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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“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
backbenchers like a recreation of the Hitler Youth. Butler soon cut ties. After a brief period of wider notoriety in the early 1940s, Mannheim settled back into obscure academia and died unheralded a few years later. He remains largely unknown to posterity.

If a current push to put the “historical school” of jurisprudence back on the map of modern legal theory succeeds, that may change. Maksymilian Del Mar and Michael Lobban’s collection Law in Theory and History is the latest iteration of that effort. It is a complex volume and encompasses a number of different understandings of what a renewed rapport between legal theory and history might entail, but its most compelling claim is that there were not two schools of jurisprudence or legal theory in the twentieth-century, but three: as well as positivism and natural law, there was the “historical” school.

Founded by the Prussian noble Friedrich Carl von Savigny, the historical school of jurisprudence was a way of adapting ancient customs and institutions for service in an age of relentless progress. When Savigny came of age, the anti-Jacobin ferment in Germany – seeking to unify nobility and peasantry in reaction against the sweep of a bourgeois rationality from which neither had much to gain – was setting into new forms of accommodation with revolutionary modernity. Preserving older social relations and sentiments amidst relentless economic rationalisation came to seem feasible. Savigny’s historical school sprang up as a means of articulating older norms in terms commensurable with new social and economic formations. Savigny’s innovations reached English readers in the later nineteenth century through the writings of Henry Maine, who saw after the Sepoy Mutiny in 1856 that the project of remaking imperial subjects in the image of English evangelicals and utilitarians was hopeless, and set about finding ways of sustaining local customs within a framework of metropolitan rationalism – the genesis of indirect rule. Historians of Britain’s empire and the internationalist project it became have found reason recently to believe that Maine’s innovations, drawing on Savigny and the historical school in Germany, carried lasting importance for the governments of the colonies and dominions, and for the League of Nations mandate system which succeeded the age of empires. But the historical school of jurisprudence has been almost wholly absent from accounts of twentieth-century jurisprudence – accounts which are dominated by the contention between positivism and natural law. Hence the obscurity of Karl Mannheim, who was perhaps the most prominent means by which this school of jurisprudence made its way into twentieth-century Anglo-American social and political thought.

Much of this volume is given over to the discussion of what it might mean to put history back into legal theory in some more general sense. This is taken in some quarters to mean upending the dominion of analytical jurisprudence: Sionaidh Douglas-Scott sees the need to make room for history in legal theory as a legacy of the overriding importance that has been ascribed to analytical jurisprudence to the exclusion of other currents, envisaging the reinstatement of a fertile pluralism where analytical jurisprudence loses its dominance and law students become familiar with the writings of radical sociology from Marx and Weber onwards once again. Other contributors here see the return to history as a means of countering a tendency in legal theory of late to replicate the esotericism of the wider academy, making the theory taught in law schools more and more remote from legal practice. By countering this tendency, Stephen Waddams argues, integrating history into legal theory will facilitate new attention to “the practical dimension of legal reasoning” – the propensity of twentieth-century courts to consider matters of policy as well as “residual considerations of fairness, of convenience, of ‘common sense’” and avoidance of perversity in interpreting and applying the law.
Other contributors here, mindful of the possible implications of subjecting jurisprudence and legal philosophy to history, sound cautionary notes, fearing that the spectre of historicism – the habit of insisting that all truths are contingent, degrading philosophy to an exercise in bottling the Zeitgeist – may not be far afield. Tamanaha sensibly suggests in his conclusion that urging legal philosophy to become historical need not mean insisting on historicism; there remains ample scope for legal philosophers to press on with their work unperturbed, much as scientists and philosophers more broadly have gone ahead making unqualified claims about the natural world and the human mind untroubled by the implications of the relativity revolution. Writing better histories of legal theory, meanwhile, can help to clarify understandings of the significance of familiar figures like Karl Llewellyn and Lon Fuller: Dan Priel and Charles Barzun’s essay here challenging the association of legal realism with positivism, pointing out that Llewellyn and Fuller had more in common with natural law than with its notional antithesis, offers some sense of the dividends that this work of clarification might pay.

