

Scholarly Commons @ UNLV Boyd Law

Scholarly Works

Faculty Scholarship

1999

Book Review

David S. Tanenhaus

University of Nevada, Las Vegas – William S. Boyd School of Law

Follow this and additional works at: <https://scholars.law.unlv.edu/facpub>



Part of the [Courts Commons](#), [Criminal Law Commons](#), [Judges Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Tanenhaus, David S., "Book Review" (1999). *Scholarly Works*. 601.

<https://scholars.law.unlv.edu/facpub/601>

This Book Review is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

cle of an ascendant middle class, Rice reads the genre as “the literary means of last resort for a tradition of civic authorship facing the vicissitudes posed by the dawning of the age of economic liberalism and mechanical reproduction” (155). No longer confident that they could directly impress moral truths into the minds of readers, authors such as William Hill Brown and Hannah Foster turned to the novel as a way of seducing their audience to virtue—of, as Emily Dickinson would later put it, telling the truth, but telling it slant. It is thus no mere coincidence for Rice that early American novels were so heavily populated with novel-reading seducers and coquettes: the subject matter mirrored the coquettish literary strategy and deportment of the novelist.

For Foucault, the transformation of authorship ends in the death of the author. For Rice, it ends in hiding and retreat. Once visible saints before a community of conscience, authors now coyly flirt with the literary marketplace, hinting at social criticism where it can no longer be openly declared. Skeptics might disagree with Rice on the particular forces behind this transformation. At times, he appears to read nineteenth-century phenomena—the development of a political party system, the widespread diffusion of print, the market revolution, the modernization of the common law—back into the eighteenth century. But the larger trajectory mapped in *The Transformation of Authorship in America* is a clear, original, and compelling one that merits the attention of students of early American culture, society, and political thought.

Mark Schmeller
University of Chicago

Christopher P. Manfredi, *The Supreme Court and Juvenile Justice*, Lawrence: University Press of Kansas, 1998. Pp. xv + 256. \$35.00 (ISBN 0-7006-0851-6).

In his engaging *The Supreme Court and Juvenile Justice*, political scientist Christopher P. Manfredi argues that Americans in the 1990s are still feeling the powerful and unintended consequences of a trilogy of Supreme Court decisions, *Kent v. United States* (1966), *In re Gault* (1967), and *In re Winship* (1970). In *Gault*, the most famous of these cases, Justice Abe Fortas announced that it was time for the “constitutional domestication” of the nation’s juvenile courts and began this process by extending limited due process protection to offenders during adjudicatory hearings. Fortas believed that these protections would shield juveniles from unlimited judicial discretion, while still retaining the juvenile court’s founding ideals of individualized treatment and rehabilitation that were embodied in the legal concept of *parens patriae* (the state as father/parent). Manfredi, however, claims that constitutional domestication instead undermined “the traditional assumptions of juvenile justice policy” and “facilitated legislative reform by unclogging the channels of political change” (176). Once under way, this reform process led to the criminalization of juvenile justice and the establishment of individual responsibility and retribution as its new twin ideals. Thus, Manfredi concludes that even court-ordered reform of a legal system, an area in which judges are experts, can be a risky business.

It should come as no surprise that *The Supreme Court and Juvenile Justice* primarily builds upon the social scientific literature concerned with litigation and social reform that stresses the shortcomings of courts to enact meaningful social change, including such influential works as Donald Horowitz's *The Courts and Social Policy* (1977) and Gerald Rosenberg's *The Hollow Hope: Can Courts Bring About Social Change?* (1991). Manfredi's first chapter on litigation and the dynamics of social reform, in fact, will serve as a good primer for readers, especially historians, unfamiliar with this growing body of scholarship. Particularly useful are his concise discussions of models of twentieth-century public interest litigation, epitomized by the strategies developed by the NAACP and ACLU, as well as his overview of "the nationalization of criminal procedure" by the Warren Court.

