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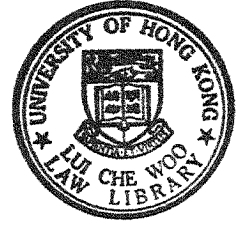


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# Lewis Carroll and the Law

by Peter Wesley-Smith\*



Charles Lutwidge Dodgson received no formal legal training and contributed virtually nothing, in his 'serious' writings, to debates on legal questions. As Lewis Carroll he used the law to good effect, of course, in the *Alice* books and the *Snark*, but how significant were his legal allusions to our appreciation both of the law and of Carroll himself? This paper discusses, first, Carroll's acquaintance with law, and secondly, modern citation of his works by legal scholars; it then attempts to analyse his characterisations of the law and to assess their value to a present-day readership.

## I

A recent biographer, Donald Thomas, claims that 'The world of the law embraced both Dodgson's family and those he knew socially'<sup>1</sup> and was 'as important as in his most famous writings'.<sup>2</sup> On the family side, uncles Skeffington Lutwidge and Hassard Dodgson were lawyers, Skeffington becoming a Commissioner in Lunacy and Hassard a Master in the Court of Common Pleas. Cousin Amy married Charles Pollock, later Baron of the Exchequer. If Dodgson corresponded with these legal luminaries, his letters have not apparently survived (there is one letter to Hassard, in 1872, concerning poetry, not law<sup>3</sup>). Skeffington's major influence was to introduce the nephew to photography;<sup>4</sup> they dined together and went to plays

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<sup>1</sup> Donald Thomas, *Lewis Carroll: A Portrait with Background* (London: John Murray, 1996), p 196.

<sup>2</sup> *Ibid*, p 207.

<sup>3</sup> Morton N Cohen (ed), *The Letters of Lewis Carroll* (New York: Oxford University Press, 1979), p 177.

<sup>4</sup> Thomas (note 1 above), pp 116-17; Morton N Cohen, *Lewis Carroll: A Biography* (London: Macmillan, 1995), p 41.

and concerts and exhibitions, but these occasions were not frequent.<sup>5</sup> As an undergraduate Dodgson went to Hassard's chambers in the Temple,<sup>6</sup> and visited his quarters in the Court of Common Pleas in 1872;<sup>7</sup> they occasionally dined and visited the theatre together, but if entries in the *Diaries* are a guide he saw less of Hassard than of Skeffington.<sup>8</sup> References to Pollock are mostly social; on two occasions, however, he observed court proceedings in which Pollock was involved.<sup>9</sup>

Thomas lists various friends of Dodgson's who were lawyers, implying that they reflected or stimulated an interest in the law. Most of them are not mentioned in the *Letters* or *Diaries* or other biographies. Reginald Southey is an exception, but he was not a lawyer (though a Commissioner in Lunacy) and the basis of the friendship was photography. Russell Gurney QC and George Ward Hunt, Chancellor of the Exchequer in Disraeli's first Cabinet in 1868, rate a couple of mentions each in the *Diaries*; these were purely social contacts except when Hunt got Dodgson into the House of Commons to listen to a debate.<sup>10</sup> George Denman, a family friend and a judge, appears a few times, but Dodgson was more interested in daughter Grace than in Denman himself. Henry Charles Hull, barrister of the Inner Temple and conveyancing counsel in Chancery, whose father had been at school with Dodgson's father and uncle Hassard, is ignored in the *Diaries* but his daughters are not. Two letters to Hull are extant, both on legal matters, but merely seeking legal advice on personal matters.<sup>11</sup>

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<sup>5</sup> By my count from the *Diaries* (note 7 below), Dodgson met Skeffington on fewer than thirty occasions during his life.

<sup>6</sup> Thomas (note 1 above), p 114.

<sup>7</sup> Roger Lancelyn Green (ed), *The Diaries of Lewis Carroll* (London: Cassell & Co, 1953), p 307.

<sup>8</sup> There are just fifteen references to Hassard in the diaries. Skeffington was his favourite uncle (Cohen, *Biography* (note 4 above), p 41), though when hearing of Hassard's death in 1984 Dodgson referred to him as 'my dear uncle' (*Diaries* (note 7 above), p 428).

