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Law and its Limits: Ethical Issues in Mary Shelley's *Frankenstein* or, *The Modern Prometheus*

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ARTICLE

David S. Caudill

Law and its Limits:
Ethical Issues in Mary Shelley's *Frankenstein or,
The Modern Prometheus*

Abstract. The law and literature movement is frequently associated with the use of literary images of law as a point of reflection upon the ethical obligations of lawyers. Mary Shelley's *Frankenstein* (1818)—the story of a young scientist whose unorthodox experiments end up creating the famed “monster”—is not, at first glance, a likely candidate for that enterprise. However, Dr. Frankenstein's ambition and ruthless pursuit of knowledge has become a contemporary image of science out of control and the need for ethical limitations on scientific progress. Consequently, the novel raises currently important issues of regulating science and technology. Given the lawyer's ethical obligation to work for the improvement of the law, is Artificial Intelligence (“AI”) and the trend toward automated decision-making in legal contexts, the professions' own out of control “monster?” Shelley's novel includes depictions of injustice in unsympathetic criminal courts: two innocent characters are condemned to death, one on weak evidence and one for his religious beliefs alone, while another has his property cruelly confiscated. While *Frankenstein* raises issues pertaining to “Big E” ethics—such as the responsibility of lawyers for law reform and justice in society—it also engages our everyday concerns for injustice as reflected in relevant judicial codes of ethics and rules of professional conduct.

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I. INTRODUCTION: THE RELEVANCE OF FRANKENSTEIN

At first glance, Mary Shelley's horror story *Frankenstein* may have seemingly little to do with law, lawyers, or legal ethics. But readers of the book invariably notice a large number of references to law, to courts, and to crime. Moreover, the book contains an overarching theme concerning injustices the law should correct but often does not. In legal ethics classrooms and continuing legal education (CLE) programs, the latter theme is often called "Big E Ethics" to highlight the principles of fairness and justice that are above and beyond the technical, minimalistic rules of professional conduct. These higher duties incorporate a lawyer's responsibility for law reform, which inevitably include the laws concerning regulation of science and technology. *Frankenstein* famously exemplifies science out of control. This Article will also identify and discuss the courtroom scenes appearing throughout the novel, which raise some ethical concerns addressed in the technical rules of professional conduct. However, the primary focus of this Article involves the lawyer's higher aspirations and responsibility for justice in society.

In law schools and in law practice nowadays, there is an urgent concern for diversity, equity, and inclusion (DEI) efforts. Perhaps, the most obvious metaphor for discrimination—based on how one looks without regard to their character on the "inside"—is Victor Frankenstein's monster, who is hated, feared, marginalized, and unfairly condemned by society (although, arguably, the true monster in the story is Dr. Victor Frankenstein). To the surprise of most readers, Frankenstein's creature is actually an astute social critic, with judgments mirroring Shelley's own critique of British society and its laws.

The purpose of this Article is to highlight the limitations of law by exploring two themes in Mary Shelley's novel—(1) the need for justice in legal systems and (2) the need to control science—while focusing on lawyers' ethical duties with respect to those two themes. Part II begins by describing the law and literature movement, familiar ground for most law professors but perhaps less so for practicing attorneys. The background of the novel is then revisited in Part III, albeit briefly, as the scholarly literature on this famous novel is voluminous and the genesis story of *Frankenstein* is recited perennially by teachers (and students) of English literature. In Part IV, the Author discusses several themes in the novel related to a lawyer's responsibility for justice, and Part V delves into Shelley's own moral

bearings as a legacy of her parents who were both well-known political philosophers. Part VI turns to the dangers of science and technology, another major theme in the novel, and Part VII offers the pertinent example of Artificial Intelligence as a rising concern for lawyers. Part VIII returns to the Rules of Professional Conduct and shows how the deficiencies in the novel's various trial scenes reflect shortcomings addressed by ethical rules. Finally, the Author concludes in Part IX that the novel reminds us: to be wary of trusting appearances since the *other* may not be who we think he or she is; courts may fail to be the trustworthy institutions we hope for; and scientific *progress* often has negative implications.

II. THE LAW AND LITERATURE MOVEMENT

[A]n insistent question haunts the subdiscipline [law and literature] . . . [W]e have to ask, in the face of new and proliferating videospheres [and] virtual textual and visual forms: is literature really the horse to be backing? [W]e are told variously that the movement is dead . . . that it is an interdisciplinary illusion. . . .

I will take . . . the allusion to illusion [as] one of the most articulate and engaging [critiques] of law and literature[,] [which] must now be viewed as an illusion. This does not mean, however, that its time is at an end . . . To the contrary, being an illusion and focusing on illusions . . . is the only hope. . . .

Literature is, after all and amongst other things, the study of illusion[,] addressing . . . imaginary bases of society, the invention of social institutions and the fictions that support them.¹

The law and literature movement is not *that* old, which is why Peter Goodrich suggests above that if it is “busy dying,” then surely it must have “aged prematurely.”² The idea that lawyers should read literature is not new. At the turn of the twentieth century, John H. Wigmore compiled a list of one hundred legal novels, stories and other literary works, which helped to generate the modern law and literature movement.³ Subsequently, in 1924,

1. Peter Goodrich, *Screening Law*, 21 LAW & LITERATURE 1, 1–2 (2009) (“Students don’t read, they watch or they view.”).

2. *Id.* at 1.

3. See generally John H. Wigmore, *A List of 100 Legal Novels*, 2 ILL. L. REV. 574 (1908).

Justice Benjamin N. Cardozo wrote an article entitled “Law and Literature.”⁴ However, it was not until the late 1970s and early 1980s that the sub-discipline of law and literature “gained in definition, in ambition, and in controversy.”⁵ As to its *definition*, the study of the images of law and lawyers in literary texts—which is usually negative—has been acknowledged as a useful point of ethical or critical reflection on the profession. Literature about law is like the reflection in a mirror. For example, those who occupy the profession are both inspired and horrified at how popular culture views lawyers and judges, as well as the many stories surrounding justice and injustice respectively. As to its *controversy*, law and literature has had its share of critics who doubt that literature is the best, or only, or even a useful basis for critical reflection on the profession. Judge Posner famously questioned whether Dickens was a good source for learning about nineteenth-century English courts. However, the Author of this Article believes Posner may have missed the point—Dickens is not read for its historical accuracy or for advice on trial strategy; rather, it reflects upon Dickens’ grim picture of sluggish legal processes, and how the law can destroy the lives of hopeful litigants at the mercy of greedy lawyers.⁶ Such doubts about the utility of the law and literature movement have not slowed the appearance of numerous books and hundreds of scholarly articles offering examples of literary works that provide a basis for: thinking about what justice means; self-critical and ethical reflections on the part of lawyers, law students, and judges; and insight towards reform of legal processes and institutions.⁷ As to the concern that law and literature is becoming irrelevant because literary texts have been replaced by video and visual technologies, the law and literature “tent” has now expanded to include film, art, or any medium for

4. Benjamin N. Cardozo, *Law and Literature*, 14 YALE L. J. 699 (1924).

5. See RICHARD WEISBERG, *POETHICS: AND OTHER STRATEGIES OF LAW AND LITERATURE* ix (1992).

6. See Richard A. Posner, *Law and Literature: A Relation Reargued*, 72 VA. L. REV. 1351 (1986): Although the writers we value have often put law into their writings, it does not follow that those writings are about law in any interesting way that a lawyer might be able to elucidate. If I want to know about the system of chancery in nineteenth-century England I do not go to *Bleak House*. If I want to learn about fee entails I do not go to *Felix Holt*. There are better places to learn about law than novels—except perhaps to learn about how laymen react to law and lawyers.

Id. at 1356. See also RICHARD A. POSNER, *LAW & LITERATURE* 299–309, 353–64 (1988) (criticizing the legal study of literature).

