skilled enough to earn money, and then claim them back to reap the financial reward. It was to stop this practice that the state took one of the first steps in the interference of parents' rights - the Custody of Children Act 1891 (54 and 55 Vict., C.3). Section 3 said that were a parent has (a) abandoned or deserted his child (b) allowed his child to be brought up by another person at that person's expense or by the guardians of a poor law union, for such a length of time and under such conditions as to satisfy the Court that the parent was unmindful of his parental duties: the Court shall not make an order for the delivery of the child unless the parent has satisfied the Court ... he is a fit person to have custody of the child."

Some people took children out of a genuine

concern for their welfare - so Mr Brownlow looks after Oliver and Mrs Maylie, Rose Fleming. Betty Higden struggles to make a living to care for Johnny and Sloppy in Our Mutual Friend. These were the lucky ones, and one suspects that much depended on the appealing looks and nature of the orphan. Others were looked after grudgingly, out of a sense of duty. Pip, in Great Expectations is "brought up by hand" by his sister (with the assistance of Tickler) and he is expected to be eternally grateful for the fact. David Copperfield is nothing but a hated encumbrance to his stepfather, Mr Murdstone. Many orphans must have suffered like David, unhappy in the loss of his parent, yet treated without sympathy as a nuisance to be disposed of if possible. Yet other children were cared for with some purpose in mind. Miss Havisham brings up Estella to wreak her vengeance on men in repayment for her own jilting. Mr Gradgrind takes Sissy Jupe as a companion for his daughter after Sissy's father dies in the opening chapters of Hard Times.

This area of minimum interference by the law is one where Dickens' descriptions of the lot of the orphan are most valuable since they are almost the only attempt at a record that we have of the feelings and treatment of children who had lost their parents. There was little legal redress for either physical or mental cruelty to children and the problem of unwanted children was so great that the authorities must have been only too glad to hand over a child to anyone who wanted it, regardless of their motives or suitability.

II. The Orphans and the Courts

"My feeling is the feeling common I suppose to three-fourths of the reflecting part of the community in our happiest of all possible

countries, and that is that it is better to suffer a great wrong than to have recourse to the much greater wrong of the law."

Dickens to Forster quoted in Forster's Life of Dickens Vol II p 75-6.

The one area where the courts would interfere on an orphan's behalf was if money was concerned. This sort of intervention went back to medieval times. The Court of Orphans was first established in 1276 in London by a borough grant of a wardship of two orphans to their mother's family.[51] Two centuries later this practice had developed into a formal court made up of mayor and aldermen. The burgers of the city could see the advantage of having the trusteeship of a rich orphan's money during his minority and so the court was set up for the children of freemen. Because no one ever seriously challenged the powers of the courts, it is not possible to say for sure on what their authority was based. A guardian in 1420 argued before the Court of the King's Bench that it was derived from "the immemorial customs of the city."[52] Under this authority, then, the City Fathers were appointed to act as an orphan's guardian in the absence of a testamentary one. His inheritance was lodged at the Guildhall and the Court found a home for the child and paid out "orphan's findings" - sums for his upbringing and education. Apprenticeship was often used as a way of finding a child a home. The Court exercised some supervision over the orphan's upbringing, checking any dishonest or brutal behaviour on the part of the foster parents by fine, imprisonment or seizure of goods. An effort was made to give an orphan to people who would not profit by his death.[53]

The Court of Orphans was obviously a valuable large-scale municipal financial institution and it

underwent an expansion in the sixteenth and seventeenth centuries to include eighteen boroughs, containing half the freemen of England. At this time, the Court was closely linked to the Court of Chancery, hearing similar types of cases - Chancery used the Court of Orphans to relieve some of its workload; the Court of Orphans used the relationship to extend its jurisdiction. But the connection with municipal finances was to prove fatal for the Court of Orphans and by the end of the seventeenth century the financial difficulties of the cities caused the decline of the Court of Orphans. Although Carlton[54] claims that the orphans' fund gave London a hundred and fifty years of solvency, by 1694 it was in such poor financial shape that the orphans petitioned Parliament six times for relief. An Act for the Relief of Orphans and Creditors of the City of London (5 and 6 Will and Mary. C.10) was the result of their petitions, and it marked the effective end of the Court of Orphans. From then on, its functions were largely taken over by the Court of Chancery.

