Legal historians often turn to literary examples to show how doctrines, practices, or institutions were perceived at a certain time. Imaginative works sometimes serve as representative illustrations of legal phenomena, sometimes as alternatives to dominant legal ideas or assumptions (voicing dissent or presenting figures and perspectives that escape the law’s comprehension), sometimes as evidence for the dissemination of legal thought or folk wisdom about the law, and sometimes as a kind of parallel formation that uses, or reflects on, legal methods and modes of explanation, even if the work does not expressly address legal issues.¹ Recent scholarship continues to use all of these methods, but there has been a shift towards the last two approaches over the last ten or twenty years, and this chapter will suggest ways of pursuing each.

As to the spread of legal ideas, new digital databases have made it possible to see how legal terms and doctrines are taken up in various genres of factual and imaginative writing. To give a sense of how legal historians might use these databases, this chapter shows what digital resources can reveal about the prehistory of the Miranda warning. By searching for the terms in which the warning is articulated and looking at the role it plays in various narratives, we can gain a fuller understanding of the meanings and functions that laypersons associated with it. The first part of the chapter, then, offers an extensive, database-driven survey that takes novelistic representation as its focus. Conversely, by studying a particular work, and focusing not only on its content but also on how it uses plot and character, we can ask about its animating logic, posing questions about how a text works rather than what it says or shows explicitly.² Imaginative writings often engage with legal concepts by remodeling or dismantling them, and these are modes of engagement that we will miss if we attend only to what narratives depict. The second part of this chapter takes a more intensive approach, asking how Oscar Wilde’s novel The Picture of Dorian Gray (1890/91) poses its protagonist in such a way as to explore the logic of obscenity law—a logic, I will suggest, that also applies to the legal regulation of language in other contexts, such as libel and sedition.

I. The Miranda Warning

American judges and lawyers have long recognized the importance of the Miranda warning as ‘part of our national culture’,³ and this awareness has led scholars to study the warning’s prehistory and its place in popular culture. Albert Alschuler notes that well into the nineteenth century, ‘magistrates and judges in both England and America expected and encouraged suspects and defendants to speak during pretrial interrogation and again at trial’.

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¹ Although the discussion here focuses on imaginative writing, the same can be said of film. I use “imaginative writing” and “literature” interchangeably in this discussion, in part to avoid creating the impression that research on law and literature should be concerned only with literary classics.

² For an excellent introduction to such questions, see John Mullan, How Novels Work (2008).

These expectations began to change towards the middle of the century: Alschuler points to an 1838 decision by the King’s Bench, which stated that a magistrate conducting a pre-trial hearing should tell the suspect ‘that what he thinks fit to say will be taken down, and may be used against him on his trial’; ten years later, Sir John Jervis’s Act (1848) provided that after presenting the accused with the Crown’s evidence, the magistrate or Justice of the Peace ‘shall say to him these words, or words to the like effect: … “[Y]ou are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial.”’ Alschuler adds that in New York City, ‘magistrates began routinely to caution defendants in 1835, [and] the number of defendants who declined to submit increased thereafter’. Following up on this research, Wesley Oliver has shown how the practice of cautioning suspects arose out of concerns that a confession might be ruled inadmissible if a court regarded it as having been coerced. Oliver notes that ‘[t]he benefits of giving cautions were … widely publicized by [British and American] treatise writers in the early nineteenth century’, and that an 1829 New York statute provided that magistrates should caution defendants in much the same way that Sir John Jervis’s Act would later specify. As Oliver explains, New York City police officers adopted a similar practice in 1845, but changes to the law in the late 1860s made coercively obtained confessions much more likely to be admitted, and the police soon abandoned the practice of cautioning suspects—as, evidently, did the magistrates, whose warnings, in any case, were belated given this change in the habits of the police.

