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# The Depiction of Law in *The Bonfire of the Vanities*

Richard A. Posner†

Tom Wolfe's best-selling novel, *The Bonfire of the Vanities*, first published in 1987 and recently reissued in paperback, illustrates an aspect of the interaction between law and literature not discussed in my recent book on the law and literature movement, and indeed rather neglected (but perhaps benignly) by the movement as a whole. This is the depiction of law in popular literature.<sup>1</sup> The popularity of Wolfe's novel and the salience of law in it make it a natural subject for consideration in a symposium on the treatment of law in popular culture. And if, as I shall argue, *The Bonfire of the Vanities* is not an especially rewarding subject for the study of law in popular culture after all, this may serve as a warning against unwarranted expectations concerning how much we can learn about law from its representation in popular culture, or about popular culture from its representation of law, or even about popular understanding of law.

The criminal justice system of the Bronx, in New York City, figures prominently in Wolfe's novel—indeed is central to the novel's plot, which depicts the progressive enmeshment of the protagonist, Sherman McCoy, in the coarse, dingy, and sordid operation that is (according to Wolfe) the Bronx criminal justice system today. McCoy is investigated, questioned, arrested, indicted, and, after the first indictment is dismissed because of false testimony before the grand jury, reindicted. The Epilogue briefly recounts his first trial, which ends in a hung jury; when the novel ends he is about to be retried. (The Epilogue also alludes briefly to a tort action against McCoy.) The offense he is charged with is reckless endangerment, which blossoms into vehicular manslaughter when the victim dies. The facts are as follows: McCoy had picked up his mistress, Maria Ruskin, at Kennedy Airport in his sports car, and on the way back to Manhattan had gotten lost in the South Bronx. A pair of teenagers—one a drug dealer ("The Crack King of Evergreen Avenue")—had thrown a tire in front of McCoy's car, and when he got out to move the tire they ap-

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† Judge, United States Court of Appeals for the Seventh Circuit; Senior Lecturer, University of Chicago Law School. The comments of Eva Saks on a previous draft are gratefully acknowledged. All page references in the text are to the 1988 paperback edition of *Bonfire*.

1. I discussed one work of popular fiction, E.L. Doctorow's *Ragtime*, but only for its borrowings from Heinrich von Kleist's classic novella, *Michael Kohlhaas*. See R. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 46 (1988)[hereinafter LAW AND LITERATURE].

proached in a fashion that McCoy interpreted as menacing. A scuffle ensued. Maria took the wheel, McCoy jumped back into the car, and as the car pulled away it hit the other teenager. Ruskin didn't stop and she and McCoy never reported the accident. The prosecutors, abetted by self-appointed black leaders, knee-jerk liberals and radicals (e.g., "Gay Fist Strike Force Against Racism"), and a scandal-mongering press, portray the victim to a credulous public as the honor student that he is not.

The novel pays close attention to the criminal process and its personnel. Larry Kramer, the Assistant District Attorney who prosecutes McCoy, is one of the principal supporting characters in the novel, along with Judge Kovitsky, the judge assigned to the case. The novel's gallery of minor characters includes the publicity-hounding D.A. himself, other lawyers, other defendants, court officers, and a juror, "the Girl with Brown Lipstick," whom Kramer pursues with a comic futility that culminates in scandal when he tries to rent for her the "love nest" (rent-controlled, of course) in which McCoy and Maria Ruskin had held their trysts. In addition to the proceedings directly involving McCoy, Wolfe treats us to an extended episode of plea bargaining and to a portion of a homicide trial.

It would be a mistake to conclude, however, that because *The Bonfire of the Vanities* has a legal plot, legal characters, and legal scenes, it is "about" law in a rich and interesting sense. In discussing the depiction of law in classical literature I have argued that literature, to flourish in a different culture from the one in which it was conceived—to *be* literature, in other words—must not be too local in its themes, and that therefore we should not expect a work of literature to depict law in a form calculated to engage the lawyer's professional interest.<sup>2</sup> This is equally true of a work of popular fiction, at least one as popular as *The Bonfire of the Vanities*. A book does not sell hundreds of thousands of copies in a short period of time by being esoteric, by appealing to narrowly professional concerns. The only pertinent difference between classical and popular literature is that the former accretes its vast audience over decades, centuries, or even millennia, and the latter all at once.