<sup>9</sup> *Ibid*, pp 360-1, 372.

<sup>10</sup> *Ibid*, p 266.

<sup>11</sup> *Letters* (note 3 above), pp 390, 481; see also p 764.

Dodgson visited the courts on a few occasions<sup>12</sup> - Green claims he had always shown an interest in court cases<sup>13</sup> - and was said to have been preoccupied by the Tichborne case, allegedly referred to in *The Hunting of the Snark*, even devising an anagram on the name of Arthur Orton's counsel.<sup>14</sup> He wonderfully caricatured the attempt by Gladstone - another victim of his anagrams - to have the House of Commons grant rights to itself,<sup>15</sup> and this might be characterised as a small contribution to legal philosophy. His major interest in the law appears to have been its connection with lunacy. He wrote to George Denman about a trial in which Denman had sentenced a young woman to life imprisonment for murder, venturing to suggest that insanity ought to have been considered. He had read a good deal on the subject, he said, and drew the judge's attention to a relevant book on mental disease.<sup>16</sup> 'Lunacy and the law, thanks to Uncle Skeffington, remained associated in Dodgson's mind.'<sup>17</sup>

There is little other evidence of any significant concern about legal matters. Dodgson's acquaintance with lawyers had more to do with family connections, photography, and the pursuit of little girls than with any abiding fascination with the law. He appears not to have been aroused by the great issues of legal reform which stimulated much public debate during his life. The Supreme Court of Judicature Acts 1873-5, which directly affected the careers of Hassard and Pollock, inspired no recorded letter or diary entry or squib. Thomas says that 'He was wedded to a picturesque past of English law rather than to the reformist present',<sup>18</sup> and legal theory, at least outside medical jurisprudence, apparently had no attraction for him. Such interest as he had in the law was doubtless more for its uses in literature than for its own sake or for its value in a programme of social reform.

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<sup>12</sup> Thomas (note 1 above), p 161; Diaries (note 7 above), pp 227, 360-1. In July 1863 he heard some petty cases in the assize court, 'but they were interesting to me, as I have seen so little of trials' (ibid, p 199).

<sup>13</sup> Ibid, p 351.

<sup>14</sup> Thomas (note 1 above), pp 197-8.

<sup>15</sup> Ibid, pp 226-7; *Diaries* (note 7 above), p 405.

<sup>16</sup> *Letters* (note 3 above), pp 246-7; Thomas (note 1 above), pp 126-8, 196-7.

<sup>17</sup> Ibid, p 197.

<sup>18</sup> Ibid, p 196.

A search in the WESTLAW legal database of articles in (mostly American) law journals from 1978 to the present revealed 676 references to Carroll. Most were to *Alice*: American legal scholars do not seem familiar with the *Snark*<sup>19</sup> (one author refers to the Bellman's 'what I tell you three times is true' but attributes it to Alice). And, contrary to expectations, Humpty Dumpty is probably not the most frequently cited character (I did not, I'm afraid, inspect all 676 articles, merely printing out the most promising-looking references). Curiouser and curiouser, though, Humpty appears in the majority of references supplied by the rival database LEXIS. The commonest technique is simply to use 'Alice in Wonderland' as a synonym for madness or the inversion of logic, as found in particular statutory situations or judicial approaches to a complex factual problem. But various scenes and characters are also employed: the Queen of Hearts' 'Sentence first - verdict afterwards' is said to mirror some aspects of American jurisprudence; the Cheshire Cat's advice ('you're sure to do that' - get *somewhere* - 'if you only walk long enough') encourages an advocate who puts forward facts in a jumbled order for forensic effect, but is also seen as a path to failure when making investment decisions in today's economy; the King's mumbling to himself of 'important - unimportant - unimportant - important' provides a metaphor for a judge trying a prosecution for possession of a firearm where the possessor has been convicted of a crime punishable by more than one year in prison. One article on the debate between rules and standards in constitutional adjudication refers to the King's Rule Forty-two, the Cheshire Cat, and Alice's conversation with the Caterpillar as illustrations of the theme. An author extracts from the trial scene the rather prosaic 'realworld' question whether rude behaviour detracts from justice. The difficulty of proving a negative brings to mind the King's reference to eyes which could see Nobody, and at that distance. Rule Forty-two and Alice's reaction to it are held up as revealing an implicit understanding of the rule of law, an arbitrary judicial pronouncement being considered unworthy of the status of a rule. 'It would be most fashionable to allude here to *Alice in Wonderland* as a metaphor of the descent from the smooth pattern of legal logic into unpredictable nonsense.' But that would be inapposite 'despite the insistence of certain critics of the legal profession that lay people are precisely like innocent children who find themselves following a strangely muttering animal down a dark hole into an absurd landscape.'<sup>20</sup> Humpty

