Legal education is a subject of constant debate and reflection. This is a good thing. The past, present, and future of legal education should be a matter of ongoing critical contemplation. And it should be controversial, even heated. Teachers of law, and students indeed, should care about legal education. The prospect of what is commonly termed a ‘liberal’ legal education tends to loom large in these conversations on both sides of the Atlantic. In this context, the rise of interdisciplinary and contextual legal studies is surely one of the defining characteristics of a modern legal education. ‘Law and’ courses are everywhere: law and politics, law and economics, law and society, law and history, law and gender, to name but a few of the more common. The purpose of this essay is to present a defense of another of these more commonly encountered, consciously interdisciplinary approaches to legal education, and this is ‘law and literature.’ The first part of the essay will provide an overview of ‘law and literature’ scholarship, and its prospective ‘strategies.’ The second will then focus more closely upon one of these strategies: the ability of the literary text to provide a supplementary chronicle with which we might be better equipped to understand the historical and evolutionary nature of particular disciplines and sub-disciplines of law.

It should be noted from the outset that this particular ‘Law and’ has proved to be especially malleable over the last few years, finding variant expression in, most obviously ‘law and humanities,’ and ‘law, culture and the humanities.’ The origin of a distinct modern ‘law and literature’ scholarship is commonly situated in the pioneering work of James Boyd White,* Ian Ward is Professor of Law at Newcastle University.

1. The literature on this contemplation is understandably vast - itself a testament to the vigour of the conversation. For significant recent statements, see the representative essays collected in Peter Birks (ed.), WHAT ARE LAW SCHOOLS FOR? (Oxford Univ. Press 1996) and Fiona Cownie (ed.), THE LAW SCHOOL: GLOBAL ISSUES, LOCAL QUESTIONS (Ashgate Publ. 1999), and also ANTHONY BRADNEY, CONVERSATIONS, CHOICES AND CHANCES: THE LIBERAL LAW SCHOOL IN THE TWENTY-FIRST CENTURY (Hart Publ. 2003). Each of these texts reaches across jurisdictions. For a recent, broadly conceived, review, focusing primarily but not exclusively on the situation in the UK, see Ian Ward, Legal Education and the Democratic Imagination, 3 L. & HUMAN. 2009, particularly at 87-93.

2. For an early comment on this intellectual evolution, see Arthur Allen Leff, Law And, 87 YALE L.J. 989, 989-1011 (1978).

3. The term ‘strategies’ was deployed by RICHARD WEISBERG in his POETHICS, AND OTHER STRATEGIES OF LAW AND LITERATURE (Columbia Univ. Press 1992).

and the publication of his *The Legal Imagination* in 1973.\(^5\) In the intervening three and a half decades, a number of legal scholars have explored the potential of a literary jurisprudence. Some have emerged persuaded, even enthused. Others have not. Amongst the latter, critics have articulated both conceptual and practical reservations. Some, most obviously those who prefer their jurisprudence to be altogether more analytical or formalist, dislike the potential slipperiness that literature insinuates. There is a wariness of a discipline that positively relishes interpretive indeterminacy.\(^6\) Others doubt the pragmatic value of literature. If students want to learn about the law of contract, the argument runs, there is more to be gained by reading textbooks on contracts, and the reports of leading cases, than in studying Shakespeare’s *The Merchant of Venice*. There are elements of both these criticisms in the writings of perhaps the most skeptical of critics of ‘law and literature,’ Richard Posner.\(^7\) A third critic, of perhaps more recent vintage, expresses a willingness to admit the possible merits of literature in legal education, but wishes to affirm a strictly limited utility. There may be functional value, in terms of enhancing legal education. But literature does not offer the ‘restless’ legal theorist any grander ‘authenticity.’\(^8\)

This educative potential is often presented at the vanguard of defenses of ‘law and literature’ scholarship.\(^9\) Perhaps the simplest, but also perhaps one of the most important,

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\(^6\) For an interesting commentary, exploring residual skepticism in legal education in some quarters of the legal academy, see Baron, ‘Problems’ supra note 4, at 1059-85.