Although scholars have also discussed the Miranda warning’s place in American popular culture since the late 1960s, there has not been any research on how these earlier versions figured in the popular culture of the time. Until recently, anyone interested in that question would have had few options short of an extended search through a massive print archive. The legal prehistory of the warning could be studied by turning to sources such as Westlaw and Lexis, the English Reports, and any treatises on criminal law and procedure that the library could offer. Heinonline has made the English Reports available digitally, and the treatise literature has become much easier to search with the advent of Gale’s database ‘The Making of Modern Law, 1800-1926’. These resources have greatly facilitated the kind of work that accounts for much of the conventional research on legal history. A study of how judicial statements relate to others’ beliefs and attitudes, however, would move beyond the realm of legal doctrine and outside the register of lawyers talking to lawyers. Various newer digital resources, such as the Gale collections ‘Wright American Fiction, 1774-1920’ and ‘Crime, 1790-1920’ (which includes both British and American materials), have expanded the range of cultural reference that such a search might encompass. Imaginative writing can help us understand the meanings, purposes, and

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7 Google Books also has some use in this kind of research, but its value is limited because many titles are not available for full-text searching, and even when they are, the results are erratic. Few of the results obtained by searching Gale’s Wright collection can be replicated on Google Books. Of course, the Wright bibliography itself is
effects that non-lawyers associated with the warning. The results cannot provide statistical proof about the prevalence of its use or about social attitudes concerning the warning, but they can give us a sense—not available in the legal sources—of what contemporaries thought was required, and of what they thought it achieved, practically and symbolically. Given that imaginative writing not only reflects existing views but can also help, often subtly and tacitly, to shape readers’ attitudes, this kind of investigation is useful as a means of indicating a range of attitudes that were available at the time.

My approach here has been to limit the choice of search terms to a verbal formula based on the one adopted in Miranda (namely ‘may/will/can/could … be used against’), whereas a fuller investigation would proceed iteratively, taking the various linguistic formulations that these searches reveal in the sources, and using those results to seek further examples and variations. Moreover, the terminal point has been set at 1920, not because of any relevant historical event but because that is the last date in Wright’s bibliography. As Robin Valenza notes, searching text databases for particular phrases yields limited results, because ‘keyword techniques depend … on specific verbal configurations, [whereas] natural languages (such as English) depend on significant variability in the way that similar ideas can be expressed’. Valenza contrasts literary critical reading with ‘indexical reading, in which the focus is the rapid processing of information’. 8 These are crucial considerations for a careful and thoroughgoing analysis of the way the prophylactic warning functioned in nineteenth-century fiction. My aim here is to indicate the potential for this approach rather than to present a comprehensive analysis, and even with the limitations described above, the results are suggestive.

To summarize briefly before turning to specific examples: the searches produced 73 results, including 68 novels (after eliminating duplicates and irrelevant results), 9 supplemented by five of Conan Doyle’s Sherlock Holmes stories. Most of the novels are American; there is, at present, no digital collection of nineteenth-century British fiction that rivals the Wright database, so these results reflect the current state of the resources rather than a greater American emphasis on criminal procedure. The searches yielded two novels in the late 1840s and another two in the 1850s, four or five novels per decade in 1860-89, seven in the 1890s, seventeen in the first decade of the twentieth century, and twenty-five in the next decade. Most notably, then, this investigation shows that novelists had already begun to refer to the prophylactic warning in the middle of the nineteenth century, and that American writers did so increasingly during a period in which the warning seems no longer to have been required. Although the total number of examples remains small, it is significant that writers invoked the warning at all in this era. It seems to have acquired the status of a literary convention, a signal—even if used only rarely—of the law’s integrity.