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<sup>19</sup> The *Index to Legal Periodicals*, however, reveals a few suggestive titles, such as D J Birch, 'Hunting the Snark: The Elusive Statutory Exception' [1988] *Criminal Law Review* 221 (a British journal) and Stephen L Carter, 'The Bellman, the Snark, and the Biohazard Debate' (1985) 3 *Yale Law and Policy Review* 358.

<sup>20</sup> Bradley M Elbein, 'The Hole in the Code: Good Faith and Morality in Chapter 13' (1997) 34 *San Diego L Rev* 439, n 8. Rule 42 of the US Federal Rules of Civil

Dumpty and his celebrated dictum 'When I use a word, it means just what I choose it to mean - neither more nor less' is cited to explain a Court of Appeals decision affirming the absurdity of a federal rule permitting frozen chickens to be labelled as fresh, to describe a legal defence by a doctor who failed to file tax returns, and to condemn a Colorado politician who opposed an equal opportunity bill (outlawing affirmative action) on the ground of equal rights. In England, Lord Atkin recommended Humpty Dumpty as the only authority which might justify a suggested method of statutory construction.<sup>21</sup>

These examples from legal literature and judicial opinions range from the trivial to - mostly - the slightly less than trivial. Some references are solely for literary effect. In the US Court of Appeals for the Third Circuit it was said that 'Lewis Carroll's *Alice in Wonderland* is a frequently cited source of authority on and about the judicial process, an association with tempting opportunities for digression ...'.<sup>22</sup> 'Indeed, Lewis Carroll would likely roll over in his grave if he were to examine the contentions plaintiff seeks to buttress with the author's work.'<sup>23</sup> One author, in a heavily-footnoted law review article about the over-abundance of footnotes in law review articles, derides pretentious 'lead-in' quotations and notes that *Alice's Adventures in Wonderland* is a popular source of them. 'The objective of the "lead-in" quote is to spark immediate attention with a titillating sample of erudition, humor, or impertinence.'<sup>24</sup> (Not finding anything by Carroll relevant to the topic, perhaps, he omitted a lead-in quote for that section of his piece.) Occasionally, however, Carroll has provided an insight into the operation of law or an aspect of jurisprudence which is recognised as such and tellingly applied to modern conditions. It is clear that the *Alice* books have something to say about the law and something to contribute to legal scholarship.

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Procedure gives scope for discussing Alice's arguments against the King's Rule Forty-two, availed of in a number of cases.

<sup>21</sup> *Liversidge v Anderson* [1942] AC 206, 244-5. See also *R v Governor of Winson Green Prison, ex p Trotter* (1991) 94 Cr App Rep 29: 'The draftsman in reg 5, no doubt with Humpty Dumpty in mind, said, in effect, that plain words must be read as meaning something entirely different.' Michael Livingstone quoted Humpty Dumpty and added: 'I should perhaps apologise for this quotation, which seems to appear in every second work on interpretation': 'Congress, the Courts, and the Code: Legislative History and the Interpretation of Tax Statutes' (1991) 69 Tex L Rev 819, n 2.

<sup>22</sup> *Director v Mangifest*, 826 F 2d 1318 (1987).

<sup>23</sup> *Claussen v Aetna Cas & Sur Co*, 676 F Supp 1571 (1987).

<sup>24</sup> Arthur D Austin, 'Footnotes as Product Differentiation' (1987) 40 Vand L Rev 1131, 1144.