7. See *LAW AND LITERATURE* (Kieran Dolin ed., 2018) (introducing the law and literature movement).

images of law, such that we can now call the sub-discipline “Law, Culture, and the Humanities.”⁸

Common examples of texts that serve as the basis for ethical reflection on our profession include: Sophocles’ *Antigone* (exploring civil disobedience), Shakespeare’s *The Merchant of Venice* (demonstrating how law can unwittingly embrace social bias), Dickens’ *Bleak House* (describing the tragedy of a long-running probate case), and of course Harper Lee’s *To Kill a Mockingbird* (famously admiring Atticus Finch for his courage in the face of racial discrimination in the legal system).⁹

In the sizeable bibliography of literary texts that compose the canon of law and literature, *Frankenstein; or, The Modern Prometheus*¹⁰—a novel written by English author Mary Shelley, first published in 1818—is not an obvious candidate for inclusion. The novel’s primary focus does not revolve around a lawsuit or a crime, and none of the main characters are lawyers or judges. However, it *is* a novel about ethics, the misuse of power, and the need to regulate some powerful institutions. There is, to be sure, a critical view of criminal courts, and an argument that science needs to be more aggressively regulated, both of which are legal themes. Throughout the novel, there are frequent images of injustice—particularly injustice in the legal system—that merit our attention. Law is mentioned throughout the text. For example, Dr. Frankenstein says he shunned others “as if [he] had been guilty of a crime,” and stated it is “unlawful” to let your scientific studies weaken your affections.¹¹ The three major legal moments in the story all seem to suggest that law is important to Mary Shelley: (i) the criminal court in Justine’s trial is a farce;¹² (ii) the arrest of Dr. Frankenstein on the Irish island ends up with magistrate arguably letting him go without asking any hard questions;¹³

8. The Association for the Study of Law, Culture and the Humanities, an organization of scholars, holds annual conferences and publishes a journal—LAW, CULTURE AND THE HUMANITIES—three times a year. See generally *About LCH, LAW, CULTURE, & HUMANITIES*, <https://lawculturehumanities.com/about-lch/> [<https://perma.cc/XCD2-SH9M>].

9. See generally SOPHOCLES, *ANTIGONE*; WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE*; CHARLES DICKENS, *BLEAK HOUSE* (London, Bradbury & Evans, 1853); HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

10. MARY W. SHELLEY, *FRANKENSTEIN; OR, THE MODERN PROMETHEUS* (London, Lackington, Hughes, Harding, Mavor & Jones 1818).

11. MARY SHELLEY, *FRANKENSTEIN OR, THE MODERN PROMETHEUS* 56–57 (Signet Classic 1963) [hereinafter *FRANKENSTEIN*].

12. *Id.* at 78–85. See also *id.* at 78 (referring to the trial as a “wretched mockery of justice”).

13. See *id.* at 167–75.

and (iii) the Genevan magistrate, to whom Dr. Frankenstein confesses, first declares he intends to hunt the monster, but then claims it impractical to do so.¹⁴ Consequently, it is no surprise that this novel, with its underlying legal themes and plots, has attracted the attention of legal scholars who contemplate what relevant lessons are to be taught from it to contemporary lawyers and judges, as well as legislators and governmental administrators.

III. BACKGROUND OF THE STORY

Much has been written about Percy Shelley and his wife, Mary Shelley's, visit to the shores of Lake Geneva, Switzerland in the summer of 1816, where they rented a house with two friends, Lord Byron and Claire Claremont. It was on this trip where the vision for the story of Frankenstein came into Mary Shelley's mind.¹⁵ The four of them experienced wildly stormy weather one night, with lightning flashing off the lake and roaring winds snapping the shutters open. Staying up late, they amused themselves by reading German fantasy tales. Notably, one tale was about a corpse's stolen head that was animated, which sounds like an influence on the story of Dr. Frankenstein.¹⁶ Byron, Percy, and Mary agreed to each write a supernatural story, but we only know about Mary's story.¹⁷ There are various accounts of how Mary's story developed, but it seems like the main inspiration was drawn from the following evening, where around a blazing fire, the friends told ghostly tales. That night, Mary said she could not sleep as her imagination wandered and she envisioned her story of how life could be regenerated.¹⁸

In her own introduction to the novel, Mary Shelley mentions the German ghost stories, and how they each agreed to write one.¹⁹ She recounts that during philosophical discussions that summer, they talked about the principle of life and the possibility of discovering it, and perhaps reanimation of a corpse through galvanism, using electrical currents within biological organisms.²⁰ She also reveals that when she tried to go to sleep

14. *See id.* at 189–91.

15. Mary Shelley writes her own account in the Author's Introduction to the novel (dated October 15, 1831). FRANKENSTEIN, *supra* note 11, at vii–xi. *See also* MIRANDA SEYMOUR, MARY SHELLEY 156–63 (2000) [hereinafter SEYMOUR].

16. *See* SEYMOUR, *supra* note 15, at 156.

17. *See id.*

18. *See* FRANKENSTEIN, *supra* note 11, at x–xi.

19. *See id.* at ix.

20. *See id.* at x.

on that ghost story night, she saw a vision of a pale student beside a “hideous phantasm . . . stretched out,” and brought to life.²¹

In this Article on legal ethics, the Author is clearly not concerned with Shelley’s novel as a horror story, or the various movie versions of *Frankenstein* that reduce Mary’s complex story to a horror film plot. Rather, the focus of this Article is on the notions of law and justice that Mary introduces into the novel. The relevant portion addressing this inquiry is found in the Preamble to the American Bar Association (“ABA”) Model Rules of Professional Conduct, which outlines the overarching responsibilities and generalized duties of lawyers—“Big E Ethics”—while setting out the specific rules for practicing lawyers.²²

IV. A LAWYER’S RESPONSIBILITY FOR JUSTICE

A lawyer is . . . an officer of the legal system and a public citizen having special responsibility for the quality of justice. . . . As a public citizen, a lawyer should seek improvement of the law, . . . the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, [and] employ that knowledge in reform of the law. . . . A lawyer should strive to . . . improve the law and the legal profession[,] and to exemplify the legal profession’s ideals of public service.²³

We might think about a comparison here—Shelley’s *Frankenstein*, in terms of her concern with justice in society, is very much like the novels of Charles Dickens, a favorite of law and literature courses and CLE ethics programs. For example, Dickens’ novel *Bleak House*²⁴ is a canonical text for law and literature scholars because it is the story of a lawsuit that ruins the lives of several of the novel’s characters. The lawsuit is a dispute over a will, and a greedy attempt of potential heirs and lawyers to get some money, the latter of which taints the entire proceeding.²⁵ Thomas Carlyle, a friend of

21. *See id.* at xi.

22. MODEL RULES OF PROF’L CONDUCT pmb1. (AM. BAR ASS’N 2023).

23. *Id.*

24. *See* DICKENS, *supra* note 9.

25. *See* Louis Menand, *The Crisis That Nearly Cost Charles Dickens His Career*, THE NEW YORKER (Feb. 28, 2022), <https://www.newyorker.com/magazine/2022/03/07/the-crisis-that-nearly-cost->

Dickens, coined the term “a condition-of-England” novel—*Bleak House* was one such novel, wherein Dickens looks around his nation and tells you what is going on, and what is going wrong (including what is wrong with law).²⁶ The story in *Bleak House* is not so much about wealthy people and their wealth as it is about everyone else in England and what their lives are like. Dickens is a social critic who satirizes institutions like the law. The legal efforts to help the poor, like the New Poor Law of 1834, were not effective—that is what the opening chapters of *Oliver Twist* are about.²⁷ The poor were almost criminalized, and put in workhouses to deter poverty, and to give the poor a work ethic.²⁸ But the workhouses in fact perpetuated misery, poverty, starvation, and death. Dickens portrays London in *Bleak House* as a place of addiction, disease, illness, exhaustion, and despair.²⁹ Dickens’ novels are therefore a critique of his society, and its legal system which is reckless with respect to many citizens. Notably, in *Frankenstein*, Mary Shelley is also very concerned with injustice in society—which makes this a good source of ethical insight (like Dickens’ novels) for lawyers with a responsibility to promote justice.

A. *England, Not Switzerland, As the Target of Social Critique*

In terms of Shelley’s critique of social injustice, many literary critics have argued that in *Frankenstein*, Shelley is actually analyzing her home country of England, and its criminal, family and socio-political structures and laws, not just those of Switzerland. In the sea of literary commentaries on Mary Shelley’s *Frankenstein*, Patrick Vincent’s analysis of Shelley’s novel is particularly relevant to this Article, as he not only highlights Shelley’s

charles-dickens-his-career-robert-douglas-fairhursts-the-turning-point [https://perma.cc/T7MJ-5Y9C].

26. *Id.*

27. *See id.* at 69; *see also* CHARLES DICKENS, *OLIVER TWIST* 8–31 (London, Richard Bentley 2d ed. 1839).