Medieval monarchs too were not slow to see that financial advantage could be got from rich orphans. They set up by Royal prerogative the Court of Wards, which was for all those who were heirs to land held in fief directly from the Crown. An heir, coming into his majority had to pay the incident of relief to his overlord (rather like and inheritance tax). There was also profit to be made out of an advantageous marriage of a ward. By the thirteenth century, orphan wards were "brought and sold like beasts."[55] In the sixteenth century, the King revived the Court of Wards which had fallen somewhat into disuse. He realised that it could provide a profitable source of revenue for the Crown and courtiers.

Although under the Stuarts there was an increasing trend to give the family "first Option" (i.e. the mother's family could buy back for her the care of her son or daughter) the corruption of such a system ran contrary to the notion of family property and honour. Carlton[56] sees it as a factor in causing the Civil War and the Court of Wards was indeed abolished under the Commonwealth (Ordinance for Removing the Court of Wards 24 Feb. 1645/6). Pinchbeck and Hewitt say[57] "Both the Court of Orphans and the Court of Wards were concerned with the custody and control of property and it was in essence precisely because the exercise of their powers in this sphere ran increasingly counter to the concept of individual property rights necessary to the development of a capitalist society that ultimately their authority was successfully challenged."

Royal wards were then transferred to the Court of Chancery and became wards-in-chancery. Orphans originally benefitted from the rise of the courts of equity since they developed the principle that the welfare of the child was of prime importance. The Crown acted on their behalf as parens patriae. The courts gradually acquired the rights to supervise the education, religious instruction and marriage of wards. If any action, suit or other proceeding relative to an infants estate or person or for his benefit was instituted in Chancery, then that infant was automatically made a ward of the Court.

However, by the nineteenth century, the courts of equity were notorious for delay and corruption. Dickens portrayed the effect of this on orphan wards in chancery in Bleak House, where Richard and Ada, two of the chief characters in the novel are born into the suit of Jarndyce and Jarndyce.

Dickens based it on the Jennings case which ran for a hundred years and then was absorbed in costs. This was not uncommon - "in equity, the system of pleading resulted in so artificial a statement of the case and the system of procedure spun the suit out to such an interminable length that the whole subject matter of the suit often went in costs before a conclusion was reached."[58]

Dickens illustrated the cost of the delays (in which suitors, practitioners and officials often had a vested interest) in human terms. His orphans Richard and Ada have their whole lives dictated by the Court of Chancery and the suit. By the end of the novel Jarndyce and Jarndyce is over because it too has been absorbed in costs, but it has claimed the life of Richard who has gradually been brought to pin all his hopes, his health and his money on it.

A ward of chancery could not be taken out of the jurisdiction of the court, nor could he make any change in his position in life (such as marriage or choice of a profession) without the Court's permission. The details of his education and maintenance were usually decided by a judge sitting in Chambers. Bolton v. Bolton (1891) 3 Ch.270 established that the control of the court only ceased when the ward became of age. These are the conditions imposed on Richard and Ada in Bleak House. They can make no move without the permission of the Lord Chancellor, a portrait of Lord Lyndhurst. He has to make an order of the court for them to live with John Jarndyce. Richard changes his mind about a career several times and his application for permission "... was adjourned and readjourned and referred and reported on and petitioned about, until Richard began to doubt whether, if he entered the army at all, it would not be as a veteran of seventy or

eighty years of age."[59] Many orphans must have been frustrated like this in their efforts to pursue an everday life. Only when Ada becomes of age can she marry Richard without the permission of the court. In the seventeenth century, for a ward to prove he was twenty-one he had to obtain a writ to summon a jury to attest that fact and then go through twenty-one further steps to prove it.[60] Worst of all, Dickens shows the attraction of the court, fed by years of speculation on the outcome finally becoming an obsession, destroying Richard, his ancestor Tom Jarndyce, and Miss Flite, previously a ward of the court.