One pattern the search reveals is a tendency towards greater fanfare in the earlier references to the warning: writers draw more attention to its invocation, sometimes by

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9 Among the results that do not involve a legal authority’s warning, however, some nevertheless bespeak a legal mindset. For example, in George Lincoln Walton’s Oscar Montague—Paranoiac (1919), the protagonist believes that his friend’s mother is conspiring with a lawyer: ‘He would carefully choose his words so that nothing could be used against him’ (167). For other telling results that were excluded from the totals given in the text, see the comments accompanying note 22.
introducing it with more legal pomp, sometimes by highlighting the drama accompanying its articulation, and sometimes by commenting narratively on its deployment. One of the earliest examples—just a year after Sir John Jervis’s Act—appears in The Forgery, or Best Intentions (1849), by the prolific British novelist and historian G.P.R. James. The novel features a dramatic scene in which the hero is brought before a set of magistrates and examined on a charge of forgery. When the case begins to take on a serious cast, one of the magistrates demands that he give a ‘clear and explicit explanation’, but another quickly intervenes: ‘Remember … that you are not obliged to make any statement, and that whatever you say will be taken down, and may be used against you at any other period’. The scene is replete with hearsay objections and other evidentiary intricacies, but despite all this legal wrangling, it is the delivery of the warning that first impresses the heroine with the gravity of the situation (‘terribly agitated at the serious turn which affairs seemed to be taking, [she] closed her eyes and bent down her head’). The hero, however, does not hesitate to proceed with his tale, which ultimately vindicates him.10

In another wildly popular British narrative published around the same time, The Mysteries of the Court of London, by George W.M. Reynolds, the warning is rendered in comic form, by a seasoned police officer who has no qualms about battering down a suspect’s door without announcing himself, but then makes a show of standing upon form: ‘Now, mind, gentlemen … anything you say here will be used against you elsewhere, according to the statit in that case made and purwided’.11 The formulaic nature of the utterance, already evident from the mock-legalese that enfolds it, is underscored by his penchant for repeating the Pickwickian phrase (‘according to the statit …’) whenever affirming the validity of some proceeding.12 Here, the seemingly mechanical recitation, garnished with his cockney accent, conveys a sense that the warning (although only recently required by statute) is already so routine as to constitute a mere form of words, unlikely to serve its ostensible purpose—if one takes it to be concerned with protecting defendants’ rights rather than ensuring the admissibility of any statement that follows.

A rather different effect is produced in one of the first fictional detective ‘memoirs’ in Britain, Recollections of a Detective Police Officer, originally published serially in the early 1850s. The protagonist charges and arrests a wronged woman, interrupting her to say, ‘If this … be a confession, let me warn you that all you say may be—’ but he is cut off by the suspect herself: ‘“Used against me hereafter,” broke in the infuriate woman, whose eyes glared with a fiery rage that cast a light as of insanity over her white, haggard countenance,’ and she rapidly proceeds to unburden herself:13 The readiness of her answer suggests that she is repeating what is already well known, and her ability to repeat it suggests that she takes the warning seriously. That she nevertheless incriminates herself does not show that she regards the recitation as a mere form of words; rather, it underscores her role as a melodramatic victim intent on proclaiming her status. The officer’s generous reminder bespeaks a sincere concern on the part of the law, one that remains admirable in spite of her refusal to heed it. These three British examples all

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12 The officious, formula-spouting Mr. Grummer, in The Pickwick Papers, uses the same phrase, and indeed Reynolds’s officer, Grumley, appears to be named after him. Charles Dickens, The Posthumous Papers of the Pickwick Club (1837), 251.
13 G.C. Waters’ (pseudonym of William Russell), Recollections of a Detective Police-Officer (1856), 305. Offering what is thought to be the earliest fictional account of professional policing in Britain; these stories first appeared in Chambers’s Edinburgh Journal in 1849 to 1853.
highlight the drama that accompanies the delivery of the warning, even as they assign different meanings to the utterance.