\(^8\) Julie Stone Peters, *Law, Literature and the Vanishing Real: On the Future of an Interdisciplinary Illusion*, 120 PROC. MOD. LANGUAGE ASS’N 442-52 (2005). Peters suggests that the use of literature by legal theorists so far has tended to be simplistic, driven by an illusory desire to access something that seems more ‘authentic’ than abstruse legal instrumentation. There is a similar skepticism, albeit articulated within a rather more positive critique, to be read in Baron, ‘Problems,’ supra note 4, at 1064-71.

arguments here is that literature leavens law. It makes law more interesting, fresher, fun even.\textsuperscript{10} The arguments based on fun might be thought sufficient. But there are deeper intellectual defenses too. Three are prominent: the value of understanding law to be an aesthetic and textual expression, and to read it is as such; the potential literature offers for enhancing the ethical and emotional sensitivity of law students; and finally, and perhaps least controversially, the ability of literature to provide a supplementary chronicle with which to chart the evolution of law, public and private.

The first of these defenses suggests that law must be understood as a textual, interpretive, and accordingly also imaginative, expression. ‘All law,’ as Kieran Dolin has recently concluded, ‘is inevitably a matter of language.’\textsuperscript{11} It is a conclusion which bears a striking resemblance to Robert Cover’s earlier and renowned injunction, ‘No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning.’\textsuperscript{12} Law comes to the law student in textual form, whether in statutes and cases, textbooks, or novels. There is a critical commonality. And there must also be a common acceptance that such textuality invites an inevitable indeterminacy of meaning.\textsuperscript{13} In this the literary jurist resembles the liberal ‘ironist’ depicted by Richard Rorty: someone who appreciates that there are ‘only descriptions of the world,’ just as they know that our comprehension of things is refracted through text and image, and nothing else.\textsuperscript{14} Such an appreciation was, of course, central in James Boyd White’s pioneering work on ‘law and literature.’ Law, White suggested, must be always ‘translated,’ like any language; and legal education, therefore, is about training putative lawyers in the art of reading and translating.\textsuperscript{15} As mentioned before, some viewed this ironic insight as liberating and exciting. Others viewed it with scarcely-veiled horror.\textsuperscript{16}

There is a resonance here with some of the more literary inspired writings of Critical Legal Studies. One prominent ‘critic,’ Allan Hutchinson, for example, felt moved to proclaim:

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We are never not in a story. History and human action only take on meaning and intelligibility within their narrative context and dramatic settings. There are many
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characterized much of the earlier scholarship on the engagement. The greater ethical ambitions came later. For a more recent comment on the educative context, see Narnia Bohler-Muller, The Challenges of Teaching Law Differently: Tales of Spiders, Sawdust and Sedition, 41 L. TCHR. 50-66 (2007).


13. For an early appreciation of this need, see Elizabeth Perry Hodges, Writing in a Different Voice, 66 TEX. L. REV. 629-40 (1988).


16. For an interesting exchange here, see Stanley Fish, Interpretation and the Pluralist Vision, and G. Edward White, The Text, Interpretation and Critical Standards, both in 60 TEX. L. REV. (1982), at 495-505 and 569-86 respectively.
stories being imagined and enacted, but we can only listen to them and comprehend them within the vernacular contexts of other stories. Our conversations about these narratives are themselves located and scripted in deeper stories which determine their moral force and epistemological validity.17

We cannot detach our cultural lives, or our jurisprudential lives, from these stories, fictive or otherwise. Gretchen Craft noted the ‘startling immediacy’ which such stories can bring to the otherwise rather abstruse experience of studying law.18 The same sentiment can be read in Patricia Ewick and Susan Silbey’s observation that it is only ‘through our storytelling’ that we can ‘(re)create the commonplace of law.’19 Hutchinson concludes:

The life of law is not logic, or experience, but a narrative way of world-making... More importantly still, it is the stories themselves that come to comprise the reality of our experience. In this sense, legal stories mediate our engagement with the world and with others: they provide the possibilities and the parameters of our own self-definition and understanding.20