A quite recent enthusiasm in the legal academy is the sub-discipline (or cross-discipline) of 'law and literature'.<sup>25</sup> Although it predates postmodernism it has been grist to that particular mill (*Alice* has been described as 'perhaps the first postmodern fiction'),<sup>26</sup> although, perhaps appropriately, with uncertain results. The effect of legal borrowings from literary theory, however, has been demonstrable, at least in the United States: 'Not only is it now difficult to tell some numbers of the *Stanford Law Review* or the *Yale Law Journal* from *Diacritics* and *Critical Inquiry*, but the issues debated in their pages have spilled out into tenure battles, the restructuring of curricula and even of whole law schools, and produced a general sense in the legal profession of a new crisis in which its authority - internal and external - is being put into question as never before.'<sup>27</sup>

The 'law and literature' school has many objectives and methods, but its fundamental distinction is between law *in* literature - the study of literary texts by lawyers for the light they may shed on the law - and law *as* literature, which supposes that the interpretive and critical techniques of literary scholarship can be usefully applied to legal texts. Only the former - law *in* literature - is relevant to my present purpose. It involves the study of fiction, usually but not solely narratives concerning a legal situation such as a trial or a contested will, for its explication of law's role in society, for the broader understanding of law's impact on human governance than the study of law itself can provide. As such it has claims on legal education, either as supplying perspectives from which to critique the law, introducing ethics into critical legal thinking,<sup>28</sup> inculcating empathy and the 'human voice' as opposed to the 'professional voice' which students yearn to develop,<sup>29</sup> or simply ensuring that lawyers are people of character, with qualities of prudence, good judgment, and practical wisdom, rather than merely accomplished

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<sup>25</sup> See Thérèse Murphy, 'Bursting Binary Bubbles: Law, Literature and the Sexed Body' in John Morison and Christine Bell (eds), *Tall Stories? Reading Law and Literature* (Aldershot: Dartmouth, 1996), pp 65-6 for a lively account of how law and literature stormed the academic citadel.

<sup>26</sup> Terry Threadgold, 'Re-Writing Law as Postmodern Fiction: The Poetics of Child Abuse' in J Neville Turner and Pamela Williams (eds), *The Happy Couple: Law and Literature* (Sydney: Federation Press, 1994), ch 29, p 340.

<sup>27</sup> Stanley Fish, 'Don't Know Much About the Middle Ages: Posner on Law and Literature' (1988) 97 *Yale LJ* 777, 790.

<sup>28</sup> Ian Ward, 'From Literature to Ethics: The Strategies and Ambitions of Law and Literature' (1994) 14 *Oxford Journal of Legal Studies* 389.

<sup>29</sup> Katherine O'Donovan, 'Identification with Whom?' in Morison and Bell (note 25 above), ch 2; Ward (note 28 above), p 395.



technicians.<sup>30</sup> These aims may be characterised as 'the instrumental argument (that the study of literature will produce better lawyers) and the humanistic belief (that the study of literature will make lawyers better persons)' - though both, of course, may be disputed.<sup>31</sup> Looking at children's literature in particular, Ian Ward proposes that books for children be analysed as jurisprudential texts: they guide and educate, constrain and liberate, through contrasts between types of order, choices between differing concepts of law and justice, and the discernment of political and ethical issues. They teach 'the essential questions', they 'de-specialise' legal language and knowledge, they demand reaction and provoke thought.<sup>32</sup> John Morison's approach is subtly dissimilar: children's literature comprises 'cultural artefacts capable of being interpreted to give an understanding of the wider society which produced them and in which they are constrained', a valuable method of exploring 'messages of order, censure and difference' and of understanding 'how our concepts of right and wrong, of safety and dangerousness, of consensus or otherness are created, transmitted and policed'.<sup>33</sup> In more political terms, we should be aware of 'the coded grammars of individual conscience' that lie beneath the surface.<sup>34</sup>

My primary concern is to examine what Carroll teaches us about law and the legal system ('Lawyers of all vintages should be encouraged to address important issues of law and justice through the more attractive Looking Glass of literature'<sup>35</sup>). I'm not sure whether Morison's questions can be answered. Ward classifies *Alice* and the *Snark* as 'pre-adolescent' texts, presenting legal and jurisprudential issues in black and white terms. 'The good and the bad are clearly determined, the order-anarchy contrast is always sharp and there is an immanent justice present in every text.'<sup>36</sup> This is not to deny that Carroll addresses, or can be interpreted by, both

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<sup>30</sup> See Anthony Kronman, *The Lost Lawyer*, p 2, quoted by Barry R Schaller, *A Vision of American Law: Judging Law, Literature, and the Stories We Tell* (Westport, Connecticut: Praeger, 1997), p 156.