The early American examples are equally dramatic. For instance, in Dillon O’Brien’s *The Dalys of Dalyston* (1866), a gang of Irish criminals is destroyed when one of the malefactors, Bernard Casey, turns state’s evidence and agrees to testify in court. Warned by the magistrate that ‘what you say now, will be taken down, and may be used against you, if the government refuses to accept of you as an informer’, Casey responds gamely, ‘I’m not afraid of that, your honor. What would they hang me for, I’m not worth it?’ Indeed, his evidence proves instrumental in convicting the main villain, who also receives a warning (‘anything you have to say, I advise you to keep for your defence’), but is rapidly reduced to utter abjection when the full dimensions of the case against him become apparent.\(^{14}\) Again, in G.J.A. Coulson’s *The Ghost of Redbrook* (1879), the warning fails to deter a hapless victim, bent on clearing his name and seemingly aware of his own status as a fictional character. Rather than accepting the advice ‘not [to] criminate yourself’ because a confession ‘may be used against you in your trial’, he responds, ‘I am willin’ to print it—every word!’ and proceeds to unfold a highly improbable tale that prompts his questioner to ask whether he has ‘ever writ[ten] any novels’.\(^{15}\) In *A Fool’s Errand* (1879), the best-known (and much-reprinted) work of the lawyer-novelist Albion Tourgée, a guilt-ridden ex-Klan member confesses to his participation in a lynching: told that ‘any thing you may say here may be used against you upon trial for any crime’, he answers, ‘It makes no difference … I can not keep still any longer. I haven’t had a good night’s rest since it occurred.’\(^{16}\)

In all of these instances (and in nearly every example from the nineteenth century) the warning is a mere formality, in the sense that hardly anyone chooses to exercise the right to remain silent. As we have seen, this is not simply a function of their confidence that it will help to secure their acquittal: the guilty are just as eager to talk. It is hardly surprising that the warning does nothing to stop the flow of the narrative; after all, unless the aim were to furnish a pretext for strategically husbanding some crucial detail to be produced later, a novelist would hardly be likely to include this bit of legal punctilio at all, if it signaled that an exciting revelation was about to be cut short. Rather, its insertion marks the seriousness of the occasion and shows how writers—and perhaps readers as well—associated the law’s procedural commitments with a kind of self-abnegating scrupulousness, which could be regarded as admirable precisely because the culprits could also be counted on to see it that way and to refuse to take advantage of it. That is also the function it serves in its various reiterations in the Sherlock Holmes stories, as Doyle shows in ‘The Adventure of the Dancing Men’ (1903), when he proves unable to refrain from commenting explicitly on the practice: “It is my duty to warn you that [any confession] will be used against you,” cried the inspector, with the magnificent fair play of the British criminal law.\(^{17}\)

\(^{14}\) Dillon O’Brien, *The Dalys of Dalystown* (1866), 265, 274.

\(^{15}\) George James Atkinson Coulson, *The Ghost of Redbrook* (1879), 248, 249.


\(^{17}\) A. Conan Doyle, ‘The Adventure of the Dancing Men’ (1903) in Leslie S. Klinger (ed.), *The New Annotated Sherlock Holmes* (2005), 2:895. On the only occasion when Holmes himself comments on the practice, he points out that his efforts have rapidly precipitated a result that the police, with their ‘compulsory warning’, could not have achieved, but significantly, the inspector is for once allowed to defend himself without contradiction:
A warning that led the suspect to clam up would not only frustrate the progress of the narrative, but would also frustrate the judicial process, showing that culprits might actually avail themselves of the opportunity (as Alschuler and Oliver suggest they did, in fact) instead of recognizing it as an invitation to speak honestly and openly. Thus, Reynolds’s *Mysteries of the Court of London* is an outlier: it belongs to the genre of ‘city mysteries’, describing a world suffused by vice and corruption, and in such a world, procedural safeguards may seem useless.\(^\text{18}\) In most of these narratives, by contrast, the warning serves as a language in which legal professionals speak to laypersons and actually make themselves understood. At precisely the moment when legal officialdom interferes with a citizen’s freedom, the law expresses itself not in the Latinate, multisyllabic jargon that so often renders it eligible for satire, but in a clear and direct fashion that elicits a response in kind, showcasing for the reader a legal system that protects the rights of defendants and thereby earns their respect.