Dickens wrote Bleak House in 1852 - 3 when the abuses had been somewhat improved, and further reforms were pending. There had been Chancery Commissions in 1826 and 1852 and these had recommended the reform of the pleading system and system of procedure. In 1852 and 3 there were acts passed to make the form of the Bill less cumbersome,[61] and some of the corrupt and delaying practices such as those of the Master's Offices were abolished. A few years after Dickens' death, the two systems, law and equity were fused in the Judicature Acts of 1873 and 1875. Although many would not consider our modern system of justice speedy, the days have gone when an orphan could spend his whole life wondering what his position was to be under the terms of a forebear's will.

WORK.

"It is a crime to rob a child of it's childhood."
Dickens in Household Words cited in W.W.Crotch.
Charles Dickens; Social Reformer

Only the poor orphan had to be put to work as soon as possible but poverty sometimes included the genteel orphan who had the added problem of finding a respectable job to earn a living. But by far the greatest number of working orphans were in the destitute category. The lower classes had always considered that children should work as soon as they were able. In the Middle Ages the only method of training and regulating the employment of children was that provided by the system of apprenticeship which had been set up by the Guilds. In 1563 the Statute of Artificers (5 Eliz. I, C. 4) made the Guild system into a national compulsory one. There was detailed regula--tion of the conditions of employment, and magistrates had the power to regulate wages and conditions. However the system depended on the Guilds for its administration and enforcement and it only applied to skilled trades. This meant that in the eighteenth century, when there was talk of extending the statute to other areas, the "free traders", jealous of the power and monopoly of the guilds opposed any extension. When the advocates of free trade grew to a sizable pressure group, the statute was abolished in 1813 (54 Geo. III C. 96). There were now no restraints on wage bargaining.

Early legislators could see that it was sensible to train destitute children to some kind of work. Since they considered poverty to be the result of shiftlessness, it seemed to them a good idea to bind

paper children to one place for seven years under an apprentice system. An Act for the Relief of the Poor 1597 (39 Eliz. I C. 3) allowed overseers to levy a rate for the apprenticing of poor children. They were also given the power to force people to take parish apprentices. Training schools were set up by this legislation. In the eighteenth century, an apprenticeship to the navy was seen to be the answer to the pauper problem, and 10,000 boys were sent to sea.[62]

However any benefit to the children from a system of training and apprenticeship envisaged by Tudor legislators was very quickly lost to the need for workhouses to be as self-sufficient as possible. The rise of laissez-faire with its doctrine of free trade and open markets meant that any attempts to hedge the rights of the workers were quickly swept away. Trade unions were allowed in 1824 when the Combination Acts were repealed but they had no real power till the end of the century. (Dickens did not approve of them and showed this in Hard Times). As a result of this lack or restraint, appalling practices grew up, especially with children whom nobody wanted. Paupers were sold from London and the south to work in the cotton mills of the North. Since this was nominally done by "apprenticing" the children, when it became the subject of a national scandal, it caused a wave of feeling against apprenticeship. Workhouses advertised children for sale as apprentices - Oliver is offered to anyone who will take him for five pounds. Some parents complained about this practice; but only because they felt it gave their own children an unfair disadvantage in the labour market since they could not afford to offer such a bonus.[63]

Oliver was bound apprentice to Mr Sowerbury under Section 61 of the Poor Law Amendment Act, 1834.

Pip in Great Expectations is apprenticed to his brother-in-law, Jo the Blacksmith in the Town Hall in the presence of the Justices, having been sponsered by Miss Havisham. The Apprentices Act of 1814 (54 Geo. 3 C. 96) had made it lawful for apprentices to be bound other than by the Statute of Artificers (5 Eliz. I, C. 4). Any deed of writing that was accepted as valid in law was sufficient to bind an apprentice. (It was not, however, till 1847 that a statute laid down that a child under nine who could not read and write his own name could not be apprenticed).[64] Pip was lucky since he was kindly treated by Jo but if he had not his only real chance of escaping would have been to run away as Oliver and later Noah Claypole did. The common-law permitted an apprentice to dissolve the contract only if it could be clearly shown to the courts that it was for his benefit to be released and usually it was not.[65] Of course, very few orphans would have the money and the courage to test the validity of their apprenticeships in the courts.