<sup>31</sup> Maria Aristodemou, 'Studies in Law and literature: Directions and Concerns' (1993) 22 *Anglo-American Law Review* 157, 160.

<sup>32</sup> Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995), pp 116-18.

<sup>33</sup> John Morison, 'Stories for Good Children' in Morison and Bell (note 25 above), pp 113-15.

<sup>34</sup> *Ibid*, p 133.

<sup>35</sup> Simon Lee, 'Law and Literature: Goodbye Austin, Hello Austen?' (1990) 10 *Oxford Journal of Legal Studies* 252, 259.

<sup>36</sup> Note 32 above, p 116.

pre-adolescent and adult audiences, establishing 'communities of language' requiring interpretive 'double vision'.<sup>37</sup> One must bear in mind, I think, that what a child learns from *Alice* may significantly contrast with the lessons drawn by adult readers.

Most studies of law in literature take as their texts the works of great writers such as Shakespeare, Kafka, Dickens, Flaubert, Scott, de Balzac, and Dickens, though the second-rank, such as Trollope, appear as well; even John Grisham has his share of analysts. Many of these authors were themselves lawyers or were trained in the law (Scott, Flaubert, Kafka, de Balzac, Grisham); Dickens at least had experience in a law office, and Shakespeare was a lawyer if you believe he was really Francis Bacon. Somewhat surprisingly, Carroll is not one of the favourite subjects, probably because he or his depiction of law is perceived as too 'safe', with insufficient gravitas. I have found no extended study of Carroll by any contributor to the 'law and literature' debate.<sup>38</sup>

#### IV

Lawyers know instinctively that the Snark is Justice and the hunting is perilous because the common law depends for its operation on myth, mystery, and magic; the great fear is that, in the end, Justice will prove illusory and the Law, with all its majesty and pomposity and the self-interest of its practitioners, will vanish away. The crew are the essential personnel of the lawyer's trade: the Bellman leads the march of the judges at the opening of the assizes, Boots looks after the itinerant judge at his lodgings when the assizes are in session, the Bonnet-maker manufactures his wig and hood and the Beaver his lace trimmings, the Broker is a frequent witness in actions for ejection and the Baker in debt cases; the Billiard-marker caters to counsel's after-work entertainment. The Baker's cry 'Fritter my wig' sufficiently establishes his connection with the judicial arm of government, and the Butcher characterises the common criminal before the courts. In this interpretation the Barrister is of course the key figure, dreaming his nightmare of the Snark displacing the judge, manipulating the law to defeat it, representing the intrusion of Equity prevailing over Law: Justice triumphant, 'bellowing on to the last', yet checked by the premature death of his client and ultimately seeing himself undone. There are details too tedious to mention - the map showing Tennyson's wilderness of scattered instances, the Bellman's rule of three as evidential

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<sup>37</sup> Ibid.

<sup>38</sup> The *Index to Legal Periodicals* (1987-date) lists 332 articles on law and literature, in not one of which (to judge from their titles) is Carroll the primary focus of analysis.

corroboration, the (judicial) fondness for quotations - and the moral of the whole thing is too obvious to require further elucidation.

Alas, a lay audience is unlikely to be convinced by the artificial reasoning of lawyers on this matter. The poem may mean many things, but its legal insights will go unrecognised. Thus impoverished, the non-lawyer looks only to *Fit the Sixth*, with its explicit references to court proceedings, and sees only caricature or parody: indeed, not even that, merely an interlude when barristerial fantasies of procedural confusion provide relief from the hazards of the hunt. The *Snark* has nothing much to tell us of the law.<sup>39</sup> If a satire on the case of the Tichborne claimant, as some believe, it is too subtle and vague to have any educative effect. An allegory for the pursuit of happiness, and Gardner's 'poem of existential agony',<sup>40</sup> are far more compelling interpretations than any suggested by a lawyer's sense of self-importance.

