



ST. MARY'S
UNIVERSITY

Digital Commons at St. Mary's University

Faculty Articles

School of Law Faculty Scholarship

2014

The Invention of Murder: How the Victorians Revelled in Death and Detection and Created Modern Crime (book review)

Michael S. Ariens

Follow this and additional works at: <https://commons.stmarytx.edu/facarticles>



Part of the [Law Commons](#)

Recommended Citation

Michael S. Ariens, *The Invention of Murder: How the Victorians Revelled in Death and Detection and Created Modern Crime* (book review), 61 *Fed. Law.* 104 (2014).

This Book Review is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons at St. Mary's University. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Digital Commons at St. Mary's University. For more information, please contact jllloyd@stmarytx.edu.

changed when he gave up being attorney general for a seat on the Supreme Court. Wohl captures the dilemmas behind the issues that dominated the news, the alternatives that were available to key decision makers, and the consequences that followed from the choices they made.

As civilian coordinator of the Alien Enemy Control Program, Tom Clark played a role in the internment of Japanese-Americans, for which he later publicly apologized. Wohl engages in a careful review of the uncertain nature of Clark's job, the daunting political and logistical complexities, and numerous comments later made by several of the principals with whom Clark had worked. On the basis of this research, he concludes that "Clark ... may have been the wrong person in the wrong place at the wrong time for this assignment."

Nowhere is Wohl's critical eye more effective than in scrutinizing the late author Merle Miller's undocumented assertion that Truman once said in an interview that his appointments of Tom Clark as attorney general and Supreme Court justice were "my biggest mistake." Wohl's exhaustive review of the evidence is devastating to Miller. It not only casts serious doubt on whether the aging former President ever uttered such a comment, but it shows why it would have been inconsistent with virtually every aspect of the long and faithful Truman-Clark relationship, which spanned three decades.

Father, Son, and Constitution is a timely book. Many of the key constitutional issues in our digital age and the ongoing war on terror are merely updated versions of struggles that were fought at mid-century. Those battles, like today's, sought to define the proper balance between individual rights and personal privacy on the one hand, and national security on the other. *Father, Son, and Constitution* contains a rich trove of historical analysis that can inform the handling of constitutional issues now and in the future. ☉

Vincent R. Johnson is professor of law at St. Mary's University School of Law in San Antonio, Texas, and the author of Justice Tom C. Clark's Legacy in the Field of Legal Ethics, 29 J. LEGAL PROF. 33 (2005). He crosses paths with Alex Wohl each year at the Supreme Court Fellows Program alumni dinner.

THE INVENTION OF MURDER: HOW THE VICTORIANS REVELLED IN DEATH AND DETECTION AND CREATED MODERN CRIME

BY JUDITH FLANDERS

St. Martin's Press, New York, NY, 2013. 556 pages, \$26.99.

Reviewed by Michael Ariens

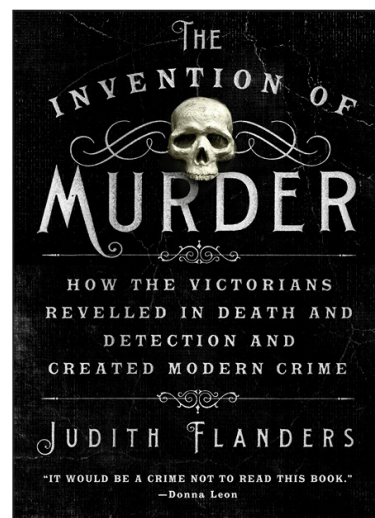
The Invention of Murder, by Judith Flanders, is an extraordinary achievement—an exhaustively researched history of 19th-century Great Britain, written with verve. Flanders uses the conceit of murder, and the stories she tells of murders, to immerse the reader in 19th-century legal, cultural, and social history. It is a superb and engrossing study.

Flanders begins with the 1811 murder of Thomas Marr, his wife, their infant, and a teenage apprentice, and she concludes with the femicides of the late 1880s attributed to Jack the Ripper. Although both events occurred in London's East End, Flanders ranges across Great Britain throughout the century. Her depth of knowledge, as demonstrated in her endnotes and bibliography, appears to encompass everything related to every murder in this place and time.