Reforms were slow in coming, since the nation's prosperity was bound up in such huge employers of child labour as the mills. Very young children were employed to clean under the unguarded dangerous machinery since they alone were small enough to do so. Children doing the same work as an adult could be paid much less. The first major victory for the reformers came in 1833 with an Act to Regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom (3 and 4 Will. 4, C.103). Section 2 restricted the working hours of those under eighteen to twelve a day. Section 7 forbade any millowner to employ a child under nine. Children were to receive schooling (Section 20), Statutory holidays (Section 9), and one and a half hours for meals (Section 6). The conditions

in factories were to be improved by, for example, whitewashing the walls (Section 26). The legislation was to be policed by national inspectors appointed under Section 17.

Unfortunately, early factory legislation was not strongly enforced and there were many ways of getting round it. (At least one factory, for instance, employed a school mistress who could neither read or write[66] although Section 23 of the 1833 Act to Regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom (3 and 4 Will. 4 C.103) gave an inspector power to dismiss such a person). Children of five were employed in the lace-making industry which was expecially exempt under Section 1 of the Act. However, the untiring efforts of people like Lord Shaftsbury ensured that these loopholes were grad--ually closed. Conditions for the child factory worker slowly improved and compulsory schooling in the 1870s[67] kept much child-labour out of the factories.

Children in the factories received a great deal of publicity yet there were other areas of child employment where there was equal abuse, about which little was done. Although horrifying facts about chimney sweeps were revealed throughout the nineteenth century, nothing effective was done till 1875 when the Statute of 38 - 9 Vict., C.70 introduced a system of certification of sweeps and penalties for breaching the conditions to be met under the certificate. In 1834 an act (4 and 5 Will. 4 C.35) forbade the apprenticing of boys under ten to a sweep and the boy had to come before two magistrates and say that he was willing. Oliver Twist narrowly escaped being apprenticed to Mr Gamfield,

the sweep, but in circumstances that broke all these conditions - he was under ten, was brought before only one magistrate, and was definately unwilling. Dickens never wrote about any of the real areas of child labour abuse - Oliver's escape to the under--taker is a paradise compared to what Dickens could have shown if Oliver had become a chimney sweep. A novelist with such graphic powers and wide popularity as Dickens might have been able to do much to help the child in the factory or other industries if he had chosen to write of such evils.

There was one area which Dickens did illustrate copiously where considerable abuse existed and no real regulation in law or legislation. That was the position of the domestic servant. In the 1830s there were fifty percent more female domestic servants than all the employees in the cotton mills put together.[68] Even the poorest households employed a skivy to do the dirtiest work. If she lived in, she would have a makeshift bed in the kitchen or under the stairs. The average servant's wage in Victorian times was £6 a year whereas £10 a year was the average for factory women. Girls from the workhouse could be apprenticed into housewifery although this meant that they learnt nothing more than to do the most menial tasks. "Guster", the unfortunate servant of Mrs Snagsby is in this class, an orphan, a drudge who came cheaper because of her fits. Here is a description of the life of the "Marchioness" the servant of Sally Brass in <u>The Old Curiousity Shop</u> "She never went out or came into the office, or had a clean face, or took off the coarse apron, or looked out of any one of the windows, or stood at the street door for a breath of air or had any rest or enjoyment whatsoever. Nobody ever came to see her, nobody spoke of her, nobody cared about her."[69]

For the poor middle-class orphan required to earn a living, the choice of occupations was equally restricted. David Copperfield and Richard Swiveller (an orphan from The Old Curiosity Shop) become law clerks but this, at least on David's part, required quite a considerable outlay on the part of his aunt. A clerkship of some sort was about all that a poor orphan could aspire to, and he could then dream of working his way up the firm. For women, teaching or governessing was practically all there was, apart from being a paid companion to some rich old woman. Miss Edwards in The Old Curiosity Shop is apprenticed at Miss Monflather's Academy, teaching for nothing but free board and lodging "... set down and rated as something immeasurably less than nothing by all the dwellers in the house." Many middle-class orphans, simply through the accident of their parents' death, must have had to suffer both poverty and scorn in this way.

EDUCATION.

"I think it is right that the State should educate the people; and I think it wrong that it should punish Ignorance without enlightening or preventing it."

Dickens. Letter to Edward Baines 1850.