The second ambition of ‘law and literature’ scholarship is perhaps the most controversial. It is also the ambition which has greatest contemporary vitality, which is probably why it is also the most controversial. This is the claim that literature can help sensitize the law student, perhaps even reinvigorate a slumbering sense of moral responsibility. Nearly a century ago, in his Democracy and Education, John Dewey acknowledged the importance of teachers, in any discipline, being able to ‘dramatize’ experience. For it is only through ‘the accompanying play of imagination’ that direct representational knowledge can be ‘translated over into a direct meaning.’21 James Boyd White, of course, rooted his original defense of literary jurisprudence in precisely the same way: the importance of revitalizing a legal ‘imagination.’ And again, the same aspiration can be detected in the more jurisprudential writings of Richard Rorty, perhaps the most influential of latter-day Deweyans. For Rorty, a truly liberal jurisprudence is defined not by its ability to nurture a deeper comprehension of statutes and cases but by developing a greater sensitivity to ‘sad and sentimental stories’ of suffering and injustice.22 Jurisprudence so understood is an ironic conception, a ‘romantic hope.’23

17. ALLAN C. HUTCHINSON, DWELLING ON THE THRESHOLD: CRITICAL ESSAYS ON MODERN LEGAL THOUGHT 13 (Carswell 1988).
22. See Richard Rorty, Essays on Heidegger and Others 182, 186-87, 192 (Cambridge Univ. Press 1991) (singling out the writings of Roberto Mangabeira Unger for specific approval).
23. Richard Rorty, Philosophy and Social Hope 212 (Harmondsworth 1999).
It is also, as Martha Nussbaum has confirmed, intensely and irreducibly ‘poetic.’ Nussbaum opened her *Poetic Justice* with the assertion, ‘I defend the literary imagination precisely because it seems to me an essential ingredient of an ethical stance that asks us to concern ourselves with the good of other people whose lives are different from ours.’ So much, she noted, was admitted by one of America’s greatest jurists, Oliver Wendell Holmes: ‘life is painting a picture, not doing a sum.’ A liberal education, in law as in anything else, aspires to foster, above all else, an appreciation of ‘imagination, inclusion, sympathy and voice.’ Here Nussbaum echoed her similar assertion, in *Cultivating Humanity*, that a liberal humanist education is defined as one which places at its centre a refined ‘narrative imagination.’ The exercise of such an imagination, Nussbaum confirmed:

Means the ability to think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person’s story, and to understand the emotions and wishes and desires that someone so placed might have.

There is a close resonance here with Drucilla Cornell’s suggestion that a critical, and literate, jurisprudence is ‘driven by an ethical desire to enact the ethical relation,’ meaning the ‘aspiration to a non-violent relation to the Other, and to otherness more generally, that assumes responsibility to guard the Other against the appropriation that would deny her difference and singularity.’ And the same resonance can be detected in the comment of Richard Weisberg, one of the most prominent of contemporary ‘law and literature’ scholars, that ‘stories about the “other” induce us to see the other, and once we do, we endeavour consistently to understand the world from within the other’s optic.’ And again in Maria Aristodemou’s conclusion, that no juristic writings ‘ever take[] place outside the mirroring love of, and for, others.’ This desire to revitalise the ethical component of law is then cherished by many ‘law and literature’ scholars. It can be placed, in a sense, at the vanguard of contemporary literary jurisprudence, prepared like any vanguard to engage the intellectual fight where it is most fierce.

In contrast, the ability of literature to provide a supplementary chronicle is perhaps the least controversial of the defences of ‘law and literature,’ perhaps in part because it is also the least challenging or threatening. If law is indeed comprehended as the expression of

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25. Id. at xix.
26. Id. at 118-19.
30. *Maria Aristodemou, Law and Literature: Stories from Here to Eternity* 295 (Oxford Univ. Press 2000). The same mirroring metaphor is also preferred by Melanie Williams, in her *Empty Justice: One Hundred Years of Law and Literature* xxiv (Cavendish 2002).
contemporary social, political and moral forces, then it is very obvious that we can better appreciate its inception and evolution if we have a surer grasp of these invariably historical forces. A fine example of this kind of scholarship can be found in Kieran Dolin’s *A Critical Introduction to Law and Literature*. Dolin takes a consciously historical approach to his examination of the mutually constitutive role of law and literature through the ages, focusing for example on the development of contract law in the sixteenth century, crime and punishment in the eighteenth, and the reform of family and property law, in particular as it related to women, in the nineteenth.³¹