After constructing a solid theoretical foundation, Manfredi then lays out a compelling narrative of the rise and fall of the rehabilitative ideal in juvenile justice, which had legitimated the creation of specialized courts to hear the cases of dependent, neglected, and delinquent children. This ideal had also helped to shield juvenile courts from legal and political challenges, especially during the early twentieth century. He traces the origins of the rehabilitative ideal to the House of Refuge movement in the 1820s, finds its embodiment in the Illinois Juvenile Court Act of 1899, and dates its fall from grace to changing social conditions in the post-World War II era. His sketch of public perceptions of delinquency and the role of children in twentieth-century society is thin. Yet, he does provide a rewarding account of how postwar legal scholars and social scientists began to question the paternal assumptions of traditional juvenile justice. He concludes this part of the narrative with a 1964 speech delivered by Chief Justice Earl Warren to the National Council of Juvenile Court Judges. In this speech, Warren warned the judges that the Supreme Court would no longer tolerate their vast discretion over children in the name of *parens patriae*.

This historical overview of juvenile justice beautifully sets up the heart of his book, four chapters of insider's history complemented by extremely close readings of the briefs and opinions in the trilogy of cases that transformed American juvenile justice. Manfredi lucidly explains difficult legal concepts and, more importantly, reveals their significance. His analysis, for example, of the shifting rationale for these decisions from "selective incorporation" of the Bill of Rights to "fundamental fairness" is enlightening. Moreover, a series of tables and charts helps to untangle legal concepts as well as the scholarship brought to the court through amicus briefs. His minute attention to legal detail, for example, also reveals that *Gault*, which is best known as a children's rights case and is even the subject of a recent book for young adults, actually began in the Arizona courts as a parental rights case. This significant transformation suggests that scholars must be extremely careful when writing the history of children's rights not to forget how often parental rights are also involved in these cases. In addition, his findings also suggest that *Gault* has become a lens that distorts our readings of earlier decisions.

The final two chapters of this first-rate monograph sketch out the unintended consequences of constitutional domestication and provide a good summary of the wave of legislative activity that has "criminalized" juvenile justice and the schol-

arly assessment of this national trend. Although *The Supreme Court and Juvenile Justice* clearly has a great deal to offer specialists in juvenile justice, it should also interest scholars concerned more generally with twentieth-century law and governance because it helps to explain the unraveling of Progressive Era assumptions about state power and social welfare.

David S. Tanenhaus

University of Nevada, Las Vegas

Edward J. Larson, *Summer for the Gods: The Scopes Trial and America's Continuing Debate over Science and Religion*, New York: Basic Books, 1997. Pp. x + 318. \$25.00 (ISBN 0-465-07509-6).

In the spring of 1924, John Washington Butler, a representative in the Tennessee legislature, took the occasion of his forty-ninth birthday to write a bill designed to prohibit the teaching of human evolution in the state's public schools. Butler had heard a preacher tell of a girl who had gone to college, learned about evolution, and lost her faith. Like many of his contemporaries, Butler believed that this trend of agnosticism was increasing and had to be stopped in order to preserve the soul of America and the faith of its citizens. Since Darwinian evolution—particularly the doctrine of natural selection—was thought to be behind this trend, ceasing to teach it would renew the faith of the young and ease the minds and spirits of their parents. Furthermore, as the tax money of those very parents provided funds for Tennessee's public schools, the law was not only a moral imperative, but it was in perfect accord with America's civic religion: the rule of the majority. The substance of the statute read that "it shall be unlawful for any teacher in any of the Universities, Normals and all other public schools of the State which are supported in whole or in part by the public funds of the State, to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals." The bill passed through the state legislature overwhelmingly in early January 1925, and Governor Austin Peay signed the bill into law, stating, "Right or wrong, there is a widespread belief that something is shaking the fundamentals of this country, both in religion and morals." Peay signed the bill into law in the name of politics, not God. From the beginning the issue was political.

Anyone interested in how Peay's political pragmatics backfired is advised to read Edward J. Larson's new book, *Summer for the Gods: The Scopes Trial and America's Continuing Debate over Science and Religion*. Larson revitalizes the seventy-year-old "Monkey" trial and shows that the antievolution controversy was not merely a conflict between science and "fool religion" to use Clarence Darrow's slur. On the contrary, the debate between science and religion was more complicated, more entrenched socially, and more profoundly felt than the historical memory of the Scopes Trial suggests. That memory, Larson argues, was generated not so much by the trial itself as by Jerome Lawrence and Robert E. Lee's play, *Inherit the Wind*, which opened on Broadway in 1955. The play, and subsequently the movie, was "the single-most influential retelling of the tale" (239). "During the