28. *See* Fiona D. Xu, *Solving Poverty by Reforming Moral Character: How the New Poor Law Failed 19th Century British Society*, 2020 *INQUIRIES* J. 1 (2020), available at <http://www.inquiriesjournal.com/articles/1823/solving-poverty-by-reforming-moral-character-how-the-new-poor-law-failed-19th-century-british-society> [https://perma.cc/9FDH-T7PY] (“[T]he legislators of the New Poor Laws were trying to tackle their perceived problem of the poor—moral dissolution—instead of the actual problems causing poverty. In [the] end, the New Poor Laws became a self-fulfilling prophecy: the treatments against moral dissolution only served to dehumanize the poor instead of modeling them into respectable citizens.”).

29. *See generally* Menand, *supra* note 25.

concerns with injustices in legal processes, but he also develops the analogy between what was going on in England and the fictional events in Geneva:

In Britain, where huge post-war unemployment led to a revival of radicalism in 1816–1817, the patrician elite, drawing on the patriarchal model of government theorized by Bolingbroke and Burke, resorted to a similarly arbitrary rule of law as in Geneva to stave off reform. [While] Mary Shelley . . . was drafting her novel in 1817, magistrates were using bribery, spying and outright violence to quell [social unrest in Britain].³⁰

Vincent argues Shelley saw the British response to social unrest as repressive and politically reactionary. However, in Vincent's view, she does not doubt the importance of a *legitimate* rule of law. Rather, in her account of Justine's trial, Shelley reveals an injustice when it is absent.³¹

The "arbitrary rule of law" in Geneva, mentioned by Vincent, refers to the lack of a penal code—no "preexisting code of laws"—and the resulting discretion given to magistrates.³² Indeed, he articulates: "Twice Shelley emphasizes this fact, showing the pervasiveness of Geneva's ruling class ideology: she has Elizabeth's patrician uncle tell his daughter to 'rely on the justice of our judges,' and then makes Justine exclaim naively, during her courtroom appeal, 'I commit my cause to the justice of my judges.'" ³³ Justine is wrongly accused of and wrongly executed for murdering William—killed, in fact, by the monster—despite there only being circumstantial evidence. Shelley highlights how a judge's discretion could be influenced by the class differences between servants and employers, and the judge's concern for social order.

The most important incriminating circumstance held against Justine is the fact that the maidservant abused her employers' trust. The maidservant's gratitude

30. Patrick Vincent, "*This Wretched Mockery of Justice*": *Mary Shelley's Frankenstein and Geneva*, 18 EUR. ROMANTIC REV. 645, 646 (2007), citing editor Charles Robinson's chronology in *THE FRANKENSTEIN NOTEBOOKS* (2016), at lxxxiii–lxxxv.

31. *See id.* at 655 ("Understood within the context of historical events in 1816 and 1817, I believe *Frankenstein* makes a powerful case for a rule of law, which strictly upholds rational, codified principles.").

32. *Id.* at 646, 654.

33. *See id.* at 654. In fact, given the judge's discretion, "the final condemnation is dictated not by the judges but by the 'popular voice' of the mob-like spectators, gazing on and execrating the accused nursemaid 'by the thousands.'" *Id.*

and dependence on her employers is repeated a number of times, so that her murder of William appears all the more irresponsible and callous. . . . Michel Porret, a historian who has written extensively on eighteenth-century Genevan justice, argues that one of the main circumstances that allowed magistrates to measure the severity of a crime in the absence of a code of laws was the crime's threat to social stability. The severity of the crime increased to the degree to which a social inferior rebelled against someone vested with civil or natural authority: servant versus master, . . . outsider versus citizen. . . . Mary Shelley significantly combines . . . these violations in the figure of Justine.³⁴

The "radical" aspect of such threats to social stability suggest that we could identify Justine "with revolutionaries who seek to disrupt the body politic."³⁵ In fact, the Creature's disruptions had caused him to be identified with revolutionaries, a figure of the French Revolution, and even as evoking Rousseau and his treatment in Geneva.³⁶

A parallel to Geneva's arbitrary justice is in the novel's next extended trial scene, where Victor Frankenstein is accused of murder on an Irish island. The novel explains: "[o]n British soil, the magistrate is portrayed as far more empathetic, the accused is considered innocent until proven guilty, and a grand jury dismisses the case for lack of evidence."³⁷ Ultimately, Vincent argues that Shelley believes:

[A] rational, codified and measured application of the law is the most effective way to avoid more violence and monsters. In the spirit of liberal reformers such as Jeremy Bentham and Etienne Dumont, Mary Shelley understood that

34. *Id.* at 653 (citing Michel Porret, *LE CRIME ET SES CIRCONSTANCES. DE L'ESPRIT DE L'ARBITRAIRE AU SIÈCLE DES LUMIÈRES SELON LES RÉQUISITOIRES DES PROCUREURS GÉNÉRAUX DE GENÈVE* (1995)). "In Geneva, servants' crimes were seen not only as a threat to the natural and civil order because they violated their master's confidence, but, moreover, because they diminished the republic's population." *Id.*

35. *Id.* at 653.

36. See Vincent, *supra* note 30, at 651, 653 (reiterating James O'Rourke's suggestion that the monster is "Rousseau, the unloved offspring of Geneva" (citing James O'Rourke, "Nothing More Unnatural": *Mary Shelley's Revision of Rousseau*, 56 *ELH* 543-69 (Fall 1989))). See also SEYMOUR, *supra* note 15, at 163 ("Some critics have interpreted the Creature as a symbol of the French mob at the height of revolutionary rage."). Conversely, we might say: "the Creature's birth also coincides with the 1792 Revolution in Geneva, and therefore represents not France's, but Geneva's disenfranchised classes . . . Justine's trial, on the other hand, set in summer of 1794, roughly fits both with Robespierre's trial and execution in Paris on 28 July and with the revolutionary tribunal in Geneva on 25 July." See Vincent, *supra* note 30, at 651.

37. Vincent, *supra* note 30, at 657.

arbitrary power could only exacerbate popular unrest, and that every individual was equally entitled to the same rule of law.³⁸

The novel warns its readers of the dangers inherent in naively trusting government institutions and explains that “without a legitimate rule of law, ‘cities of brothers formed’ can just as soon become monstrously deformed or unformed.”³⁹

B. *Other Injustices, Legal or Otherwise*

After Justine Moritz is tried and found guilty of a murder she did not commit, Dr. Frankenstein refuses to admit to the authorities that his own creation—the monster—is the murderer. Moreover, Justine is not only falsely accused, but her conviction was a result of her forced confession to the crime (which she later regrets). In any event, the legal injustices experienced by Justine were made even greater by the fact that she loved William, the victim.

Nowadays, considerable research and attention has been given to the phenomenon of false and coerced confessions.⁴⁰ Juries often decide to convict based on an accused’s confession—even if only supported by minimal corroborating evidence—because what could be a clearer indication of guilt than a confession? However, a confession does not always mean guilt. In fact, many defendants confess under police interrogation pressure, just to stop a lengthy interrogation and get some sleep. A failure to provide an innocent accused with a *Miranda* warning can also lead to a false confession and a wrongful conviction.⁴¹ Shelley’s fictional account of Justine’s flawed trial offers an example of such a coerced confession, later retracted:

38. *Id.*

39. *Id.*

40. See generally Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 PSYCH. SCI. IN THE PUB. INT. 33 (Nov. 2004); Richard A. Leo & Steven A. Drizin, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891 (2004) (“There is now ample research on false confessions and wrongful convictions. This research is robust and has been scientifically validated. . . . [I]t is now established that false confessions are certainly possible, occur with troubling frequency, and are corroborated by numerous academic studies and law enforcement statistics.”). See also Brief of False Confession and Wrongful Conviction Scholars as Amici Curiae in Support of Respondent, *Vega v. Tekoh*, 142 S. Ct. 2095 (2022) (No. 21-499), 2022 WL 1109833.

41. See generally Amicus Brief, *supra* note 40, at 5 (describing the “inexorable connection between false confessions and wrongful convictions”).

I did confess, but I confessed a lie. I confessed, that I might obtain absolution; but now that falsehood lies heavier at my heart than all my other sins . . . Ever since I was condemned, my confessor has besieged me; he threatened and menaced, until I almost began to think that I was the monster he said I was.⁴²

Thus, despite the passage of more than 200 years since the novel emerged, this legal injustice identified by Shelley persists.