It is also notable that among the narratives published during the nineteenth century, only a few are detective stories. Thus, to the extent that this scene of interaction between citizen and police officer (or magistrate) was becoming a literary convention, it was not restricted to a particular subgenre. Over time, however, mysteries increasingly account for these references to the prophylactic warning, and the repeat examples come exclusively from writers of detective fiction. The warning appears in three novels by Rodrigues Ottolengui, a dentist-turned-detective writer of the 1890s.\(^\text{19}\) The warning also appears in three of the four tales collected in Oswald Crawfurd’s *The Revelations of Inspector Morgan* (1907).\(^\text{20}\) Indeed, by the first decade of the twentieth century, not only do we see a significant increase in the number of detective stories using some version of the warning, but increasingly, the function is not to emphasize the legal system’s dedication to ‘fair play’ but in fact to allow the suspect to remain silent—even when the suspect is innocent.\(^\text{21}\) The highly dramatic and elaborately blazoned examples of the mid-to-late nineteenth century give way to a more perfunctory treatment after the turn of the century. That tendency suggests that writers of these early twentieth-century mystery stories—the precursor of the modern-day procedural—recognized the value of drawing on legal formalities and exploiting their narrative potential, particularly those formalities that had sufficiently entered the vernacular as to be readily intelligible to laypersons. No longer serving only symbolically, as a means of trumpeting the law’s decorousness and impartiality, the warning could indeed help to justify the narrative deferral of information, a function it could achieve only after becoming sufficiently well-known that readers could take its symbolic meaning for granted.

Another indication that this language was increasingly familiar to readers comes from its use outside the legal context altogether. In several early twentieth-century novels with courtship plots, writers place the warning in the mouths of female characters who jokily advise their suitors

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\(^\text{19}\) Rodrigues Ottolengui, *An Artist in Crime* (1892), 103-4; *A Conflict of Evidence* (1893), 77; *A Modern Wizard* (1894), 415.

\(^\text{20}\) Oswald Crawfurd, *The Revelations of Inspector Morgan* (1907), 246, 251, 328. See also Natalie Sumner Lincoln’s two novels *The Trevor Case* (1912), 291-2; and *C.O.D.* (1915), 300.

to be on their guard. In Alice Brown’s *Margaret Warrener* (1902), one of the characters tells a male caller, ‘This is an interview, you know. … Remember that anything you say may be used against you’. The importation of the warning into the arena of sexual conflict signals the characters’ urbane perspective on what they recognize as an adversarial relationship, but for the statement to have the desired effect, the writer must assume that the warning is already so well-known as to require no further translation.

It may seem tempting to ask about the kinds of law enforcement officers these stories portray—federal, state, county, or municipal—but the authors are not likely to have been sensitive to such distinctions. What matters is not which legal authorities, in particular, they thought were apt to utter a prophylactic warning, but rather that they thought it was apt to be uttered at all—let alone that an officer might consider it his ‘duty’ to issue the warning, or that ‘the statute’ provides for it, or that it would be recited ‘like a lesson well learned’. Again, the reactions of suspects who greet the statement as a platitude (‘The old phrase!’), are open to various interpretations—are these characters revealing their own experience with the law, or commenting cynically on the warning’s uselessness? Even if these scenes offer a very inaccurate picture of contemporary practice or public knowledge, they suggest that readers would at least have been willing to indulge the premise that such a warning was a matter of routine.

As we have seen, over a period of about fifty years, what began as an event requiring elaborate narrative staging could become relatively mundane, and could even be shown as resulting in the very response that the prophylactic warning allows. The development of this literary convention is all the more remarkable, given that criminal defendants in the early twentieth century could hardly take it for granted that they would not be questioned without counsel and pressed to confess. Perhaps novelists were learning from each other, or perhaps they were responding to a treatise literature that continued to make reference to the rights of the accused. Further research may disclose that in some American jurisdictions, the practice of cautioning suspects persisted even after the New York City police abandoned it. In any case, its use in fiction seems to have become a convenient means of praising the even-handedness of a legal system dedicated to protecting the rights of all. In that way, long before the *Miranda* decision, the invocation of the right to remain silent joined other frequently rehearsed legal mottos that make up the language of America’s civic religion.