One of the factors which increased support for child labour legislation was the growing interest in education. This culminated in the year of Dickens' death in "Forster's Education Act"[70] which made education free and compulsory for all children. Section 71 said that all children of not less than five nor more than thirteen years of age must attend school. There was a right to levy a school fee under Section 17, but it was possible for this to be remitted for poverty. Schools were to run on a parliamentary grant and to be regularly inspected by State inspectors. Dickens had been campaigning for most of his life to get this sort of legislation passed, although he did not see it as taking over the role of the private schools. State education was only to be for those who could not afford any other sort. But until 1870, learning had largely been the preserve of those who could pay.

Spasmodic attempts had been made from Tudor times onward to provide some sort of workhouse school for the paupers but since these were usually staffed by some other unfortunate inmate such as an alcoholic, very little was learned. Usually the workhouses were more interested in training children for some occupation rather than teaching them to read and write. The Poor Law Amendment Act, 1834 provided that workhouse children should be taught for three hours a day, but Oliver Twist shows this as being

ignored since in most places there was not enough money to provide adequate teachers. One of Florence Nightingale's favourite stories[71] concerned an old man who was made parochial schoolmaster since he was "past minding the pigs." In 1846, in response to the growing need for education, parliament voted £15,000 towards workhouse teachers' salaries.

Dickens saw a direct link between crime and lack of education. When he considered the prison tables, he saw that of 20,000 women prisoners, 9,000 could not read or write. Only 14 could read or write well. Of 41,000 men, only 13,000 could read or write and only 150 could read or write well.[72]

Grammar schools had been early established for the sons of the rich. Dickens only sends one of his characters to a public school and that is Richard in Bleak House. He does not ever show us the school and we only learn that he had been there by Esther's wry comment that it taught him how to make Latin verses and nothing else. Some of these schools had free places for poor boys and therefore provided stepping-stones for the social betterment of those lucky enough to get them. Some charity schools such as Christ's Hospital were established in the eighteenth century and catered particualarly for the education of poor orphans. (Poor in money only; genteel birth was usually a sine qua non). In a speech in 1857 on behalf of a public school, Dickens described the inmates of a charity school "... in leather breeches with mortified straw baskets for bonnets which file along the streets to churches in long melancholy rows under the escort of that surprising British monster, a beadle."

The work of the charity schools was taken up and

expanded from the 1780s by the Sunday schools and later the "Ragged Schools". The churches, particularly at first the non-conformist ones set up Sunday Schools to teach religion but found themselves also teaching reading and writing. The Ragged School movement[73] followed on from this collecting children off the streets, literally giving them a place of shelter during the day, some food and some rudiments of education. Dickens personally helped with the Ragged School Union through his philanthropist friend Angela Burdett Coutts. He helped with canvassing for funds, wrote articles and gave lectures although privately he expressed criticism of the narrow religious outlook of many of the teachers while admitting the difficulty of obtaining even adequately trained teachers for something that was only a charity.[74]

In Our Mutual Friend one orphan, Charley Hexam, is shown attending a Ragged School, "a miserable loft in an unsavoury yard. Its atmosphere was oppressive and disagreeable; it was crowded, noisy, and confusing; half the pupils dropped asleep or fell into a state of waking stupefaction; the other half kept them in either condition by maintaining a monotonous droning noise... The teachers animated solely by good intentions, had no idea of execution, and a lamentable jumble was the upshot of their kind endeavours."[75]

Many Victorian working-class and middle-class parents would have paid a small sum for their children to be educated at a dame school (Dickens and his sister Fanny went to one in Chatham). He sketched a picture of one such school in Great Expectations - "Mr Wopsle's great-aunt kept an evening school in the village; that is to say, she was a ridiculous old

woman of limited means and unlimited infirmity, who used to go to sleep from six to seven every evening in the society of youth who paid twopence per week each for the improving opportunity of seeing her do it."[76] The other extreme is that suffered by Sissy Jupe, "girl number twenty" in Hard Times where the pupils were regarded as "... little vessels then and there arranged in order, ready to have imperial gallons of facts poured into them until they were full to the brim."[77]

