

so instrumental in smoothing the passage of the Constitutional Reform Act 2005. The Concordat would have made an interesting case study of how codes have been used to manage tensions between senior judges and ministers. On the one hand, the Concordat was the subject of intense negotiations, with Lord Woolf securing major concessions that in turn went some way to repairing senior judges' confidence in the Blair Government. For several years after the 2005 Act, senior judges regarded the Concordat as a text of considerable constitutional importance. On the other hand, the Concordat was soon rendered partially redundant by the way that the 2005 Act made further fast-paced changes to the nature of judicial-political relations.

Overall, this book tackles an important and under-investigated topic in a manner that is sensitive to the history of parliamentary executive and the complexities of modern government. Although overly descriptive and repetitious at times, the book will be an especially valuable resource for lawyers studying the inner workings of the executive as well as for those keen to better understand parts of the UK Constitution that until recently remained largely out of sight.

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Masculinity and the Trials of Modern Fiction. By MARCO WAN [Abingdon: Routledge, 2017. 177 pp. Hardback £110.00. ISBN 978-1-13-868419-5.]

As “law and literature” scholarship has progressed over the last decade or so, so has it diversified. Scholars engaged in this work have taken to adding another “and” or two. Marco Wan does precisely this in his *Masculinity and the Trials of Modern Fiction*. At a more focused level it is a study of law, literature and gender. But then again it is a little more focused still. For it is really a study of law, literature and masculinity. And it is set historically too, in the writing of a particular literary genre at a particular moment in time. The genre is Anglo-French. The moment is the turn of the nineteenth and twentieth centuries; according to Wan it was “one of the most repressive in literary history”.

The book commences with a useful introduction, which identifies two key “questions”; a first of gender, more specifically the construction of sexual identity; and a second of interpretation, the extent to which a text might somehow be said to represent the view of an author, or indeed the author him or herself. Wan then provides the reader with a broader cultural overview of England and France at the turn of the century, discussing a range of contested, often conflicting, perceptions of masculinity and literature. Here Wan suggests a critical dichotomy between the “domestic” perception in England, shaped by an overarching responsibility to provide for the marital home, and a “martial” perception in France, which focused on public manliness and sexual virility.

The remainder of the book comprises five literary “trials”, some more familiar perhaps than others. The first is amongst the more familiar: Gustave Flaubert's *Madame Bovary* (1856). In 1857 Flaubert and his publishers were charged with having committed an “outrage against public and religious morals”. The subsequent trial is renowned for the exchange between prosecuting and defence counsel. Critically Flaubert's counsel, Jules Senard, deployed a didactic defence, arguing that *Madame Bovary* might be read as a cautionary moral tale. As such he presented his client as a realist rather than an imaginative or “impressionist” author. The text,

Senard suggested, had no existence independent of the society which it sought to engage and inform, nor indeed the literary genre within which it was founded. Wan calls this the “inter-textuality” argument. Most importantly, of course, it succeeded. And it established a precedent, as can be seen in the second of Wan’s chosen trials: that of Paul Bonnetain’s 1883 novel *Charlot s’amuse*. Threatened with a similar charge, Bonnetain’s defence was similarly didactic. The novel, which focused on the frustrations of a compulsive masturbator, was written to educate not titillate. Much furthermore was made of its apparently faithful adherence to the insights of medical science, in the hope of reinforcing its realist credentials. And again it succeeded, notwithstanding the passage of a new Act in France in 1881 which was intended to encourage the rigorous prosecution of writings which “outraged public decency”.

At this point Wan’s focus, for the third of his literary “trials”, shifts from Paris to London. In 1888 Henry Vizetelly was prosecuted under the provisions of the 1857 Obscene Publications Act 1857 (20 & 21 Vict. c. 83) for the translated publication of three novels written by Émile Zola. Here again Wan focuses on the particular strategies deployed by respective defence counsel. On this occasion, Vizetelly’s lawyers preferred the canonical and didactic defence ventured by Senard in Flaubert’s trial, whilst eschewing the kind of scientific rhetoric used by Bonnetain’s lawyers. But it did not this time work, and the reason is jurisdiction. The prosecution focused on precedent discovered in the common law, and the court was unpersuaded by counter-arguments derived from literary practice. Accordingly the thought remains that if Vizetelly had been prosecuted in France the result might have been different. The most telling of the precedents used against Vizetelly was *R. v Hicklin* (1868) L.R. 3 Q.B. 360 in which Cockburn C.J. had given a famously opaque judgment in which he ventured that the appropriate test in such a case might be whether a given text had a “tendency to corrupt and deprave”. Opaque or not, Vizetelly’s lawyers did not even bother to challenge the authority of the *Hicklin* test. The consequence is intriguing. It was not the writing of Émile Zola that led to Vizetelly’s demise. It was the jurisprudential canon of Lord Cockburn.