II. Reflecting on Obscenity in *Dorian Gray*

Having considered how fictional portrayals of legal actors and practices can inform historical research, I turn in this section to questions that have more to do with the logic and methods by which fiction operates. What novels say about the law can provide a useful perspective on the beliefs and attitudes of contemporary writers, but as every lawyer knows,

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judicial decisions are often telling not only because of what they assert, but also because of what they leave out or take for granted—and the same applies to imaginative works. Fiction explores legal modes of thought and argument as well as legal rules and doctrines, and we will miss those more conceptual kinds of engagement with the law, if we focus only on what writers say directly or on particular verbal formulations (as Valenza notes).\(^\text{26}\)

In some related research, I have discussed the history of obscenity prosecutions in Britain, arguing that a concern with the work’s effect, rather than the author’s intentions, was not a product of the 1868 decision in *R v. Hicklin* (as some scholars have thought), but has provided the basis for these prosecutions ever since obscenity became a matter for the criminal law, in the late seventeenth century.\(^\text{27}\) In explaining that ‘the test of obscenity is ... whether the tendency of the matter ... is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands [the] publication ... may fall’,\(^\text{28}\) *Hicklin* merely summarized the logic that had long governed the analysis of obscenity. Indeed, *Hicklin* is notable less for what it says than for what it implies. Its concern with ‘those whose minds are open to such immoral influences’ was understood to be directed at ‘the young person’, who had also been a perennial object of the law’s protection in this area, since the late seventeenth century; and the attention to works that were likely to ‘fall’ into the hands of such readers was understood to refer to cheap books and prints, as opposed to expensive publications billing themselves as limited editions, intended for medical professionals or bibliophiles.

If this way of framing the aims of obscenity law was not particularly new, *Hicklin*’s language was nevertheless helpful because it expressed these ideas so succinctly, furnishing an eminently quotable axiom that both British and American judges quickly adopted. Besides its concise, if tacit, specification of the objects of obscenity law, *Hicklin* also gestured implicitly towards the law’s subject—namely, the reasonable man, whom the test relies on as the agent charged with recognizing ‘the tendency … to deprave and corrupt’. In the second half of the nineteenth century, the reasonable man increasingly furnished the means by which the law oriented its objective standards in numerous areas,\(^\text{29}\) and this kind of guidepost was particularly useful for language crimes, such as obscenity, sedition, and blasphemy, which were concerned with the words’ effect rather than the speaker’s intentions. Whenever language is regulated on the basis of its effect, the authorities may opt to prosecute after the injury has occurred and proof of the harm can be offered up, or may insist that a publication has an inherently harmful tendency, according to the kind of objective observer who is capable of discerning it—the reasonable man. The latter approach has the great advantage of eliminating the need to produce victims of these crimes (who are often hard to find), thereby translating the problem of proof into an entirely different register—one that infers the criminal effect from the text itself, based on a legal standard that judges can apply without any difficulty. *Hicklin* operates, then, in a Janus-like fashion, hinting at one kind of individual (the young person) as its object, and another (the reasonable man) as its subject. That is precisely the way in which Wilde’s hero (or anti-hero) operates, to similar effect.

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\(^{26}\) Note 8 above.


\(^{28}\) *R v. Hicklin*, (1868) LR 3 QB 360, 371.

The Picture of Dorian Gray may seem an unlikely choice for an analysis of obscenity law. Although the story was attacked by some reviewers as obscene when it appeared in Lippincott’s Magazine, in 1890, and again by the defence counsel when Wilde sued the Marquess of Queensberry for libel, in 1895, the book was not prosecuted for obscenity in Britain. After Wilde’s conviction for ‘gross indecency’, however, Dorian Gray was the only one of his books to vanish from the literary marketplace: Wilde’s publishers had prepared a second edition, which they sold off to a dealer in secondhand books, and the novel was not reprinted in Britain for eighteen years (save for a single, surreptitious piracy). Commentators celebrated Wilde’s conviction as a verdict on the novel, observing, for example, that although Dorian Gray’s ‘abominable immoralities’ were aimed at ‘the upper circles of the reading world’, they had the same kind of ‘corrupting influence’ as more popular works ‘which incite a less cultivated section of the reading public to even more dangerous crimes’.