Apart from injustices in legal contexts, *Frankenstein*—like a Dickens novel—focuses on those individuals who are marginalized by race, gender, or socio-economic status (such as the impoverished DeLacey family). Thus, social injustice is a major theme in this novel, with society's rejection of the monster (a figure of the "other") being the most obvious example. For instance, the monster's creator is disgusted with his creation, refusing to take any responsibility for the act of creation; the monster is beaten by Felix and shot at by the man near the stream, solely based on his appearance; and when he tries to civilize himself, he is subjected to unjustified hatred. Upon a moment of reflection, the monster questions who he is—given he has no money, no friends, and no property.⁴³ He observes that money leads to respect, and without money, one is a slave or vagabond.⁴⁴ Here, Mary Shelley is arguably implying that in the early 1800s, England had learned little from the French and American revolutions.⁴⁵ Workers had no right to vote, women had few legal rights, and "repressive laws were common."⁴⁶ Shelley portrays Victor Frankenstein on his deathbed, balancing his duties to his creations against his duties to society, as unwilling to admit his guilt. This failure can be summarized as "a parable for the failure of the nineteenth-century socio-political structure to take responsibility—material and spiritual—for the greater populace."⁴⁷

Indeed, the education of the monster in Shelley's story shares many commonalities with that revealed in published Slave Narratives—providing

42. See FRANKENSTEIN, *supra* note 11, at 91 (providing Justine's conversation with Elizabeth after the confession became public knowledge).

43. See FRANKENSTEIN, *supra* note 11, at 128.

44. See *id.*

45. See Patricia Peek, "The Words Induced Me to Turn Toward Myself": The Politics of Inheritance in Mary Shelley's "Frankenstein," FORDHAM RSCH. COMMONS: ETD COLLECTION, at 4 (2007), available at <https://www.proquest.com/docview/304874277> [https://perma.cc/L6UN-U9W9].

46. *Id.* at 4.

47. *Id.* at 1 (quoting BETTY T. BENNETT, MARY WOLLSTONECRAFT SHELLEY: AN INTRODUCTION 39–40 (1998)).

further evidence of the monster's outsider status.⁴⁸ The law at the time permitted slavery, thereby permitting the oppression of slaves, just as the monster was oppressed.⁴⁹ The status of an outsider is also considered in *Frankenstein*, as Safie (Felix's fiancé in the novel), is a colonial "other"—a Turkish-Arabian—and thus a foreigner, like the monster, who struggles with language and the need to belong in her new society. Unlike her parents, who wrote political tracts, Mary Shelley uses the novel's narrative form to subtly raise these issues.⁵⁰ Indeed, she even published the first edition of *Frankenstein* anonymously, cognizant of the backlash it would receive.⁵¹

Finally, in contrast to meritorious wealth, *Frankenstein* presents a theme of inherited wealth throughout the novel—yet another social and legal injustice Shelley exposes.⁵² A reformer like Dickens, Shelley attacks British

48. Alan Coffee, *Frankenstein and Slave Narrative: Race, Revulsion and Radical Revolution*, in CREOLIZING FRANKENSTEIN (Michael Paradiso-Michau ed., forthcoming), available at <https://ssrn.com/abstract=3548595> [<https://perma.cc/MQZ3-G5E8>]; see also Peek, *supra* note 45, at 2 (explaining "women, the poor and the colonial [subjects were] disenfranchised" and these citizens were also denied educational opportunities, which kept them marginalized). Moreover, the year *Frankenstein* was published, Frederick Douglass—American social reformer and abolitionist—was born into slavery. In his autobiography, he recounted the experience of learning how to read, which he was able to do "by trading with white boys for lessons." Douglass states his "coming of age" occurred at twelve years old while reading the "Dialogue Between a Master and Slave," as it was then that he became aware of "his political condition." Douglass wrote: "[t]he more I read, the more I was led to abhor and detest my enslavers[.]" . . . in a line that the creature himself might have written." See Jill Lepore, *The Strange and Twisted Life of "Frankenstein"*, THE NEW YORKER, Feb. 5, 2018, available at: <https://www.newyorker.com/magazine/2018/02/12/the-strange-and-twisted-life-of-frankenstein> [<https://perma.cc/UX3P-U868>].

49. See SEYMOUR, *supra* note 15, at 137–39 (discussing Shelley's familiarity with and reaction to slavery). In reading a study of the West Indian slave trade, in 1814, Shelley encountered:

[T]he view of a non-white as inferior, belonging to a different species. . . . Turning from Edwards's book, Mary could see black men being worked on Bristol Quay; she could hear the callously pragmatic views of those who had owned and now technically employed them. . . . In the nameless Creature [of her novel], whose yellow skin, black hair, and giant limbs allowed her to combine contemporary perceptions of [Asians] with African and West Indian, she examined the plight of a seemingly non-human being, judged by his looks to be incapable of moral feeling or elevated sentiments.

Id. at 139.

50. See Peek, *supra* note 45, at 1–2, 9.

51. See SEYMOUR, *supra* note 15, at 190, 196.

52. See Peek, *supra* note 45, at 2 ("Shelley focuses on several concepts related to the power of citizenship as they affect the right to inherit and distribute property.").

laws concerning property devolution, which historically favored the white, male, educated, aristocratic English class.⁵³

Shelley herself witnessed and participated in tragedies influenced by inheritance. From the suicide of her illegitimate sister, Fanny, to the chancery suit to gain custody of her husbands' children, to her own entailed inheritance of her husband's estate as administered and controlled by her father-in-law, lives and livelihoods were lost or denied based on customs and laws governing lines of inheritance.⁵⁴

Throughout *Frankenstein*, Shelley analyzes “family lines of descent to express how different groups are dependent upon members of the patriarchy for their existence.”⁵⁵ For example, the novel briefly mentions that Elizabeth's inheritance was to be “restored to her by the Austrian government,” but *only* through the “exertions” of Victor Frankenstein's upper-class father.⁵⁶

V. MARY SHELLEY'S PARENTS AND HER MORAL BEARINGS

Literary scholars have generally attributed Mary Shelley's moral bearings to her parents—both of whom were moral philosophers, recognized as major thinkers and political commentators.⁵⁷ But it was Shelley's mother, Mary Wollstonecraft, who had the greatest influence on Shelley, as Shelley was familiar with her mother's writings. Wollstonecraft died at age 38 after giving birth to Shelley, but in her short life, she became a well-known feminist, and moral and political theorist. Wollstonecraft was critical of the social condition of women in the late eighteenth century, and her book *A Vindication of the Rights of Woman* (1792)⁵⁸ remains relevant today in debates

53. *Id.* at 1. See also *id.* at 6 (“[T]he novel can be read as articulating anxieties of those marginalized by race, gender and socioeconomic status, and that central to the understanding of the politics of the novel are the principles of inheritance and the laws governing the distribution of property, as defined in the Romantic period.”).

54. Peek, *supra* note 45, at 2.

55. *Id.*

56. FRANKENSTEIN, *supra* note 11, at 207.

57. See, e.g., Sylvia Bowerbank, *The Social Order vs. the Wretch: Mary Shelley's Contradictory-Mindedness in Frankenstein*, 46 *ELH* 418–31 (1979).

58. MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMAN: WITH STRICTURES ON POLITICAL AND MORAL SUBJECTS* (1792).

about women's rights.⁵⁹ She advocated for freedom from arbitrary powers—such freedoms that were grounded in rational and moral law—and argued for equality of citizenship and liberation of women in the home and in the workplace.⁶⁰ Wollstonecraft forcefully rejected the antiquated concept that women were created for feelings, and men for reason.⁶¹

With respect to the indirect influence by Wollstonecraft on the story of *Frankenstein*, great concern over the condition of the poor was raised throughout *A Vindication of the Rights of Woman*. Just as Dickens and Shelley emphasized in the following century, Wollstonecraft “complain[ed] that the rich are above the law, which they can circumvent, while the poor fall below its protection.”⁶² Thus, it is not surprising that the advantages of wealth and the condition of the poor are major themes in *Frankenstein*. For instance, Justine's wrongful murder conviction was likely due to her belonging to a lower class, as opposed to an upper-class citizen who can afford to hire high-quality attorneys to fight a weak prosecutorial case based solely on circumstantial evidence.

Frankenstein also depicts the influence of Shelley's famous father, William Godwin, who—like his wife Mary Wollstonecraft—campaigns for political and social change by writing essays and political tracts.⁶³ Shelley dedicated *Frankenstein* to her father,⁶⁴ and the novel reflects some of his theories on society and political institutions. The monster at times seems to understand and support Godwin's views, particularly those described in Godwin's book, *An Enquiry Concerning Political Justice* (1793).⁶⁵ Godwin

59. See generally Alan Coffee, *Mary Wollstonecraft and Liberalism*, in LIBERALISM (Michael G. Festl ed., forthcoming), available at https://www.academia.edu/50581909/Mary_Wollstonecraft_and_Liberalism [https://perma.cc/W8EF-5BT7].