A more thorough and exacting modelling of the applications of history in legal theory is ventured in Maksimilian Del Mar’s “Modelling Law Diachronically: Temporal Variability in Legal Theory”. Del Mar envisages three augmentations of legal theory in and through the “diachronic modelling” of law. Working diachronically, Del Mar anticipates, legal theorists would grow more adept at analysing legal reasoning: recognising the diachronic aspects of legal reasoning, the way in which certain hesitations by judges serve to encourage innovation in more propitious climates by later successors. They would be better equipped to follow the relations between different legal units: if the twentieth-century focused on the identity of legal systems, on “how they hang together and form one unified, complete, legal order”, the new diachronic mode would recognise the importance of the “various interactions over time that any one political community has with other communities”. Working diachronically, studying relations between communities, legal theorists would also be able to follow changes in “discourse about law” more readily; showing us how, for instance, interaction between a community of idolaters and a guild of artisans might produce “a very interesting and complex hybrid compromise of law as, say, in part command and in part custom”.

Joshua Getzler models a distinctive collaboration between legal theory and history in an essay on the role of conscience in Chancery in the time of Adam Smith. Getzler posits three bases upon which the law of obligations acted to restrain “self-interested” conduct in bilateral relations (at a time when self-interest was cause for concern): a voluntarist or will theory, a command or paternalist theory, and a conscience or good faith jurisdiction empowering courts of equity to supervise the exercise of acknowledged legal rights. Getzler suggests that the voluntarist or will theory is now ascendant in courts, with the command or paternalist theory justifying statutory intervention in the law obligations, and where “the equitable conscience jurisdiction has steadily dwindled”. Getzler notes that the prevalence of the will theory comports with the predominance of a wider liberalism favouring the atomisation of individuals into self-contained right- and duty-bearing agents. He points out that voluntarism has proven less adept at protecting the interests of weaker parties. He wonders whether a revivified conscience jurisdiction might “offer a possible corrective to the weaknesses of voluntarism” in “a postmodern world”, “suspicious of the paternal authority and command of the state and its elites”. He finds precedent for the operation of such a system in Chancery in the late eighteenth-century, and elucidation of the concept of conscience at work in that system in the writings of Smith.
Two seemingly distinct uses of history are contemplated here, in the juxtaposition of Del Mar’s essay and Getzler’s. One represents an epistemological refinement, a sharpening of the conceptual tools of legal theory in a manner seemingly innocent of polemical intention. The other represents a doctrinal innovation, a bid to insinuate specific possibilities into the contemporary law of obligations by recourse to a relatively remote past, in a manner which foregrounds the failings of a predominant theoretical school and challenges its ascendancy without going on to prescribe a distinct alternative. Both of these essays stop short of aligning themselves with the historical school of jurisprudence whose renewed salience this volume seems to indicate. And indeed it may be that these three developments remain distinct and separable: the sharpening of legal theory’s tools, the sounding out of possible new paradigms in the law of obligations, the revival of interest in the “historical” school represented by Savigny, Maine and Mannheim. Readers of this volume are left with work to do to join the dots; an effect of the novelty and boldness of the enterprise, but one which nevertheless gives this volume a provisional and uneven feel. But alongside earlier interventions by Brian Tamanaha (“The Third Pillar of Jurisprudence” (2015) 56 Wm. & Mary L.Rev. 2235) and contributors to a 2015 Virginia Law Review symposium (Charles Barzun and Dan Priel, “Jurisprudence and (Its) History” (2015) 101 Va.L.Rev. 849), this volume would seem to indicate fairly emphatically that change is afoot in understandings of modern jurisprudence. There have not been two pillars of modern jurisprudence – to borrow Brian Tamanaha’s metaphor – but three. And it is certainly arguable that the uptake of an updated historical school of jurisprudence might form the basis for both the tool-sharpenings Del Mar envisages and the doctrinal innovations Getzler contemplates.

“There is nothing like foregrounding change over time,” Del Mar writes here, “as a solvent for conceptual habits.” That is certainly one of history’s powers. But the historical school of jurisprudence in its nineteenth and twentieth-century iterations has been a means not of dissolving extant categories (modern economic rationality needs no assistance with that) but of reconstructing extant categories out of which to build legal and social forms by making the old new again. That is a much more difficult task, a much more contentious business – as Karl Mannheim knew all too well. “One cannot understand history,” Mannheim wrote, “without wishing something from history.” If contributors to this volume waver between regarding history as a mild empirical corrective to certain forms of theoretical myopia and thinking about history as the engine of a more profound reconstitution of modern jurisprudence, they represent a wider ambivalence. What, in re-opening this “neglected dialogue” with history, are legal theorists wishing for? Answers to that question will determine where this increasingly momentous push to integrate the historical school into contemporary jurisprudence goes next.

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If, as Alfred North Whitehead quipped, all philosophy is a footnote to Plato, then the Laws has proven the most troubling subject for such footnoting. One of the final