As a legal history, *The Invention of Murder* explains a number of developments in English law: the Prisoners' Counsel Act of 1836, which finally gave felony defendants the right to counsel; the speed with which executions took place in the initial absence of an appellate process; the peculiar legal prism by which infanticide was (or was not) dealt with; the right to request a change of venue due to local prejudice (known informally as Palmer's Act, and opposed by the "victualling interest"); the popularity and, later, abolition of, public hangings; the invention of policemen, skeptically called "raw lobsters" or "the unboiled" (uncooked lobsters are blue, cooked lobsters red, and policemen wore blue coats to distinguish them from the red-coated army); the rise of a detective force; the Anatomy Act of 1832, which, adopted to end the "resurrection" trade, allowed anatomy schools access to corpses; the increasing importance of expert medical testimony (and its abominable use in many cases); and the influence judges possessed in summing up criminal cases (a practice abolished by most states in the United States in the same century).

As a cultural history, *The Invention of Murder* discusses the importance in the early 19th century of broadsides—typically single sheets printed on one side—for the working classes when a tax on newspapers made them prohibitively expensive; as well as penny-gaffs, which were illegal, unlicensed plays performed in disused shops turned into theaters and attended almost exclusively by children under 16, and entertaining up to 50,000 persons per day in London alone. Licensed theaters in London also made available more than 50,000 seats nightly. The plays they showed used murder, often recent murders, to entertain their vast audience.

Penny-bloods were small booklets about murder and mayhem (often, Flanders notes, involving either dashing highwaymen or evil aristocrats) sold, as one might expect, for a penny, and popular with much the same audience that attended penny-gaffs. Penny-bloods were later called penny-dreadfuls, and were abhorred by the middle class, which found other ways to embrace the same violence, as by attending murder trials or reading fiction written to their tastes. Flanders links the rise of newspapers to their coverage of murders, demonstrating statistically the astonishing amount of coverage to murders given by even the most respectable papers. She explains clearly the importance of melodrama in the earlier part of the 19th century, with its stock characters and the triumph of justice. Melodrama was displaced by sensation-fiction, which often made a gentleman of standing the murderer. Sensation-fiction was in turn displaced by the detective novel, as exemplified by Sherlock Holmes, the amateur who bests the police. Flanders provides a magnifying lens



allowing the reader a better understanding of Charles Dickens and Wilkie Collins, among others, as sensation-novelists who collected and reflected middle-class sensibilities and who took historical events and fictionalized them. She also examines the publishers' sophisticated understanding of both their working-class and middle-class audiences, particularly how newspapers, serialized novels, and plays characterized victims and the accused. Flanders casts a cold, bright light on the lengths to which the newspapers would go to sell themselves; they were centers of gossip, not purveyors of fact.

As a social history, *The Invention of Murder* gives the American reader a deeper understanding of how class affected considerations of crime, victim, and offender. Flanders demonstrates how and why the working class was suspicious of the police, both at their inception and through the end of the 19th century, and why the middle class, in the middle of the century, began to admire the police. Flanders uses the Jack the Ripper case as a study in class distinctions, for London's East End, where he operated, was a working-class and poverty-stricken area bereft of police and the shame of middle-class Londoners.

The victims, killers, witnesses, and wrongly charged whom Flanders describes are persons whose frailty and strengths are shown in equal and humane measure. Flanders brings to horrifying life the many miscarriages of justice of a dyspeptic legal system. One powerful example is the 1835 execution of Eliza Fenning, whose "terrible story was inextricably bound up with class anxiety, with fear of the mob, with hierarchy and social structure." Fenning was a 21-year-old servant who was wrongly tried and convicted of attempted murder by arsenic poisoning of her employers and other servants. Flanders cogently explains that it was Fenning's perceived lack of character—as well as the "facts," as claimed by the newspaper the *Observer*, that "*her father and mother are both from Ireland, and ... are BOTH ROMAN CATHOLICS*" (her parents were Dissenters)—that led to her conviction in 10 minutes after a biased summation by the judge. Flanders notes the institutional legal constraints that made Fenning's defense tragically ineffectual. Before the Prisoners' Counsel Act of 1836, felony defendants were "forbidden access to any legal counsel at all," though