60. See *id.*

61. *Id.* (quoting Wollstonecraft's critique of the devastating idea that “women were created rather to feel than to reason” (MARY WOLLSTONECRAFT, A VINDICATION OF THE RIGHTS OF WOMAN 89 (2014))). See also *infra* note 70.

62. Coffee, *supra* note 48.

63. See generally Katherine Richardson Powers, *The Influence of William Godwin on the Novels of Mary Shelley* (1972) (Ph.D. dissertation, University of Tennessee), available at https://trace.tennessee.edu/utk_graddiss/1599 [https://perma.cc/2SWH-LXXY].

64. See generally FRANKENSTEIN, *supra* note 11 (dedicating the work “[t]o William Godwin, Author of Political Justice, Caleb Williams, etc.”).

65. Articulating similarities of the social and political ideologies possessed by both the monster and Godwin, Jill Lepore explains:

opposed the class system in England, while openly and radically opposing British political institutions. Likewise, the monster is an outsider, excluded from social circles, but he is able to intelligently perceive the flaws in the circles closed off to him. Indeed, as an outsider, the monster has firsthand knowledge of class-based exclusions with particular insight into the mistreatment of those who are marginalized. Godwin articulated that what people want for most is *society*: “No doubt man is formed for society. . . . Without society we should be wretchedly deficient in motives to improvement.”⁶⁶ Indeed, the sense of society is what the monster longs for as well.

On the other hand, some commentators suggest Dr. Victor Frankenstein is the stern image of Godwin. Similar to the portrayal of a rejecting Dr. Frankenstein and his rejected creature, Mary's father rejected her and withdrew all support when she eloped with Percy Shelley.⁶⁷ Like Dr. Frankenstein, Godwin was intoxicated by a dream of perfection, writing of a time when there would be no inequality, no sexism⁶⁸—just as Victor Frankenstein had his own dreams of conquering death.⁶⁹ Thus, Shelley's

The creature's own politics . . . align . . . with . . . Mary Wollstonecraft and William Godwin. Victor Frankenstein has made use of other men's bodies, like a lord over the peasantry or a king over his subjects, in just the way that Godwin denounced when he described feudalism as a “ferocious monster.” (“How dare you sport thus with life?” the creature asks his maker.) The creature, born innocent, has been treated so terribly that he has become a villain, in just the way that Wollstonecraft predicted. “People are rendered ferocious by misery,” she wrote, “and misanthropy is ever the offspring of discontent.”

Lepore, *supra* note 48.

66. WILLIAM GODWIN, POLITICAL JUSTICE 108–09 (1890 reprint of book VIII of AN ENQUIRY CONCERNING POLITICAL JUSTICE, ITS INFLUENCE, GENERAL VIRTUE AND HAPPINESS (3d ed., 1798) (emphasis added).

67. Among other things, Godwin condemned his daughter's elopement, stating she—like Dr. Frankenstein's failed creature—was “guilty of a crime.” WILLIAM GODWIN, THE ELOPEMENT OF PERCY BYSSHE SHELLEY AND MARY WOLLSTONECRAFT GODWIN 16 (1977).

68. *See* WILLIAM GODWIN, AN ENQUIRY CONCERNING POLITICAL JUSTICE 458 (2013) (“There will be no war, no crimes, no administration of justice as it is called, and no government.”).

69. Matthew Querino, *To William Godwin*, 6 OSWALD REV.: INT'L J. OF UNDERGRADUATE RSCH. & CRITICISM IN THE DISCIPLINE OF ENG. (2004) (citing FRANCIS WINWAR, THE ROMANTIC REBELS 4 (1935)).

Frances Winwar describes Godwin as being, ‘intoxicated with his dream of perfection: The time would come, hailed Godwin, . . . when there should be no ignorance, no inequality, no distinctions of sex, no death!’ . . . Godwin and Victor are both intoxicated by their quest to improve humanity through new theologies. They also share the same dream to rid the world of death although Godwin means preventable deaths from the hands of tyranny and oppression while Victor plans literally to rid the world of death by using the scientific secret he has discovered. The similarities between these two revolutionaries are remarkable.

Frankenstein is not only a call for reform influenced by her father's values, but it is also a critique of her father's radical idealism. Shelley's views were more conservative: perhaps considering revolution as mob rule, and preferring slow progressive reform.⁷⁰

Most intellectual historians in this field view Shelley's father, William Godwin, and her mother, Mary Wollstonecraft—and even her husband Percy Shelley—as radicals who supported the French Revolution and expressed concerns over an oppressive social order and the injustices of domestic stereotypes.⁷¹ While Mary Shelley seems to have consciously shared these concerns in some respects, she also embraced a contradictory, conservative streak. Indeed, just before writing *Frankenstein*, she expressed understanding for the goals of her parents and husband, but she stated that *she* is not a person of opinions like they are.⁷² She respects her family, she explains, but concedes that she is not argumentative, that she cannot *demonstrate* the validity of her viewpoint, and she “feel[s] the counter-arguments too strongly;” thus, she did not feel as though she could “efficiently support the radical cause.”⁷³ Thus, in *Frankenstein*, Shelley is both a radical and a conservative—defending family tranquility with sentimental images in the novel, *even as* she attacks the treatment of women and domestic stereotypes. Shelley learned from her mother that women should not have “gentleness, docility, and a spaniel-like affection,”⁷⁴ yet, all of the female characters in the novel preserve domestic bliss by being gentle, docile, and spaniel-like in their affections!⁷⁵ Those images cut against the attack on the social injustices against women in this novel. On the other

Id. at 106–07. See also *id.* at 107 (describing the comparison of Godwin, made by progressives, to “a great, if failed, explorer on humanity’s behalf—a Promethean paradigm that Mary would immortalize in her scientist, *Frankenstein*” (quoting EMILY SUNSTEIN, *MARY SHELLEY: ROMANCE AND REALITY* 20 (1989) (emphasis added))).

70. See Bowerbank, *supra* note 57.

71. *Id.* (“Not only Mary Shelley’s father, but also her mother Mary Wollstonecraft, and her husband, Percy Shelley, were committed defenders of the radical perspective.”).

72. “[I]f we read *Frankenstein* looking for a defense of the radical perspective, we do find that Mary articulates what may be called a Godwinian concern for the victims of an oppressive domestic and social order. But, unlike Shelley, Mary was also imbued with the spirit of conservatism which dominated England during her adolescence.” See Bowerbank, *supra* note 57, at 204 (quoting MARY SHELLEY’S JOURNAL, ed. Frederick L. Jones (Univ. of Oklahoma Press, 1947)).

73. *Id.*

74. MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMAN* 68 (2014).

75. See Bowerbank, *supra* note 57.

hand, there is certainly concern surrounding the injustices endured by: the outcast monster as he becomes a criminal; Justine, the maidservant; and Safie, the foreigner.

Next, the Author highlights another area where law reform may be necessary. Notably, the following topics present prevalent issues for lawyers tasked with improving the law—namely the regulation of the sciences and the scientific enterprise. The notion that science can get out of control, and may need to be reined in, is obviously one of the most prominent themes in Mary Shelley's *Frankenstein*.

VI. HUBRIS, "PLAYING GOD," AND THE DANGERS OF SCIENCE AND TECHNOLOGY

Perhaps the most influential of all the works of science fiction [concerning the dangers of scientific progress] was Mary Shelley's *Frankenstein*, which she wrote as a teenager in 1816. It focused on a scientist who was destroyed by the person, or monster, he had created. *Frankenstein* raised the question of whether science would refashion our world or destroy it.⁷⁶

These issues and their associated dangers have been explored in other literary works as well. In 1896, a convergence of these themes was illustrated in H.G. Wells' *The Island of Doctor Moreau*—the story of a scientist who sought to challenge the limits of science by mastering evolution.⁷⁷ In 2000, Michel Houellebecq's *Elementary Particles* told the story of a geneticist who wanted to create a post-human species.⁷⁸ Beyond fiction, these stories recall a problematic eugenics movement in the United States, as well as Nazi efforts to create a master race. "In retrospect, these programs were based on naive science and the even more naive notion that we could find a purely technical solution to an array of perceived social problems."⁷⁹

It bears mentioning, in scholarly discussion of the science fiction genre, a distinction is made between "Hard Science Fiction" (or "Hard SF") and science *fantasy*—the latter being viewed as involving stories that are