To a certain extent Dolin, like many ‘law and literature’ scholars, prefers an identifiable canon of literary jurisprudence. Certain texts lend themselves very obviously as historical supplements; *The Merchant of Venice*, *Bleak House*, and *The Scarlet Letter* are amongst the most popularly deployed. The presence of law is very obvious in all three. Indeed, it might be argued that each was written as an expression of a particular concern with the apparent limitations of law to facilitate justice, respectively in the areas of restitution, equitable settlement, and adultery laws. Dickens, for example, cared passionately about the need for reform of Chancery and wrote *Bleak House* as a contribution to an often heated contemporary debate which eventually saw the instantiation of the Judicature Act, and whilst Shakespeare’s deeper motivation, across the corpus, will always remain maddeningly opaque, Hawthorne shared a similar and pressing anxiety with regard to the residual strength of a jurisprudential culture which he thought thoroughly pernicious.

Equally interesting, it might be suggested, are those texts which are not so obviously about law, but which on closer inspection are in fact replete with legal allusion and aspersion. Here, for example, the relative absence of concentrated ‘law and literature’ scholarship on the nineteenth century, with perhaps the very obvious exception of Dickens, has attracted critical commentary. To a considerable degree, this is precisely because relatively few novels of the genre address law directly.³² There is, all the same, plenty of law to be found.³³ It takes, however, what might be termed a more ‘subterranean’ form, lying just below the surface of the text, but providing at the same time a necessary social and structural foundation.

The nature of this kind of ‘subterranean’ literary jurisprudence can be discerned, by way of example, in one of the defining canons of the nineteenth century: the novels of the Brontë sisters. Whilst there has been a handful of political ‘interpretations’ of the Brontë

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novels, there has been virtually no legal or jurisprudential engagement. And yet, whilst there might indeed at first glance appear to be very little law in the Brontë novels, closer inspection uncovers a rich mine of subterranean jurisprudence; some public, such as the collateral engagement with mid-century debates regarding the state of the Church of England in *Shirley*, and still more private, ranging from the myriad instances of physical violence which can be found scattered across the entire canon, including that which attaches to the incarceration of Bertha Mason in *Jane Eyre*, a subject which was itself a matter of ongoing public concern at the time, to altogether more technical and intricate matters of estate succession in *Wuthering Heights*.

Of all the Brontë novels, the one that contains the richest seam of jurisprudence is perhaps Anne’s *The Tenant of Wildfell Hall*. Written concurrently with Charlotte’s *Jane Eyre* and Emily’s *Wuthering Heights*, during the winter and spring of 1846-47, the plot of *The Tenant* moves around the misfortunes that attend the young Helen Huntingdon on marriage to her drunken and putatively violent husband Arthur, and her resultant decision to abandon the marital home taking her son, little Arthur, with her.\(^{34}\) In this compositional context, the common incidence of violence, much of which imports an obvious gender consonance, has long been noted by literary scholars. The same is true of the historical and jurisprudential context here, the mid-nineteenth century being identified by legal historians and jurists as a critical moment in the development of a distinct female voice in contemporary debates regarding the reform of marital and associated legal instruments.\(^ {35}\) Three particular and necessarily closely related issues, the capacity of the married woman to acquire estate, the case for reforming divorce law, and the need to amend child custody provision, all find expression in *The Tenant*.

The collapse of the Huntingdon marriage is cataclysmic, designed to distress, written to shock. The extent of Helen Huntingdon’s error, in marrying her husband in the hope that he might be redeemed and recalled to the ‘path of virtue,’ becomes very obvious very quickly: increasingly violent quarrels, accompanied by a toxic mix of adultery, drunken orgies and child abuse.\(^ {36}\) The drunken Arthur’s suggestion, to his friends, that any who wanted might ‘have’ his wife added petty pimping to the growing litany of abuses.\(^ {37}\) But it is the pointed exchange between Helen and one of her husband’s drunken friends, Hattersley, which brings the matter centre-stage. Hattersley beats his wife, until, he confesses, ‘she cries – and that

\(^{34}\) For a more considered discussion of this novel as a particular example of mid-nineteenth century ‘subterranean’ jurisprudence, see Ian Ward, *The Case of Helen Huntingdon*, 49 CRITICISM 151-82 (2007) [hereinafter ‘Case’].