some unofficial consultation was allowed. Further, closing arguments by the defendant were not permitted, although Fenning was allowed to speak (but not under oath, because defendants were then incompetent witnesses in both Great Britain and the United States), and she simply and plaintively declared her innocence. At this time, newspapers were coming into their own, and competing papers divided on Fenning's guilt based on whether their readership was middle class or working class, loyalist or not. The Fenning case was one of the first to generate a pamphlet that used science to show the utter lack of proof of Fenning's guilt. Testimony in the case showed that the poisoned dumplings must have contained 1,800 grains of arsenic, when five grains was a fatal dose, yet no one died. Though many believed Fenning innocent, fear of the mob led officials to execute her. Flanders sums up, "Eliza Fenning was born too early."

Flanders regularly offers droll commentary: "In 1845 Robert Blake, a twenty-six-year-old grinder (he sharpened blades), deserted his wife in Birmingham and ran off to London with Harriet Parker, aged thirty-five, taking his two children, Amina and Robert, aged six and three, with him. They lived in the inappropriately named Cupid's Court, a tenement behind Golden Lane, in the City, and were averagely unhappy." And, in discussing a novel based on a "not proven" Scottish murder prosecution, she writes, "The novel also contains the splendid line: 'I am obliged to say now that ... I cannot marry a person whom I believe guilty of a murder.' A rule to live by." One of Flanders' *bête noires* is the incompetent medical doctor and prosecution skill, Alfred Swaine Taylor: "As always, however, Taylor was prepared to commit himself on contradictory (or no) evidence." Such tart observations are found throughout the book.

Flanders' research offers nuggets of information on almost every page. For example, though the *Oxford English Dictionary* dates the first printed use of "detective novel" to 1924, she found a reference to it in the 1860s. And she notes that the early meaning of "detect" or "detective" was not "to investigate" or "investigator," but "to watch" or be "watchful."

I have but one small bone to pick. Flanders extensively discusses the 1840 murder of Lord William Russell by Benjamin François Courvoisier, in which the butler did it. Courvoisier was tried, convicted,

and executed. The case became a cause célèbre in England and the United States because the public learned that Courvoisier had confessed his guilt to his barrister, Charles Phillips, during the trial. Phillips informed one of the two trial judges of the confession, and was told to continue to defend Courvoisier. After his conviction, Courvoisier publicly confessed his guilt, including his statement of such to his barrister during the trial. The public was outraged. Flanders writes, "Then as now, if he had admitted to murder, his barrister had a legal obligation to report this to the court." This is not the law in England now, nor was it then. The lawyer had and has the obligation not to introduce false evidence (remember that Courvoisier, as a defendant, was incompetent to testify), but must continue to defend his client zealously, including requiring the government to prove its case beyond a reasonable doubt.

The Invention of Murder is a significant addition to British legal history, as well as broader 19th-century British history. Just as importantly, it is a great read. ☉

Michael Ariens is a professor of law at St. Mary's University in San Antonio, Texas, where he teaches American legal history, constitutional law, evidence, and other courses. He is the author of Lone Star Law: A Legal History of Texas (2011) and other books.

ADDITIONAL BOOK REVIEWS

In addition to the book reviews in the paper copy of this issue of *The Federal Lawyer*, bonus reviews are included in the online version of the magazine. The following reviews are available at www.fedbar.org/magazine. ☉

THE PSYCHOPATH WHISPERER: THE SCIENCE OF THOSE WITHOUT CONSCIENCE

BY KENT A. KIEHL

Reviewed by Christopher Faille

THE LAW IN NAZI GERMAN: IDEOLOGY, OPPORTUNISM, AND THE PERVERSION OF JUSTICE

EDITED BY ALAN E. STEINWEIS AND
ROBERT D. RACHLIN

Reviewed by Jon M. Sands and Felicitas
Rieger