76. See HAROLD T. SHAPIRO, A LARGER SENSE OF PURPOSE: HIGHER EDUCATION AND SOCIETY 126 (2005).

77. H.G. WELLS, *THE ISLAND OF DR. MOREAU* (New York, Stone & Kimball 1896).

78. MICHEL HOUELLEBECQ, *THE ELEMENTARY PARTICLES* (2000).

79. SHAPIRO, *supra* note 76, at 127.

untethered from reality and from actual scientific principles. Examples of science fantasy include magical creatures, supernatural powers, alternate worlds, and even zombies, ghosts, dragons, sea monsters, or alien life forms—anything is possible. Hard science fiction, on the other hand, imagines futures or events based on potential advances and innovations in science and technology.⁸⁰

Many scholars view Shelley’s *Frankenstein* as the first real science fiction story—although consideration should also be given to Thomas More’s *Utopia*,⁸¹ as well as Cyrano de Bergerac’s *L’Autre Monde: ou les États et Empires de la Lune*⁸² which tells a story about the author’s alleged trip to the moon (using firecracker-powered rockets) where he meets four-legged moon men. Nevertheless, both “within the scholarly community and within popular culture, *Frankenstein* is synonymous with science fiction, and only a controversial critic would want to argue that *Frankenstein* belongs outside of the genre.”⁸³ Australian law professor Kieran Tranter has identified not only an “intimate association” of science fiction with technological innovation, but also with *law*:

Science fiction presents technology as a glimpse of a future that calls for law. This suggests a cultural logic that bounds up technology, future, and law. . . . This configuration has a name and pedigree. It was first given form by Mary Shelley in *Frankenstein: Or the Modern Prometheus* (1818).⁸⁴

80. See, e.g., Austin Carmody, *Difference Between Science Fiction and Fantasy Explained*, FANTASY BOOK FANATIC, available at <https://perma.cc/ZJ46-7XYP> (“The fundamental difference between science fiction and fantasy is that science fiction narratives describe what is possible, whereas fantasy narratives describe what is impossible. Science fiction elements have a firm basis in reality. In contrast, fantasy elements are founded purely on facets of the imagination.”).

81. THOMAS MORE, *UTOPIA* (1516) (originally titled: “*Libellus vere aureus, nec minus salutaris quam festivus, de optimo rei publicae statu deque nova insula Utopia*”).

82. CYRANO DE BERGERAC, *L’AUTRE MONDE: OU LES ÉTATS ET EMPIRES DE LA LUNE* (1657) (translated as “*Comical History of the States and Empires of the Moon*,” published posthumously in 1657).

83. KIERAN TRANTER, *LIVING IN TECHNICAL LEGALITY: SCIENCE FICTION AND LAW AS TECHNOLOGY* 29–33 (2018).

84. See *id.*

According to Tranter, the *Frankenstein* “myth” is “the” myth of modernity—it enacts the “quintessential modern relationship between humans and technology.”⁸⁵

Victor Frankenstein, the protagonist, becomes the epitome of the rational scientist too preoccupied with his techniques to consider the wider context of his creating. . . . The scientist concocts in his private rooms while society remains passive and impotent against the depravity of his monstrous creation.⁸⁶

This is the problem of having the “technical” expertise without the ethical or legal guardrails—there is no institutional boundary, no ethics committee in Shelley’s account, to allay our anxieties about technological progress. There is, of course, always the potential for good in scientific advances: Dr. Frankenstein’s monster can rescue a child, refuse to steal, and appreciate literary classics written by Goethe, Plutarch, and Milton. But there is also the potential for disaster in scientific advances, just as the monster can murder Victor’s younger brother William, frame Justine for that murder, and kill both Henry Clerval and Elizabeth. The monster’s exclusion from society turns him into the non-human, amoral image of technology out of control, and a vulnerable humanity needs the law:

Shelley’s cast—irresponsible scientist, ambiguous monster, and vulnerable Society—calls out for a hero to thwart Frankenstein and control the monster in society’s name. . . . In essence, the *Frankenstein* myth posits a humanity whose fate is determined by a primal battle between two forces. On the one side . . . is the monster of technology . . . perpetually challenging and disrupting the human present with anxieties and hopes of inevitable technological futures. On the other side . . . is law, the instrument through which present humanity can combat or entrench specific technological futures.⁸⁷

Whether it is the danger of cloning, genetic engineering, cyberspace, or nanotechnology, the “*Frankenstein* myth says that technology will change

85. *See id.*

86. *Id.* (questioning, in “most commentaries it is Victor, with his acontextual rationalism, bourgeois irresponsibility, and petty revulsion, who is the true monster[?]”).

87. *Id.*

human futures, but that through law the human present can influence this changing.”⁸⁸

It is common—in “debates about embryo research and reproductive technologies—to invoke Victor Frankenstein’s hubris in ‘playing God.’”⁸⁹ But we seem not to have listened to the moral teachings implied in Shelley’s novel, which nowadays have been “stubbornly ignored, or even inverted, by the scientists and ethicists who have the most to learn from it.”⁹⁰ Notably, sociologist of science Bruno Latour argues:

[T]he real lesson of the novel is that ‘we must care for our technologies as we do our children.’ According to Latour, ‘Dr. Frankenstein’s crime was . . . that he *abandoned the creature to itself*,’ referring to the moment in the story when Frankenstein runs in horror, without good reason, from the creature he has made.⁹¹

In this view, Dr. Frankenstein should have acted as a parent: “[t]he real goal must be to have the same type of patience and commitment to our creations as God the Creator, Himself.”⁹² Perhaps Victor Frankenstein *should* have played God! Latour seems to be overstating the matter, but certainly we should pay attention to science and watch out for ethical lapses in the drive to improve technologies. The growth of Artificial Intelligence (“AI”), sometimes called “meta-expertise” to indicate our handing over expertise from human experts to machines, is exemplary in this regard.

VII. THE EXAMPLE OF ARTIFICIAL INTELLIGENCE

Regulation of scientific research is rare. Requests by scientists to be regulated are even rarer. Thus, in 1973 when a group of prominent scientists suggested that their research be subject to controls,

88. *Id.* In the end, Tranter is arguing we need science fiction like *Frankenstein*. He asserts it is “the West’s storehouse of technological futures, and the saving law of the *Frankenstein* myth is the law of the present to influence those futures.”

89. Brendan P. Foht, *Responsible Frankensteins?*, 54 THE NEW ATLANTIS, at 83 (2018), available at <https://www.thenewatlantis.com/publications/responsible-frankensteins> [https://perma.cc/GQ5V-WNEM].

90. *Id.* at 83–95.

91. *Id.* at 83 (discussing Latour’s “Love Your Monsters”) (emphasis in original).

92. *Id.* (quoting Bruno Latour, *Love Your Monsters: Why We Must Care for Our Technologies As We Do Our Children*, BREAKTHROUGH INSTITUTE (2012), available at <https://thebreakthrough.org/journal/issue-2/love-your-monsters> [https://perma.cc/V6VC-XC3V]).

unprecedented public attention focused on that research. The issue of whether recombinant deoxyribonucleic acid (rDNA) technology is unique—and thus requires special regulations—is still not totally settled.⁹³

Beginning in the early 1950s, the structure of DNA was discovered; and once the genetic code was deciphered, it was possible to manipulate DNA by stripping off pieces and combining those pieces with other DNA, and then to insert the combined DNA into living cells—the technique known as rDNA technology. “Molecular biologists were no longer passive observers of life; they became its creators. The public, with an imagination spurred by visions of mad scientists creating chimeras and Frankenstein monsters, demanded input into research decisions.”⁹⁴ The scientific advances in this field, and the ethical challenges, are greater than ever nowadays—“inheritable” gene-editing is possible for single gene disorders (like Sickle cell disease, cystic fibrosis, and Duchenne muscular dystrophy).⁹⁵ “Yet bioethicists point out that inheritable gene editing raises large societal questions, given the dire consequences of an error, as well as the ethical questions that arise at the prospect of erasing disability from human existence.”⁹⁶

Altering DNA with CRISPR technology is part of an effort to “uncover the actual chemistry of life” (which sounds like Victor Frankenstein).⁹⁷ However, when recipient of the 2020 Nobel Prize in Chemistry, Jennifer Doudna, was asked about the “ethical ramifications” of her gene-editing research, she replied: “I’m still on the learning curve with that.”⁹⁸ There are parallels in the field of information technology, with “damning evidence”

93. Valerie M. Fogelman, *Regulating Science: An Evaluation of the Regulation of Biotechnology Research*, 17 ENVTL. L. REV. 183–273 (1987).