\(^{35}\) See generally Dolin, Law and Literature, supra note 11, ch. 4, and also Maria Drakopoulou, *Feminism and the Siren Call of Law*, 18 L. & CRITIQUE 331-60 (2007).


\(^{37}\) *Id.* at 340, 342-43. Interestingly, the mere offering of a wife to another man had been held, in law, not to constitute a form of mental cruelty sufficient to legitimate an action for legal separation. See Maeve E. Doggett, *MARRIAGE, WIFE-BEATING and THE LAW IN VICTORIAN ENGLAND* 31-32 (Weidenfeld & Nicolson 1992).
satisfies me.’ The beater’s confession echoes down the ages: ‘I positively think I ill-use her sometimes, when I’ve taken too much – but I can’t help it, for she never complains, either at the time or after. I suppose she doesn’t mind it.’ She ‘does mind it,’ Helen retorts, whether or not she has the courage to complain. A wife-beater is a ‘tyrant.’ When Hattersley blusters another feeble if familiar justification, that a bit of a beating never really hurt anybody and that if anyone has been hurt it is he, it is Helen who again responds, painting the bigger picture. It is, she counters, ‘a great matter,’ for ‘it is impossible to injure yourself – especially by such acts as we allude to – without injuring hundreds, if not thousands, besides, in a greater or less degree, either by the evil you do or the good you leave undone.’

Victorian men beat their wives, and they did so, as Frances Power Cobbe confirmed in her famous essay on Wife-Torture in England, because the law let them. The situation of the woman trapped in a violent marriage was confirmed by the rigor of existing divorce law; much of which was still, in effect, written around the revered principle of coverture, famously described by Blackstone in his Commentaries. ‘In marriage the husband and wife are one person in law,’ the Commentaries affirmed, ‘that is, the very being or legal existence of the woman is suspended during the marriage.’ The case for reform of marriage law, or at least some amendment, had grown as the nineteenth century progressed, finding famous expression in the writings of Caroline Norton, John Stuart Mill and others. It was for this reason that women had found it virtually impossible, at least up until the Divorce Act in 1857, to sue for divorce. And it was not that much easier afterwards. It was only with the 1878 Matrimonial Causes Act, three decades after Anne Brontë penned Helen Huntingdon’s furious riposte, that the law admitted spousal abuse as a justification for judicial separation.

The effect of coverture also impacted in a variety of further ways. One was child custody. It is the fear that her husband will corrupt her son, little Arthur, which proves decisive for Helen Huntingdon. The arrival of a governess, appointed more to provide sexual liaison for her husband than educational benefit for her son, finally persuades Helen to leave Grassdale. In doing so she takes a huge risk. A father who found himself so abandoned, and divested of his children, had merely to issue a writ of habeas corpus to facilitate their, if necessary, forcible return. The common law took no notice of whether a father might be a

38. TENANT, supra note 36, at 278.
39. Id. at 277.
40. Id. at 277-78.
41. Id. at 277-78.
43. See Ward, ‘Case,’ supra note 34, at 153-54.
44. And even then only if it was proved that her ‘future safety’ was ‘in peril.’ See MARY LYNDON SHANLEY, FEMINISM, MARRIAGE AND THE LAW IN VICTORIAN ENGLAND, 1850-1895, at 168-69 (Princeton Univ. Press 1989), and see also A. JAMES HAMMERTON, CRUELTY AND COMPANIONSHIP: CONFLICT IN NINETEENTH-CENTURY MARRIED LIFE 4-5, 123-26 (Routledge 1992).
drunk, an adulterer or a wife-beater. The 1839 Custody of Infants Act had merely given mothers the right to petition Chancery for custody until a child was seven years old. Thereafter there was no legal respite. It was only with the passage of the 1886 Infant Custody Act that mothers were finally vested with a right to sue for full custody in instances of proven paternal misconduct. Furthermore, in fleeing the marital home, Helen Huntingdon also took a huge financial gamble. A further effect of coverture was to deny married women the right to hold estate, a position only partially ameliorated by the equitable doctrine of ‘separate estates.’ Helen was fortunate in inheriting such an estate. But she had no such right to any part of her husband’s, and neither could she harbor any hope or expectation of financial support. Her position, and reputation, as a furtive single mother trying to eke out a living as an artist in her new home is presented as a significantly precarious one.