*Through the Looking-Glass* is a chess game, a poignant declaration of Carroll's love for Alice, and a series of logical puzzles and word-games rather than a legal text. It has only Humpty Dumpty as a character for which lawyers have any natural sympathy. Law, like literature, is expressed in words; unlike literature, its coin is authority, 'which is to be master - that's all'. Legal drafters refer to a statutory stipulation as to meaning which differs from ordinary usage as a humpty-dumpty definition; like Carroll, who wrote that a writer 'is fully authorised in attaching any meaning he likes to any word or phrase he intends to use',<sup>41</sup> they are prescriptivists, however often they fail in their objective. The common law is probably more sympathetic to the descriptivist school of word use, more in tune with Carroll's 'Still, you know, words mean more than we mean to express when we use them'.<sup>42</sup> Thus Humpty Dumpty may be, to the common law judge, a symbol of frustration with statutory law much more than of annoyance at the relative slipperiness of judicial diktat. Yet Humpty Dumpty speaks to linguistic usage rather than to law or legal theory.

I confess I find *Sylvie and Bruno* largely unreadable, thus perhaps leaving only the trial of the Knave of Hearts in *Alice's Adventures in Wonderland* for analysis. Like the Barrister's dream or the mouse's tale it depicts the inversion of due

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<sup>39</sup> Compare, however, Elizabeth Sewall, 'Law-Courts and Dreams' in *The Logic of Personal Knowledge: Essays Presented to Michael Polanyi on his Seventieth Birthday 11th March 1961* (London: Routledge & Kegan Paul, 1961), ch 16, p 180.

<sup>40</sup> Martin Gardner, *The Annotated Snark* (Harmondsworth: Penguin, 1967), p 28.

<sup>41</sup> Symbolic Logic, quoted by Gardner in *The Annotated Alice* (New York and Scarborough: Meridian, 1963), p 269.

<sup>42</sup> Quoted in Gardner (note 40 above), p 22. See also William Safire, 'Wife-Beaters and the Misrule of Thumb', *International Herald Tribune*, 26 January 1998.

process: the King as judge (not permitted in English law since Coke's time), constantly breaching the rules of natural justice by 'entering the arena' and by demanding the verdict before the evidence, intimidating witnesses, interfering with the jury, confused by the rules of examination and evidence, inventing rules on whim, and permitting the intrusion of the Queen with her 'Sentence first - verdict afterwards' and her orders to decapitate the Hatter. There is not a shred of realism in it except the judge's failed attempt at humour and the court's dutiful laughter. The trial is a broad farce, nothing more. It ends when Alice literally rises above it, proclaims 'You're nothing but a pack of cards!' - and wakes up from her dream. Such are its exaggerations the scene holds no terrors. Its images are potent, but they do not relate to actual conditions in any way: they express no critique of society or the legal system, they represent no challenge to the law. They are just nonsense.

This sceptical attitude has however been undermined by other commentators who have given us a darker and more complex reading of Carroll, one that is, finally, more persuasive. At one level the books are about rules and settled expectations, achieving their effect through contrast. Alice wants solutions to riddles, directions for travel, coherent 'rules of the game' to order play and determine winners, meaningful goals to pursue<sup>43</sup> - and rules and logic of ordinary sense and sanity, time, distance and space, self-identity, language, social etiquette, and morality. She finds none of these in Wonderland, where rules are arbitrary, circular, senseless, founded upon mere assertion and infected with self-interest. Only when she applies above-ground logic - particularly in her response to the King's Rule of Forty-two - can she restore 'right reason over nonsense and rules over anarchy'.<sup>44</sup> Yet her ultimate victory is secured not by rationality but by a refusal to participate ('Who cares for *you*?'), the only response being the attempted physical violence of the cards flying down upon her. The pertinence to law - whose fundamental concern, after all, is the subjection of human behaviour to rules,<sup>45</sup> and which ultimately is founded on violence or mystique - is readily apparent. Carroll presents law's ultimate dilemma in a sustained manner throughout the *Alice* books, the trial scene being merely the culmination of the central theme and thus not so easily dismissed as mere farce.