94. *Id.*

95. See Katie Hafner, *Once Science Fiction, Gene Editing Is Now a Looming Reality*, N.Y. TIMES (July 22, 2020), <https://www.nytimes.com/2020/07/22/style/crispr-gene-editing-ethics.html> [<https://perma.cc/KH4U-96ZT>].

96. “There absolutely must be broad public discussions about whether we’re ready to use something that has an unprecedented capability of making changes that have the potential to be passed on to subsequent generations,” said Dana Carroll, a biochemistry professor at the University of Utah who is interim director of the Public Impact Program at the Innovative Genomics Institute at the University of California, Berkeley. *Id.*

97. See David Marchese, *Her Discovery Changed the World. How Does She Think We Should Use It?*, N.Y. TIMES (Aug. 12, 2022), <https://www.nytimes.com/interactive/2022/08/15/magazine/jennifer-doudna-crispr-interview.html> [<https://perma.cc/BFJ5-GY6Y>].

98. *Id.*

that Facebook may not have the control of its operation that was assumed—a series of *Wall Street Journal* reports revealed that “it knew Instagram was worsening body-image issues among girls and that it had a bigger vaccine misinformation problem than it let on.”⁹⁹ And nowadays, perhaps, what science lawyers worry most about is AI, including the trend toward automated decision-making in legal contexts. Is AI our own out of control “monster?” Scholarly focus on algorithmic technologies has recently grown:

[T]he infinitude of algorithms that pervade our lived reality . . . has triggered a special genre of literature around algorithmic lifeworlds, driven by the need to decipher and maneuver this digital, datafied terrain on which algorithms intricately and invasively come into effect. . . . This literature [includes asking] how to anticipate the . . . risks [algorithms] engender [and] how to hold them accountable to ethical and legal standards.¹⁰⁰

Some legal scholars have suggested we need to mitigate algorithmic harms while maintaining the potential benefits of new technologies.¹⁰¹ One such compromise has been suggested by Professor Josh Davis: “AI will be able to perform sophisticated tasks usually reserved for lawyers, but it should not be trusted to perform similar tasks reserved for judges.”¹⁰²

Importantly, law is often perceived as lagging behind technology; regulatory frameworks are often outdated, and like our “patchwork approach to data privacy,” U.S. regulation of AI is full of “lacunae.”¹⁰³ Mary

99. Kevin Roose, *Facebook Is Weaker Than We Knew*, N.Y. TIMES (Oct. 4, 2021), https://www.nytimes.com/2021/10/04/technology/facebook-files.html?campaign_id=9&emc=edit_nn_20220822&instance_id=69930&nl=themorning®i_id=100596401&segment_id=102039&te=1&user_id=4f435818fe714149705b758320ac43f9 [https://perma.cc/Q938-TZCI].

100. Nishtha Bharti, *Engaging Critically with Algorithms: Conceptual and Performative Interventions*, 47 SCI., TECH., & HUMAN VALUES 833, 834 (July 2022).

101. See generally Mihailis Diamantis, Rebekah Cochran & Miranda Dam, *AI and the Law: Can Legal Systems Help Us Maximize Paperclips While Minimizing Deaths?*, TECH. ETHICS: A PHIL. INTRODUCTION & READINGS (forthcoming 2023), available at <https://ssrn.com/abstract=4177378> [https://perma.cc/JEW2-TV33].

102. Joshua P. Davis, *Of Robolanyers and Robojudges*, 73 HASTINGS L.J. 1173 (2022), available at <https://ssrn.com/abstract=4021610> [https://perma.cc/4CS8-N84U].

103. Francesca Bignami, *Artificial Intelligence Accountability of Public Administration*, AM. J. COMPAR. L. (forthcoming), available at https://academic.oup.com/ajcl/article/70/Supplement_1/i312/6596541 [https://perma.cc/YVH2-B72P].

Shelley was prescient in seeing how technology can surprise and outrun the legal protections we need.

The U.S. criminal legal system increasingly relies on software output to convict and incarcerate people. In a large number of cases each year, the government makes these consequential decisions based on evidence from statistical software—such as probabilistic genotyping, environmental audio detection, and toolmark analysis tools—that defense counsel cannot fully cross-examine or scrutinize. This undermines the commitments of the adversarial criminal legal system, which relies on the defense's ability to probe and test the prosecution's case to safeguard individual rights.¹⁰⁴

Do we want legal decisions in court—or, similarly, medical decisions in hospitals—to be made by “Big Data” (by algorithms)? Everyone's quick reaction is no, because of criticism that such machines are prone to error and possible bias, are dependent on subjective inputs from humans, and the difficulty for defense attorneys to cross-examine the data. However, human beings are also prone to bias and error, and research surveys show some people actually prefer decision-making by algorithms.¹⁰⁵

The human brain operates algorithmically through complex neural networks. And when humans make collective decisions, they operate via algorithms too—those reflected in legislative, judicial, and administrative processes. Yet these human algorithms undeniably fail and are far from transparent. On an individual level, human decision-making suffers from memory limitations, fatigue, cognitive biases, and racial prejudices, among other problems.¹⁰⁶

So maybe we are increasingly coming to believe that it is not irresponsible or unethical for judges to rely on computer algorithms. Moreover, there is a common refrain among those who promote computer algorithms that issues of potential bias (built into the data) are merely technical problems to be solved. For example, as to the concern that criminal defense attorneys are disadvantaged by not being able to cross-examine an algorithmic “meta-

104. Rediet Abebe, et al., *Adversarial Scrutiny of Evidentiary Statistical Software*, ACM FACCT CONF. (2022), available at <https://ssrn.com/abstract=4107017> [<https://perma.cc/9QZF-XWKC>].

105. See Aaron Smith, *Attitudes Toward Algorithmic Decision-Making*, PEW RSCH. CTR., available at <https://www.pewresearch.org/internet/2018/11/16/attitudes-toward-algorithmic-decision-making/> [<https://perma.cc/E9HM-JH3R>].

106. Cary Coglianese & Alice Lai, *Algorithm vs. Algorithm*, 72 DUKE L.J. 1281, 1281 (2022).

expert,” there is now potential for defense counsel to interrogate the data in an algorithmic decision:

Responding to this need to adversarially scrutinize output from [algorithmic] software, [several computer scientists now] propose robust adversarial testing as an audit framework to examine the validity of evidentiary statistical software. [They draw] on a large body of recent work in robust machine learning and algorithmic fairness [and] demonstrate how this framework . . . empowers defense lawyers to examine their validity.¹⁰⁷

The above is just one example of a technological advance that initially appears to be out of control, but is countered with a reform effort to remedy this potential problem with the new technology.

Lawyers should be at the forefront of such efforts, not as computer engineers, but as those who can recognize the potential for harm in new technologies. Importantly, the ABA Model Rules of Professional Conduct emphasize the special responsibility of lawyers to ensure quality of justice.¹⁰⁸ Moreover, the Preamble notes the ABA Model Rules do not “exhaust the moral and ethical considerations that should inform a lawyer.”¹⁰⁹ There is a new term being used in legal ethics, namely “change leadership,” which combines the notion of lawyers being leaders (the Preamble refers to this notion as “the legal profession’s ideals of *public service*”)¹¹⁰ with the notion that lawyers are responsible for changes in our society.

Lawyers, as inherent and frequent leaders in professional, community, and personal environments, have a greater-than-average need for proficiency in change leadership. In these many settings, lawyers are charged with promoting, making, and addressing change. . . . [In this vein, lawyers have an] ongoing responsibility to foster continuous system improvement. Change is part of the fabric of lawyering, writ large. Change leadership, whether

107. Abebe, *supra* note 104.

108. MODEL RULES OF PROF'L CONDUCT pmb. ¶ 1(AM. BAR ASS'N 2023) (“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the *quality of justice*.” (emphasis added)).

109. *Id.* at ¶ 16 (reasoning “no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law”).