Dorian Gray himself complains about having been ‘poisoned’ by a book—the unnamed French novel lent by his friend, Lord Henry Wotton—but Lord Henry, speaking in an idiom that sounds distinctively Wildean, ridicules the accusation: ‘As for being poisoned by a book, there is no such thing as that. ... [Art] is superbly sterile. The books that the world calls immoral are books that show the world its own shame’. This response, added to the text when Wilde revised the Lippincott’s Magazine version for publication as a book in 1891, corresponds closely with several of the epigrams in the preface that Wilde also added at that time, such as the observation that ‘[t]he nineteenth century dislike of Realism is the rage of Caliban seeing his own face in a glass’. Lord Henry’s answer and this prefatory axiom both encapsulate the explanation that Wilde would invoke to fend off accusations about the novel’s obscenity—namely, that any perceived immorality was a reflection of the beholder’s own vices, not an inherent property of the text. Answering one of the reviewers who attacked the novel, Wilde wrote, ‘Each man sees his own sin in Dorian Gray. What Dorian Gray’s sins are no one knows. He who finds them has brought them’. To endow the tale with that reflective capacity, Wilde claimed, was ‘the aim of the artist who wrote the story’ and he pronounced the effort a success.

To court the accusation that it depicts immorality, Dorian Gray refrains from depicting any illicit conduct in particular. The novel proceeds by inference and implication rather than by direct representation. Its cultivation of this reflective capacity is most salient in the character of Dorian Gray himself. The artist Basil Hallward completes the painting of the twenty-year-old Dorian at the very moment when the latter is meditating on Lord Henry’s provocative and hedonistic precepts, uttered in language that Dorian finds utterly captivating: ‘Words! Mere words! How terrible they were! How clear, vivid, and cruel! One could not escape from them! And yet what a subtle magic there was in them!’ Dorian’s expression during this reverie (he stands silently, ‘with parted lips, and eyes strangely bright’) is charged with an erotic force that Basil and Lord Henry register, and that both of them find enchanting. Thus when Dorian wishes

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30 The novel was, however, removed from library shelves in St. Louis and Newark, and was banned in Russia. Evelyn Geller, Forbidden Books in American Public Libraries, 1876-1939 (1984), 51; Marianna Tax Choldin, Russian Censorship of Western Ideas under the Tsars (1985), 111.
31 ‘Hugh Chisholm, ‘How to Counteract the “Penny Dreadful”,’ (1895) 58 Fortnightly Review 765.
33 Ibid., 3.
35 Wilde, Dorian Gray, 19.
to change places with the painting, and has his wish granted, the countenance he shows to the world, for the remainder of the story, is the one that Basil has captured during those crucial, reflective moments. People who meet him have various reactions—most of them are charmed, some are horrified, and more than a few see him as ‘the true realization of a type of which they had often dreamed’. The face they see reflects back their own dispositions, and it does so through the erotically charged medium of a young man discovering within himself the impulses awakened by a decadent philosophy. It is not his youth alone, but also this peculiarly reflexive erotic power, that makes him such an absorbing object of attention wherever he goes.

Dorian may appear to recall the ‘young person’ whom the law seeks to protect: not quite at the age of majority when he has his portrait painted, he falls unhesitatingly under the spell of Lord Henry’s words, seemingly confirming the fear that one whose mind is ‘open to … immoral influences’ will go immediately from innocence to depravity and corruption. As if to underscore the point, Wilde informs us that Lord Henry, as he watches Dorian’s reaction (and reflects on it, in turn) is reminded of ‘a book that he had read when he was sixteen, a book which had revealed to him much that he had not known before’, making him wonder ‘whether Dorian Gray was passing through a similar experience’. Two ‘young persons’, then—one who is twenty, one who is sixteen, both of them captivated and corrupted by an immoral influence. At the same time, Dorian’s name might also conjure up the somber, impersonal figure, shaded in neutral tones, that exemplifies the standard of the reasonable man—a standard, as Oliver Wendell Holmes explained in 1881, that ‘should correspond with the actual feelings and demands of the community’. Dorian’s dual mode of existence, making him at once of a member of the fashionable London world and an external observer (frequently described, in the text, as an idealization), nicely exemplifies the means by which that standard operates. He serves the same mirror-like function within the plot that the novel claims for itself. He embodies the Janus face that we saw in the Hicklin test, figuring both as the object of the law’s concern and the abstracted subject that deploys a test for discerning others’ tendencies.