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<sup>43</sup> Kathleen Blake, *Play, Games, and Sport: The Literary Works of Lewis Carroll* (Ithaca and London: Cornell University Press, 1974), ch 4.

<sup>44</sup> Ward (note 32 above), p 103.

<sup>45</sup> Richard A Posner, *Law and Literature: A Misunderstood Relation* (Cambridge, Mass: Harvard University Press, 1988), p 105; this was the theme of much of the legal philosopher Lon Fuller's writing.

At another level, Donald Rackin writes that if Alice is merely a dream-vision 'one might dismiss the work (and some critics have) as simply a whimsical excursion into an amusing, childlike world that has little relevance to the central concerns of adult life and little importance in comparison to the obviously "serious" works that explore these concerns'.<sup>46</sup> On the contrary, the first *Alice* book is 'best viewed as a grimly comic trip through the lawless underground that lies just beneath the surface of our constructed universe'.<sup>47</sup> Alice's final rebellion follows her realisation 'that her quest for unambiguous meaning and immortal order is fruitless',<sup>48</sup> and her flight from the frightful anarchy of the world underneath the grounds of common consciousness, is a symbolic rejection of mad sanity in favour of the sane madness of ordinary existence'.<sup>49</sup> *Alice's Adventures* is 'paradoxically both a denial and an affirmation of order - a kind of catharsis of what can never be truly purged but what must, for sanity's sake, be periodically purged in jest, fantasy, or dream'.<sup>50</sup> The conclusion solves the problem 'of the disorder beneath man-made order' by 'a kind of alogical dreamwork affirmation of man's artificially constructed universe'.<sup>51</sup>

Rackin does not explicitly refer to law, but his analysis will strike a chord in any legal thinker disturbed by the imposition of an artificial legal reason upon a social and psychological reality too wild and complex to be so constrained. Progressive, critical legal scholars are inescapably confronted at every turn by the common alternative to the traditional legal assumptions and rules of capitalist society: the unpredictability, insecurity, chaos and confusion of life without law (Tennyson's 'Nature red in tooth and claw') or with only bureaucratic totalitarian law or the shifting sands of socialist legality, the alarming freedom from comprehensible rules in Wonderland and behind the Looking-Glass. Carroll's solution - return to bourgeois order - is profoundly conservative, denying the anarchy by placing it in a dream and relying on his somewhat priggish satisfaction with the conventions of Victorian England. In a separate essay Rackin reinforces such an interpretation by placing Carroll in the intellectual movement of disillusionment with the complacent

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<sup>46</sup> Donald Rackin, 'Alice's Journey to the End of Night' in Robert Phillips (ed), *Aspects of Alice: Lewis Carroll's Dreamchild as seen through the Critics' Looking-Glasses* (New York: Vintage Books, 1971), p 392.

<sup>47</sup> *Ibid*, p 393.

<sup>48</sup> *Ibid*, p 408.

<sup>49</sup> *Ibid*, p 414.

<sup>50</sup> *Ibid*, p 415.

<sup>51</sup> *Ibid*, p 416.

assumptions of the nineteenth century. *Alice* and the *Snark* are 'a strangely comical announcement of a new age of dark human consciousness'<sup>52</sup> and Alice 'becomes for many modern readers what she undoubtedly was for Dodgson: a naive champion of the doomed human quest for ultimate meaning and Edenic order'.<sup>53</sup> If the *Snark* presents us with the existential dilemma, and seems to invoke pessimism and doubt, Carroll was more sanguine in his earlier creations, where, 'as in modern existential theory, human meaning is made in spite of the void; and, in making her order and meaning out of, essentially, *nothing*, the child Alice spitefully makes - for herself and for us, her elders - sense out of nonsense'.<sup>54</sup> She, or Carroll, uncompromisingly rejects the one vision in favour of 'a complacent, comic reassertion' of the other.<sup>55</sup> 'For at this point in the adventures and the narratives there appears no sane choice for humans but to seize power, to impose the fragile, artificial order of above-ground human law and social convention, using their shaky *words* as their primary means of mastery ...'.<sup>56</sup>