The fourth of the trials which Wan discusses is perhaps the most familiar, that of Oscar Wilde. Wilde’s case is of course different for a variety of reasons. Most obviously he was not prosecuted, directly at least, for anything he wrote. Following the collapse of his libel action against the Marquess of Queensberry, Wilde was prosecuted for having engaged in “acts of gross indecency” contrary to the so-called Labouchere amendment of the Criminal Law Amendment Act 1885. What he wrote and published was relevant, but only insofar as it might be deemed representative of him and his presumed sexual proclivities. It was possible in the respective trials of Flaubert, Bonnetain and Vizetelly to separate the accused from the work. It might have been possible in Wilde’s case too. But neither Wilde nor his prosecutors preferred the distinction. The prosecution led by Sir Edward Carson lingered long over selected passages in Wilde’s writings. And Wilde, in turn, was happy to play the role that Carson offered. Law and literature scholars often like to suppose that trials are places of high drama. But rarely has the suggestion seemed more credible than in the trial of Oscar Wilde. Each side craved the theatricality of the moment. The note that the Marquess famously left at Wilde’s club, which accused him of “posing” as a sodomite, assumes here a peculiar resonance. Wilde made little attempt to disclaim his sexuality, and he rarely eschewed the opportunity to strike a pose, inside the courtroom and out.

The final of the trials which Wan examines is that of the author Radclyffe Hall and her publisher Jonathan Cape. The text in question was *The Well of Loneliness* (1928). There are certain similarities between the Hall and Wilde trials. The most obvious

perhaps is the sexual context. Wilde's trial was, in Wan's words, a "turning point" in the history of homosexuality. Hall's trial represents much the same in the history of lesbian sexuality. And in both cases, the prosecution was determined to show that the lives they led, as much as the words they wrote, represented a threat to the morality of impressionable lives. But perhaps the most striking similarity is the way in which the texts of law and those of art strove to define homosexual and lesbian sexuality differently. There is, however, something critically different which Wan is keen to draw out. Against the kind of theatricality which Wilde embraced, Hall was determined to present lesbianism, in her novel, as something more authentic. London, Hall urges at one point in her novel, is full of people who live as her protagonists live. Wilde never claimed that London was full of people who lived their lives as he lived his; quite the reverse. Hall, in comparison to Wilde, was not inclined to strike poses.

A review can only provide a glimpse of a book. And *Masculinity and the Trials of Modern Literature* is a rich book, providing a series of fascinating and provocative insights which range easily back and forth across disciplines and intellectual perspectives. The structure, based on the five particular trials, is entirely effective, the narrative progression, from Flaubert to Hall, from the later eighteenth to the early nineteenth century, from Paris to London, is compelling. Selections of essays sometimes stand on their own feet as nothing other. Sometimes, however, a collection can add up to rather more than the sum of its parts. *Masculinity and the Trials of Modern Literature* does the latter. The individual studies of the trials craft a rather larger narrative which guides the reader through a critical and defining period in the shaping of modern sexuality. And it is of course a shaping which continues today, and is vital not least because it remains so contested. It is perhaps appropriate to close with Wan's opening supposition: that his text should be read didactically. It is, as noted earlier, a defining aspiration of so much law and literature scholarship. There is an enormous amount to be learned from reading his book.

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Law in Theory and History: New Essays on a Neglected Dialogue. Edited by MAKSYMILIAN DEL MAR and MICHAEL LOBBAN. [Oxford: Hart Publishing, 2016. xiv + 347 pp. Hardback £79.99. ISBN 978-1-50990-386-3.]

"One cannot understand history," wrote a young Hungarian living in Heidelberg between the wars, reading Edmund Burke's polemics against the French Revolution, tracking their influence over the German thinkers in the nineteenth century who framed the critique of capitalism, "without wishing something from history." The appeal to history is never idle, never neutral: there is always a polemical edge to it, a sense of threat or opportunity or both behind it. The writer here was Karl Mannheim. An early inspiration to the firebrand American sociologist C. Wright Mills and sometime policy guru of Conservative Reconstruction Minister R. A. Butler, Mannheim is an obscure figure now. His short-lived fame rested on his promise to re-enchant modernity by gathering a group of intellectuals around him to discover the values English people cherish, producing a veritable "Summa" to which legislators could refer in building the New Jerusalem. His ideas for education policy included extending compulsory national service for young people into peacetime, putting recruits through a kind of moral calisthenics. This sounded to Tory