Boarding schools were often little better. Dickens made a special trip to Yorkshire in 1838 to visit the schools which he ultimately exposed as Dotheboys Hall in Nicholas Nickleby. These schools had grown up in the second half of the eighteenth century as places where parents or guardians could get rid of unwanted children for £20 a year. Orphans and illegitimate children featured prominently on the school rolls. A feature stressed was that these schools had no holidays. All letters were censored and, since there were no inspectors, the children were treated appallingly. One William Shaw, whose school Dickens visited and on which the establishment of Mr Squeers was probably based, had had two cases brought against him in 1823 for gross neglect resulting in the blindness of some of his pupils.[78] A jury awarded damages of £300 each to the parents, although the judge, Park J., seemed less worried about the conditions than about Shaw's "concealment of the calamity from the parents." A picture such as the following finally forced these schools to close after the widespread popularity of Nicholas Nickleby. "Pale and haggard faces, lank and bony figures, children with the countenances of old men, deformities with irons upon their limbs, boys of stunted growth and others

whose meager legs would hardly bear their stooping bodies, all crowded on the view together; there were the bleared eye, the hare-lip, the crooked foot and every ugliness or distortion that told of unnatural aversion conceived by parents for their offspring or of young lives which, from the earliest dawn of infancy had been one horrible endurance of cruelty and neglect." [79]

Other novels show orphans in boarding schools which, while not quite as horrific as Dotheboys Hall, were still joyless, harsh places, providing little food and less education. Such a place is the establishment of Dr Creakle which David Copperfield attends. "Here I sit at the desk again, watching his eye - humbly watching his eye as he rules a ciphering book for another victim whose hands have just been flattened by that identical ruler..."[80] Dr Strong's enlightened school which David Copperfield later attends was an example of the new liberal school which grew up ."We had noble games out of hours and plenty of liberty". Dickens also showed himself inimical to the cramming school like Mr Gradgrind's which taught poor children in the North or Dr Blimber's in Dombey and Son which was for rich children in the South. Blimber's was described as "a great hot-house in which there was a forcing apparatus constantly at work". The "hard facts" school was produced largely as the result of state teacher training, introduced in 1853. In 1858 the Newcastle Commission criticised teacher training as being "too little adaped to the real needs and capacities of the children".[81] Mr M^c^Choakumchild in Hard Times is one such. "He and some one hundred and forty other schoolmasters had been lately turned at the same time, in the same factory, on the same principles, like so many pianoforte legs... Orthography, etymology, syntax and prosody, biography,

astromony, geography and general cosmography, the sciences of compound proportion, algebra, land-surveying and levelling, vocal music and drawing from models were all at the end of his ten chilled fingers."[82]

Throughout the nineteenth century, efforts were made, especially by people like Dr Kay-Shuttleworth to bring in some sort of compulsory universal education scheme. Most foundered on the question of religious instruction. Dickens, reporting in the House of Commons would have seen that body reject four such bills - one by Lord Brougham in 1832 and three others in 1833. In both his actions and his writing Dickens did a great deal to bring about the 1870 Elementary Education Act (33 & 34 Vict., c. 75) by which the State provided a minimum standard of education for all children, and helped to pay, train and supervise competent teachers. The novels showed for the first time that teachers needed special training and special qualities to succeed in their task. They insisted that a pleasant, non-coercive atmosphere is necessary for real learning. On a visit to the Limehouse School of Industry, Dickens commented that the pupils "...would have done better, perhaps, with a little more geniality on the part of their pupil-teacher; for a cold eye and a harsh abrupt manner are not by any means the powerful engines your innocence supposes them to be." [83]

CONCLUSION

"AT every new act of kindness on your part, I say to myself; "That's for Oliver: I should not wonder if that were meant for Smike; I have no doubt that is intended for Nell.""

DICKENS. 1842 SPEECH ON FIRST ARRIVAL IN AMERICA.