A E Dyson's comparison of Carroll and Franz Kafka - the latter far more prominent in the 'law and literature' canon than Carroll - finds 'a pattern of feeling' in *Alice* which is 'not dissimilar' to Kafka's.<sup>57</sup> He makes the case that Alice prefigured K (in *The Trial*) who, like her, was in a strange and enigmatic situation, an experience he could not understand or reduce to a pattern.<sup>58</sup> But the 'total feeling' of Alice's world differs from K's: hers is pleasant and fun, intellectual exercise rather than life-threatening bewilderment, one from which she can escape to the familiar and safe. Her predicament was 'the very stuff of amiable nonsense'<sup>59</sup> - but in the modern world 'similar symbolic situations become not charming nonsense, but sinister sense; ... they cease to delight as fantasy, but become a far from delightful reflection of actuality'.<sup>60</sup>

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<sup>52</sup> Donald Rackin, 'Blessed Rage: Lewis Carroll and the Modern Quest for Order' in Edward Guiliano (ed), *Lewis Carroll: A Celebration. Essays on the Occasion of the 150th Anniversary of the Birth of Charles Lutwidge Dodgson* (New York: Clarkson N Potter, 1982), p 18.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid, p 20.

<sup>56</sup> Ibid, p 21.

<sup>57</sup> 'Trial by Enigma' (July 1956) *The Twentieth Century* 49, 50.

<sup>58</sup> Ibid, p 52.

<sup>59</sup> Ibid, p 64.

<sup>60</sup> Ibid, p 61.

Thus, by expanding our focus from the explicitly legal scenes to the *Alice* books as a whole, a deeper and more enduring relevance for law can be discovered. Carroll may be less obviously disturbing than Kafka, but the themes are much the same. And this may suggest that modern lawyers' use of his work could be less trivial than it is, and that he is a neglected resource for 'law and literature' scholars.

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Dyson's article satisfactorily, I think, relates this more penetrating interpretation to Carroll himself. Dodgson was not a social activist or a critical thinker on theological, political, social, or legal issues but a prim Victorian cleric who, despite his sense of humour and appreciation of the ridiculous, espoused the narrow moral and behavioural standards of his time. He may have been prepared to defy Mrs Grundy but in other respects he was the very model of intellectual timidity, political complacency, and religious orthodoxy. He seemed little interested in the law. Yet his stories can be seen as raising ultimate questions of law, politics, and religion. One resolution of this paradox might be that he was in fact a far more profound philosopher than we've recognised. But nothing in his life suggests that that might be so. Rather, as Dyson says, 'the overtones of his situations are incidental', his method was arrived at 'by accident, without [Carroll] fully understanding its implications', and he had 'no single allegorical intention'.<sup>61</sup>

Lewis Carroll was near enough to a tradition of complete agnosticism to feel that all things had been called in doubt, but he was not near enough to it to take the possibility of a complete breakdown of intellectual and social certainties seriously. He was near enough to it to know all the disturbing questions that could be asked, but not near enough to it to believe that the questions might prove to be disastrously unanswerable. The more anarchistic suggestions of, say, Humpty Dumpty concerning language, or Tweedledum concerning Alice's 'reality' were still, to him, strictly speaking, *nonsense*. They could be played with by his keenly logical mind, and used in the creation of a make-believe world for children, but they were not yet in danger of becoming *sense*, and in so doing, of threatening the very foundations of social sanity and order.<sup>62</sup>

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<sup>61</sup> Ibid, pp 52-3.

<sup>62</sup> Ibid, pp 59-60.

We cannot therefore read back from our modern (or postmodern) appreciation of *Alice* any insight into Carroll's mind. He wrote entertainments for little children. His fascination with logic and language produced incidents, scenes, and characters of depth and significance, and their symbolism has been recognised in many different fields of knowledge. But he intended no alternative vision of the world and depicted only nonsense in the adventures of his heroine. It is only in the interwar circumstances of the twentieth century<sup>63</sup> that his symbols, metaphors, and satires achieved their grimmer resonance, and it is only with current challenges to standard legal form and theory that their relevance to law becomes fully apparent.

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<sup>63</sup> See Sewell (note 39 above), pp 181, 186.



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