Yet in serving these two functions, Dorian ironizes both of them. The speed of his reaction, and the amplification that Wilde achieves by offering Lord Henry as a second, younger example of a young person, have the effect of undermining the logic of Hicklin, caricaturing it through exaggeration rather than reproducing it. Dorian’s rapid transformation mocks the supposition that corrupting influences operate so quickly and directly; according to the theories that Wilde elaborates throughout his writing, influence proceeds circuitously and indirectly. Moreover, the agent who applies the Hicklin standard is caught up in the same process of self-recognition, denial, and condemnation that Wilde attributes to the novel’s other readers. In Wildean paradox, then, obscenity law comes to stand in a contradictory relation to the harmful effects it guards against: if the source is in the observer, then the law is looking in the wrong place, and if the work actually has the power ascribed to it, then it can ensnare even the ideal

\[36\] Ibid., 109.
\[37\] Ibid., 19.
\[38\] Oliver Wendell Holmes, The Common Law (1881), 41. On the tendency to be reasonable, the novel offers no kind words. Told that Americans ‘are absolutely reasonable’ and that this trait is ‘their distinguishing characteristic’, Lord Henry translates the statement into a claim about rationality and justification, which he finds abhorrent: ‘How dreadful! … I can stand brute force, but brute reason is quite unbearable. There is something unfair about its use. It is hitting below the intellect’. Wilde, Dorian Gray, 36.
observer of legal analysis, the ‘true realization of a type’ of which the jurists have ‘often dreamed’.

Dorian Gray presents itself as a challenge to the logic of Hicklin, not by criticizing the law or taking on the subject of obscenity, but by holding itself up to law’s suppositions. Observing the result is akin to watching sunlight ricochet in the Hall of Mirrors at Versailles. Yet these are effects we can recognize only if we ask what the novel does rather than what it asserts. Dorian Gray does not present itself as a story about legal matters or processes. It is evident, however, that many of Wilde’s contemporaries considered it obscene, and that—whether or not he meant to provoke that response, in particular—Wilde hoped that the novel would act as a touchstone. Henry James observed that ‘[e]verything Oscar does is a deliberate trap for the literalist’, and that nevertheless, nothing was more common than ‘to see the literalist walk straight up to it, look straight at it and step straight into it’.40

In this chapter I have sought to display two ways of studying the connections between law and literature, one focused on the explicit, and the other on the implicit, proposing that both approaches can inform legal history by suggesting new avenues of research and presenting legal doctrines and decisions in a new light. Mining textual corpora for legal language can complement the efforts that legal scholars typically undertake, using databases of cases and treatises. Because the search procedures are largely transposable, the turn to literary databases may seem the more appealing option. One might think that imaginative writing invites attention to how it works, as opposed to what it says, in a way that legal sources do not; however, this kind of investigation can remind us that the difference is, at most, a matter of degree rather than kind. Legal history is often, necessarily, concerned with the literal—with the explicit grounds of lawyers’ arguments and judicial decisions, writs and verbal formulae, and quantifiable data about legal institutions and actors. But legal sources, no less than the other materials that historians study alongside them, often reveal similarly rich layers of meaning when we ask how they work, what they say implicitly, and what they avoid saying. If one of the rewards of reading law with literature is to reveal new perspectives on legal institutions and actors, another is to bring fresh insights to the study of conventional legal materials.

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