110. *See id.* at ¶ 7 (emphasis added).

voluntarily assumed or involuntarily shouldered, is inherent in the lawyering task.¹¹¹

Without such leadership, there is a perennial concern that legal processes and institutions will falter and fail to produce justice. Many also suggest that we should be teaching law students to become leaders and change society. For example, Professor Etienne Toussaint recently argued *all* law professors—not only those teaching Professional Responsibility—should be teaching “public citizenship lawyering” based on every lawyer’s special responsibility for the quality of justice set out in the ABA Model Rules.¹¹² Instead of trying to be neutral or apolitical, professors arguably should be teaching law students how to be justice-oriented in order to correct the flaws in our legal system that have resulted from racial, gender, and class bias. Indeed, the flaws of the legal system have been identified as one of Mary Shelley’s themes in *Frankenstein*:

As William P. MacNeil has acknowledged, there is law work occurring throughout the text. There is excessive talk of crime, murders, and guilt. There are also some obvious institutional legal moments: the trial of Justine for the murder of the child William, Frankenstein’s subjection to the Irish legal process, and Frankenstein’s ‘confession’ to the Genevan magistrate. However, Shelley presents an impotent law: Justine’s trial is a farce, Ireland frees Frankenstein without asking hard questions, and the Genevan magistrate reluctantly agrees to hunt the monster with the caveat that it will be ‘impracticable’. Faced with the monster’s campaign of terror, law does not respond, and the monster and creator are left to chase on the northern ice, alone.¹¹³

Like so many books in the law and literature canon, *Frankenstein* is obviously a challenge to the idealistic view that law uniformly delivers justice. For example, just as Russell Banks’ *The Sweet Hereafter* is decidedly

111. Joan MacLeod Heminway, *Change Leadership and the Law School Curriculum*, 62 SANTA CLARA L. REV. 43, 45–46 (2022).

112. Etienne C. Toussaint, *The Miseducation of Public Citizens*, 29 GEO J. ON POVERTY L. & POL’Y 287, 315 (2022). *See also id.* at 287 (defining public citizenship lawyering as “a democratic conception of professional responsibility whereby lawyers engage in routine critique of their lawyering practice through the lens of justice as a moral virtue”).

113. *See* TRANTER, *supra* note 83, at 31–32 (citing William P. MacNeil, *The Monstrous Body of The Law: Wollstonecraft vs. Shelley*, 12 AUSTRALIAN FEMINIST L. J. 21, 23–24 (1999)).

not idealistic, *Frankenstein* falls into the same category of novels that focus on the frequent powerlessness of law.¹¹⁴

VIII. REFLECTING ON THE RULES OF PROFESSIONAL CONDUCT

A. *Prosecutorial Obligations*

A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause. . . .¹¹⁵

The criminal prosecution of Justine is described in the novel as a “wretched mockery of justice.”¹¹⁶ Dr. Frankenstein did not tell the court who the real murderer was because he “rel[ied] on the justice of our laws.”¹¹⁷ That was not a good move. Justine was convicted on the thinnest of circumstantial evidence and harassed into a false confession with threats of damnation to hell.¹¹⁸ Through this negative lens of a criminal proceeding, we see that the prosecutor was not—in contemporary terminology—focusing on probable cause.

B. *Religious Bias*

During trial, a lawyer shall not “allude to any matter that the lawyer does not reasonably believe is relevant[,]”¹¹⁹ nor shall a lawyer violate any established rule of evidence¹²⁰ or “engage in conduct [which is] disrupt[ive] [to] a tribunal.”¹²¹ Moreover, “[i]t is professional misconduct for a lawyer to: violate or attempt to violate the Rules of Professional Conduct.”¹²²

114. Compare RUSSELL BANKS, *THE SWEET HEREAFTER* (1991), with FRANKENSTEIN, *supra* note 11.

115. AM. BAR ASS’N, *CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION*, Standard 3-4.3(a) (4th ed. 2017) (outlining the “minimum requirements for filing and maintaining criminal charges”).

116. See FRANKENSTEIN, *supra* note 11, at 85.

117. *Id.* at 84.

118. *Id.* at 83.

119. MODEL RULES OF PROF’L CONDUCT R. 3.4(e) (AM. BAR ASS’N 2023).

120. See generally *id.* at R. 3.4.

121. *Id.* at R. 3.5(d); see also *id.* at R. 3.5 cmt. 5 (“The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition.”).

122. *Id.* at R. 8.4(a).

Another grim image of legal processes and institutions is the seeming conviction of Safie's Turkish father solely on the basis of his religion and wealth—suggesting some Islamophobia in nineteenth-century Geneva.¹²³ The rules of evidence prohibit discussions of religion in court¹²⁴ and it would be unethical for a lawyer to break that rule. In such a scenario, both Rule 3.4 prohibiting violation of a rule of evidence, and Rule 8.4 prohibiting violation of the ethical rules, would come into play.¹²⁵

C. *Judicial Obligations*

A judge shall perform the duties of judicial office [(“judicial duties”)] . . . without bias or prejudice.¹²⁶ A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, . . . including but not limited to bias [or] prejudice . . . [toward any member of a protected class].¹²⁷

A judge shall require [all] lawyers in proceedings before the court to refrain from manifesting bias or prejudice . . . based upon attributes [of a protected class], against parties, witnesses, [or] lawyers.¹²⁸

In *Frankenstein*, ultimately all of the Genevan magistrates appear incompetent. As to the religious bias mentioned above, a judge or magistrate would have a responsibility nowadays to correct that problem. As aforementioned, Justine's judge in her trial was harsh and unfeeling. The magistrate Mr. Kirwin on the Irish island was eager to let Dr. Frankenstein go—notwithstanding the suspicious murder of Clerval—and the Genevan magistrate who promises to hunt for the monster suddenly declares such hunt impractical. Consequently, Victor Frankenstein is treated as delusional.

123. See FRANKENSTEIN, *supra* note 11, at 67 (“[I]t was judged that his religion and wealth rather than the crime alleged against him had been the cause of his condemnation.”).

124. See FED. R. EVID. 610 (“Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.”).

125. See *generally* MODEL RULES OF PROF'L CONDUCT R. 3.4, 8.4.

126. MODEL CODE JUD. CONDUCT, Canon 2, R. 2.3(A) (AM. BAR ASS'N 2020).

127. See *id.* at Canon 2, R. 2.3(B)—i.e., “based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.”

128. See *id.* at Canon 2, R. 2.3(C).

D. *Pro Bono and Responsibility for the Poor*

A lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services. Pro bono publico services include poverty law . . . and volunteer activities designed to increase the availability of pro bono legal services.¹²⁹

As lawyers, we are called to provide some pro bono assistance to the poor, and Shelley's novel provides numerous images of those who are impoverished and mistreated by the legal system. When the DeLacey family tries to help Safie's father escape, they lose everything. The novel explains that the family was innocent but nevertheless condemned to poverty, since the court deprived the family of their fortune.¹³⁰ In light of her own problems with inheritance laws in England, Shelley seems obsessed with loss of wealth. As discussed above, the Austrian government restored Elizabeth's estate, but only through the exerted efforts of Victor Frankenstein's father. Moreover, the monster notices the division between immense wealth and squalid poverty, and that the efforts of the poor result in "profits of the chosen few."¹³¹ It seems quite clear that Shelley was not simply writing a horror story to scare readers; rather, she was writing as a commentator on the condition of the women and the poor, and the failure of law in her day. Indeed, the monster—viewed in Hollywood as a terror to villagers because of his appearance—is actually a literate social critic who understood the flaws of nineteenth-century European society.

IX. CONCLUSION: DO NOT TRUST APPEARANCES

Although the Creature often and vehemently defends his 'crimes,' it is not long before he will turn around and condemn himself, thus showing the

129. VA. RULES OF PROF'L CONDUCT R. 6.1 (2023). See also MODEL RULES OF PROF'L CONDUCT R. 1 (AM. BAR ASS'N 2023) ("Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.").

130. FRANKENSTEIN, *supra* note 11, at 120 (describing the result of the trial in which the DeLacey family was "deprived . . . of their fortune and condemned . . . to perpetual exile from their native country"); *id.* at 128 (providing that DeLacey told the monster: "I and my family have been condemned, although innocent").

131. FRANKENSTEIN, *supra* note 11, at 153.

extent to which he acquired his moral perceptions as well as his ability to speak and read, from eavesdropping on the DeLacey family. . . . [He reads three books:] *The Sorrows of Werther* reinforced his experiences of the domestic gentleness of the cottagers; *Plutarch's Lives* made him abhor vice in public affairs; only in *Paradise Lost* did he find that, though he tried to identify with Adam, Satan was 'the fitter emblem of my condition.'¹³²

"Satan or Adam?"—the monster asks himself.¹³³ One of the obvious lessons from *Frankenstein* is that one should not trust first appearances. Do not think a hideous creature does not deserve respect. Do not assume a ghost story is just a ghost story; it may be a socio-legal analysis of what we call today the "wealth gap." Shakespeare's comedies always have characters who seem to be one thing but are something else entirely. The law makes mistakes and is ineffective if judged too quickly. Justine was "caught" with the picture of William in her pocket, so she *obviously* was the murderer—but she was not. Lesson learned?

132. Bowerbank, *supra* note 57.

133. FRANKENSTEIN, *supra* note 11.