It was said that the sound of Helen Huntingdon metaphorically slamming her bedroom door in the face of her drunken husband echoed throughout the length and breadth of middle England. The image might be a little fanciful, but not, perhaps, so much. Contemporary reviewers of The Tenant were, with one or two exceptions, famously appalled by what they read, and little reassured by the author’s avowed intention, stated in the preface, that she intended to ‘tell the truth, for truth always conveys its own moral to those who are able to receive it.’ They certainly feared that the publication of such novels represented a genuine threat to the stability of mid-Victorian middle-class England, and a more particular threat too to the stability of the minds of mid-Victorian middle-class female novel readers. It was, the reviewer in the Rambler concluded, ‘one of the coarsest books which we have ever perused.’ Sharpe’s London Magazine openly articulated the deeper fear, that ‘lady-readers’ might, presumably by accident, stumble across it, further advising that ‘so revolting are many of the scenes, so coarse and disgusting the language put into the mouths of some of the characters, that the reviewer to whom we entrusted it returned it to us, saying it was unfit to be noticed in the pages of Sharpe’s.’


46. A form of ‘cruel tyranny’ that Caroline Norton famously wrote against in her polemical essay The Separation of Mother and Child, published in 1838. Norton herself suffered grievously from this peculiar form of injustice; her circumstances bear a similarity to those portrayed in Tenant, so striking a similarity indeed that commentators have wondered the possibility of them serving as a model for the novel. See Ward, ‘Case,’ supra note 34, at 154-55, 162-63.

47. The latter doctrine allowed wealthier women to inherit estates in their own right, and maintain their separation from their husband’s estate. The doctrine was clearly intended to reassure male members of their families, most obviously their fathers, and operated within the larger jurisprudence of strict settlements. Lord Brougham referred to the ‘manifold evils’ which attended the anomalous nature of female marital estate holding when presenting the petition in support of reform of divorce laws to Parliament in 1856. See Ward, ‘Case,’ supra note 34, at 164; and see also SHANLEY, FEMINISM, supra note 44, at 60, 68-70, noting the particular interest shown in the issue by Dickens’s All Year Round.

48. Tenant, supra note 36, at 3.

49. For both reviews, see MIRIAM ALLOTT, THE BRONTËS: THE CRITICAL Heritage 267, 263-65 (Routledge 1974).
No less disgusted by the ‘unnecessary coarseness’ and ‘spleenetic and bitter tone’ of the novel was Charles Kingsley. But his disgust was tempered by an appreciation of its author’s determination to indeed present the ‘truth,’ to expose the ‘foul and accursed undercurrents’ that lay beneath ‘smug, respectable, whitewashed English society.’\(^5\) Dickens famously alluded to the ability of the novel to ‘pull the roofs off houses’ to reveal what lay within.\(^5\) Not everyone found the prospect to be appealing. But it was a vital prospect all the same. Whilst there is no firm evidence that Anne Brontë wrote The Tenant as an explicit contribution to contemporary debates regarding spousal violence, child custody or estate succession, it is very obvious that she wrote her novel with the intention of presenting to her audience all the horrors that might befall a woman who, trapped in a loveless marriage to a violent husband, was unable to seek effective recourse to either state or Church. And in so doing, it was impossible to do other than write law and jurisprudence into the structural foundation of the novel. The jurisprudence may thus be ‘subterranean,’ a foundational support for a broader argument. But that does not diminish its importance. Lisa Surridge has recently argued that such novels might be read as a gesture of ‘active resistance’ to a pervasive culture of jurisprudential misogyny.\(^5\) Mary Poovey has reached the same conclusion, that associated fictive and factual accounts of spousal violence played a critical role in transforming public perceptions of the female condition during the Victorian period.\(^5\) The law may not dominate the landscape in a novel such as The Tenant of Wildfell Hall. But it is impossible to read The Tenant of Wildfell Hall without encountering, time and again, the centrality of the law, and its attendant injustices, in the life of its principal protagonist. It is impossible now, and it is reasonable to suppose that it was just as impossible a hundred and sixty years ago.

\(^5\) Id. at 269-73.
\(^5\) SurrIDGE, BLEAK HOUSES, supra note 33, at 9-10, 86.