It is, of course, impossible to assess what Dickens' effect on the lot of the orphan was, since his contribution was so indirect. However, bearing in mind the enormous popularity of his novels during his lifetime his greatest contribution would probably be the popularisation of the abuses, both physical and mental, to which children were subject. As Pinchbeck and Hewitt say in opening what is at present the standard text on the development of children's rights, "The awakening in England of the public conscience to the importance of the care and welfare of children was one of the most striking developments of the later nineteenth century"[84]

The orphan is almost regarded as a rarity in western society now. The development of women's role and rights means that we rarely think of a child whose father has died as an orphan. In this International Year of the Child, orphans would seem to the Victorians to be amazingly hedged about by the elaborate protections of the welfare state.There is now no question of handing over a child to anyone who offered to take it without an intensive screening process to assess their suitabilty. Section 73 of the Children and Young Persons Act 1974 (New Zealand) allows no unauthorised person (under the Act) to have a child for more than twenty-eight days.

Section 9 makes it an offence to leave a child without reasonable supervision and care. The Act sets up special courts, children's boards and social workers to safeguard a child's rights. Section 53 accords to the child a right of appeal; Section 54 gives it to his parents. Abenefit in respect of orphanhood is payable in the case of a child under sixteen who was born in New Zealand or whose last surviving parent was ordinarily resident in New Zealand for a period of not less than three years preceding the date of his or her death. (The benefit is also paid to children whose last surviving parent is institutionalised for a long period) In 1977, the benefit was paid in respect of 503 children The benefit is at present $25.85 a week if an orphan's income is not more than $260 a year. Every attempt is made to place an orphan in a family situation rather than an institution.

It is difficult to insist that the law can do much more to help the rights and needs of the New Zealand orphan. in material terms, no child need suffer. Most officials and social workers are aware of the shock that the loss of a parent can be to achild. Perhaps it would be a fitting guesture, and one of which Dickens would approve, if, in this International Year of the Chld, we extended the benefits which we can offer orphans to some of the child victims of war and disaster in Asia.

FOOTNOTES

1 K.J. Fielding (ed) The Speeches of Charles Dickens (Oxford 1960) 197

2.W. S. Holdsworth.Dickens as Legal Historian (New Haven 1929) 7.

3. Jowett's Dictionary of English Law (London, 1977)

4. NOVELS NOT considered were:- Edwin Drood (unfinished) BArnaby Rudge ; A Tale of Two Cities;and Martin Chuzzlewit (either set outside Britain or outside the period of Dickens life) and the novellas. This leaves eleven novels as a basis for consideration and these are listed in the bibliography.

5. In 1849, the Report of the Commission into Sanitary Conditions in England (the Simon Report) estimated the mortality rate as 30 per thousand per annum. The estimate for Britain in 1978 was 12per thousand per annum N.Z. Yearbook)

6.IVY Pinchbeck and Margaret Hewitt.Children in English Society (London, 1969)595-7 quote cases (very few in number) where mothers were prosecuted for leaving unwanted babies in the middle of roads, in hedgerows, and throwing them into rivers.

7. Dickens. Autobiographical Fragment quoted in J. Forster'S Life of Charles Dickens (London,1872)

8. Edgar Johnson. Charles Dickens: His Tragedy and Triumph (New York, 1977) 261-2.

9.Pinchbeck and Hewitt. op cit.8-10, 50-9, 351-3 These ideas are specifically related to the Victorian period in Jenni Calder. The Victorian Home (London,1977) The need to preserve the family fortune and lands lay behind such legal developments as the entailed estate and the use which

originally allowed the Crusaders to preserve their estates for their children if the Crusader died in battle.The need for an heir has been a notion which has only slowly died in the twentieth century.

10. Johnson, op cit.179

11. Calder. opcit.163

12. Blackstone Commentaries on the Laws of England5th Ed (Oxford,1765) 449-51

13. For the Prevention of Frauds and Perjuries (29 Charles II c.3.)

14.Pinchbeck and Hewitt opcit.364.

15.(49&5o Vict., c.27)

16. Wellesley v. Beaufort (The Duke of) (1827) E.R.38 Ch. 236,244

17.An Act for the Prevention of Cruelty to and Better Protection of Children 52&53 Vict.,c.44

18. A thesis stressed in Calder, Pinchbeck and Hewitt and Margaret Heywood Children in Care (London, 1969) and well-illustrated by the parliamentary debates of the time.

