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FATHER, SON, AND CONSTITUTION: HOW JUSTICE TOM CLARK AND ATTORNEY GENERAL RAMSEY CLARK SHAPED AMERICAN DEMOCRACY

BY ALEXANDER WOHL

University of Kansas Press, Lawrence, KS, 2013. 486 pages, \$39.95.

Reviewed by Vincent R. Johnson

In *Father, Son, and Constitution*, Alexander Wohl brings to life two major figures of American law: Tom C. Clark and his son Ramsey Clark. The story focuses primarily on the middle third of the 20th century and the many heated constitutional challenges that arose during that era. From the early 1940s to the late 1960s, one or both of the Clarks held prominent federal government positions in Washington, D.C.

With an engaging literary style, Wohl perceptively examines not merely the lives and careers of Tom and Ramsey Clark, but the key roles they played in the issues of their day. At so many different junctures, over several decades, the Clarks were at the center of the constitutional struggles that defined the legal balance between the exercise of individual rights and the maintenance of public order.

Tom Clark was President Harry S. Truman's close friend, his attorney general from 1945 to 1949, and his law-and-order appointee to the U.S. Supreme Court in 1949. Evolving into a moderate among the liberals on the Vinson Court, he helped to pave the way for the desegregation of public education. As a member of the Warren Court, he was an important voice in a judicial revolution that transformed American society through an expansive recognition of individual rights and a broad construction of the Commerce Clause. During his 18 years on the nation's highest tribunal (1949 – 1967), Tom Clark wrote 214 majority opinions, including most famously *Mapp v. Ohio*, 347 U.S. 643 (1961), which held that illegally obtained evidence cannot be used in state criminal proceedings.

Ramsey Clark was assistant attorney general (1961 – 1965), first for President John F. Kennedy and then for President Lyndon B. Johnson, and thereafter deputy attorney general (1965 – 1967) and attorney general (1967-1969) in the Johnson

administration. In those roles, he made a major contribution to the drafting and passage of the Voting Rights Act of 1965 and the Civil Rights Act of 1968. Known for his liberal positions on issues central to the Bill of Rights during the tumultuous late 1960s, Ramsey Clark later became a leading critic of the U.S. criminal justice system and a champion of persons oppressed and accused around the globe.

Honoring the tradition of lawyers' fearlessly defending unpopular clients, Ramsey Clark represented many controversial people, including Supreme Court Justice William O. Douglas, Vietnam-era peace activist Philip Berrigan, politician and conspiracy theorist Lyndon LaRouche, and the Palestine Liberation Organization. He also represented notorious figures, such as Slobodan Milosevic, Radovan Karadzic, and Saddam Hussein. Ramsey Clark's name has long been synonymous with professional integrity, though he has had more than his share of detractors. For example, Richard Nixon, in his 1968 presidential campaign, attacked him as soft on crime.

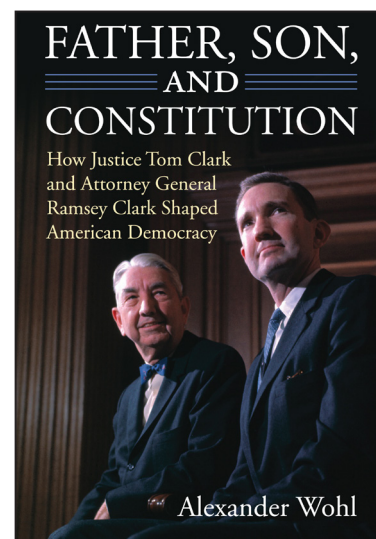
Tom and Ramsey Clark were both colorful figures who attracted loyal followers and lived in interesting times. But they were different types of men. Whereas Tom Clark was the amiable pragmatist and "gregarious extrovert," Ramsey Clark is an introspective and "impractical" idealist. They also had very different life experiences. For example, Tom Clark—the only Texan and only graduate of the University of Texas School of Law ever appointed to the U.S. Supreme Court—did not leave Texas until he was 18. By contrast, Ramsey, a graduate of the University of Chicago Law School, had traveled on five continents and in 75 countries before he was 19 (as a diplomatic courier in the Marines)—and even now in his 80s continues to trot the globe.

Although both father and son shared a commitment to American democracy, they approached constitutional questions from different starting points. Tom Clark was on the right or middle of the political spectrum, and Ramsey Clark was on the left. The issues with which they dealt—such as discrimination, wiretapping, and membership in subversive organizations—grabbed the headlines. The chief virtue of *Father, Son, and Constitution* is not that the book tells a good story—which it does—but that

it offers lessons in how to seek answers to public questions in a principled fashion consistent with the rule of law.

Wohl has had the good fortune to follow in the literary wake of Mimi Clark Gronlund, the daughter of Tom Clark and sister of Ramey Clark. In 2009, Gronlund published an excellent book, the first major biography of her father, *Supreme Court Justice Tom C. Clark: A Life of Service*, which I reviewed in the November/December 2009 issue of *The Federal Lawyer*. Although *Father, Son, and Constitution* inevitably retraces some of the same ground covered by Gronlund in her book, it deepens and expands her analysis of events and issues, and includes much new material. For example, Wohl's book reflects the dozens of hours of interviews that Ramsey Clark granted to him to assist the project. Ramsey is raised from a minor supporting role in Gronlund's biography of her father to a principal subject receiving equal treatment with his father in *Father, Son, and Constitution*.

Wohl's story proceeds from Pearl Harbor and World War II (including fraudulent war contracting, the Nuremberg trials, and the Marshall Plan), to the Cold War (including loyalty programs, subversive organizations, and the Alger Hiss case), to desegregation (including Southern resistance, presidential action, and pivotal Supreme Court decisions), to the problems that beset President Johnson's efforts to build the Great Society (including race riots, war protests, and assassinations). At each juncture—regardless of whether the historical events are familiar or faded—Wohl's account is vivid and fresh, as when he explains how dramatically Tom Clark's life



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