19.Calder. op. cit.164

20.An Act to Amend the Poor Law (4&5 Will.IV c.76)

21.An Act to Provide for Public Elementary Eductation in England and Wales(33-34 Vict.,c.75)

22.Guardianship of Infants Act (49&50 Vict,c.27)

23.An Act to Regulate the Labour of Children and Young Persons in he Mills and Factories of the United Kingdom (3&4 Will.IV,c.103)

24.P. Rooke The Age of Dickens (London,1970) 107ff.

25. W.W. Crotch. Dickens as Social Reformer (London,1913) P. Collins. Dickens and Education (London, 1964)

has calculated that oonly four of Dickens' novels fail to give a prominent place to children

26. Crotch op.cit.44

27. M. Heywood op. cit 1-6

28. Even in the twentieth century, the notion still persists that the unemployed are all without work because they have not tried to get it and that those on the dole are bludgers on the state.

28.b (43 Eliz.I., c.4)

29. M. Heywood op.cit.6

30. Pinchbeck and Hewitt. op. cit.101

31. Ibid.136

32. O. Mcdonagh. Early Victorian Government (London, 1977) 97

33. Oliver Twist 69

34. Bleak House 398

35. For example, Christ's Hospital.

36. Donald Grist. A Victorian Charity (London, 1974)

37. Children of three and four often spent up to twelve hours a day carding wool or winding bobbins for lacemaking.

38. So called because the magistrates met at a town called Speenhamland.

39. Royal Commission into the Administration and Operation of the laws for the Relief of the Poor.

40. S.G. and E.O.A. Checkland (Ed) The Poor Law Report of 1834 (Harmondsworth, 1973) 132ff

41. The Poor Law Commission was the first time a Royal Commission was used before altering legislation and it established a valuable precedent for the future.

42. The Poor Law Report op. cit.127

43. Oliver Twist 28

44. Quoted in Johnson op. cit. 36

45. The Poor Law was based on the parish with its relatively stable population. In the large, shifting masses that made up the city the parish scarcely existed, especially since scepticism or indifference to religion was widespread.

46. Bleak House 136

47. Ibid. 202

48. Crotch op. cit. 44

49 Henry Mayhew London Labour and the London Poor quoted in Heywood op. cit. 23. Cobbett in his Rural Rides (1823, Vol. 2, 3) indignantly points out that country labourers were worse off in terms of wages and outdoor relief than those in the gaols.

50. Discussed more fully in the section on the orphan and the courts.

51. Charles Carlton. The Court of Orphans (Leicester, 1974) 1

52. Ibid. 15

53. Ibid. 56

54. Ibid. 24

55. Heywood. 6

56. Carlton op. cit. 74

57. Pinchbeck and Hewitt op. cit. 90

58. W. Holdsworth. A History of English Law Vol IX (London, 1926) 393

59. Bleak House 309

60. Carlton op. cit. 58

61. 15 & 16 Vict., c. 86. 16 & 17 Vict., c. 22

62. Pinchbeck and Hewitt op. cit. 105

63. Grace Abbott. The Child and the State (Chicago, 1938)

81

64. (10&11 Vict.,c.70)

65. R. v. Great Wigston (Inhabitants) (1824) 3B& C 484

R.v. Austrey (Inhabitants) (1758) Burr S.C. 441.

Waterman v. Fryer (1922) 1 K.B. 499

R. v. Mountsorrel(Inhabitants) (1815) 3Mo S 497

66. Heywood op.cit. 70

67. An Act to Provide for Public Elementary Education in England and Wales (33&34 Vict., c.75)

68. Rooke. op. cit. 108

69. The Old Curiosity Shop 255

70. (33&34 Vict., c.75)

71. Quoted in P. Collins op.cit. 97

72. Quoted in Crotch op. cit. 69

73. So called because of the appearance of most of their pupils. They were largely run by voluntary philanthropists, who imparted the rudiments of education with a large slice of religious dogma.

74. Collins op. cit. 97.

75. Our Mutual Friend 201

76. Great Expectations 48

77. Hard Times 48

78. Reported in The Times 31st Oct. and 1st Nov.

79. Nicholas Nickelby 151

80. David Copperfield 142

81 Collins op. cit. 150-1

82. Hard Times 52

83. Collins op. cit. 82

84. Pinchbeck and Hewitt op. cit. 1

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1862 Great Expectations.Collins 1965
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