It does not follow that all popular books, any more than all classics, are predestined never to have anything interesting to say about law. Lawyers' professional concerns, focused as they naturally are on the quotidian, do not exhaust the social interest of law. Although many works ostensibly about law, notably Kafka's *The Trial*, use law as a metaphor for other dimensions of human experience and are therefore misunderstood when read literally, such classic works as *Eumenides*, *The Merchant of Venice*, *I Promessi Sposi*, and *Billy Budd* have much to say about law at the

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2. See *id.*, ch. 2, especially 71–79. Works of literature may contain local themes—consider whaling in *Moby Dick* or twelve-tone music in Mann's *Dr. Faustus*—but to endure as literature must transcend them.

jurisprudential level if not at the level of legal practice, while Dickens' great legal novels *Pickwick Papers* and *Bleak House* not only have jurisprudential interest but were significant contemporary criticisms of the English legal system. An immensely popular contemporary novel about law may, moreover, afford a better glimpse of how lay people regard law than a public opinion poll would do.

I do not consider *The Bonfire of the Vanities* significant at any of these levels. I do not think it would be a rewarding book to teach in a course on law and literature, either in a law school or in an English or a sociology department. I say this not because I consider the book a bad book—I consider it a good book—but because it is not the sort of book that has anything interesting to say about law or any other institution. With his enormous journalistic skills and his more modest but still impressive novelistic ability (*The Bonfire of the Vanities* is a first novel), Wolfe could undoubtedly write a penetrating fictionalized critique of the American legal system. There are even Dickensian touches in the grotesquerie of *Bonfire*, but it is not a book that aspires to be another *Bleak House* or another *Pickwick Papers*.

With strain, one can find in the book aspects of what I am calling jurisprudential significance: the danger of misusing the legal process for political ends; the “radicalizing” effect (on McCoy) of being prosecuted (if a conservative is a liberal who has been mugged, a liberal is a conservative who has been arrested); the capacity of a public arrest to inflict profound, life-altering humiliation, making the actual outcome of the criminal process almost a side issue; the effect of racial hostility on the rule of law; the difficulty of doing justice across large social-class differences; even the difficulty of reconstructing history by the methods of litigation. These things are in, but not of, the book; the author does not treat them in a fashion that alters our understanding of them.

What sort of book is *The Bonfire of the Vanities*, then? It is a funny, vicious satire on the diverse classes that coexist uneasily in New York City. The book exploits to the hilt the City's most arresting feature, which is now even more pronounced than when Wolfe wrote the book. (Attentive readers of *The New York Times*—readers familiar with such names as Brawley, Sharpton, and Milken—may think Wolfe has prophetic gifts.) This is the juxtaposition of grotesque extremes of opulence and squalor, the former symbolized by McCoy and his Park Avenue-Wall Street set, the latter by the Bronx County Criminal Court with its crummy and overcrowded facilities, its clientele of black and Hispanic criminals, and its harried, underpaid, precariously middle-class judicial and law enforcement personnel. Shuttling between the extremes is a rich cast of hustlers, social climbers, toadies, hangers-on, and con men, seeking to share in the opulence and avoid sinking into the squalor. There is an *egregious* quality about the City that provides a field day for a sharp-eyed and sharp-

tongued social satirist. (Wolfe has a particularly keen eye for prices and for how people dress.) This is not to say that Wolfe describes New York City and its institutions with complete fidelity. The City is not *that* sordid. Wolfe exaggerates, less by misdescribing—I am told that his portrayal of the Bronx County Criminal Court is essentially accurate, although its environs aren't *quite* so hellish as he describes, and indeed that the whole book is a *roman à clef* populated by institutions and characters that are instantly recognizable to knowledgeable New Yorkers—than by suppressing complexity. But that is the satirist's privilege.

For Wolfe is in the tradition of Bosch and Swift in portraying humanity at its worst, and it is therefore part of his technique to present a one-sided view of his subject. His target is not only the individual but also the group to which the individual belongs; this is a salient but not endearing feature of the novel, for group libel raises hackles and can cause pain. Among the groups (of varying sensitivity, to be sure) that Wolfe ridicules are blacks, Jews, WASPs, Englishmen, homosexuals, Yuppies, liberals, politicians, women, the rich, and people who serve the rich. So encompassing is the denunciation of human types that it would be misleading to describe Wolfe as a bigot, for a bigot divides the world into us and them. Although he appears to dislike blacks, and does a disservice to the cause of racial friendship by studiously neglecting any positive black character types, it hardly seems that he likes whites. He does seem to have a soft spot for the Irish, but Irish readers will wince with the rest, since it appears that Wolfe admires the Irish *only* for what he describes as their invincible stupidity—the source in his view of their physical courage, the single thing he admires in them. One of Wolfe's Jewish characters, Judge Kovitsky (“a Jewish warrior, a son of Masada,” as Larry Kramer muses, p. 111), is presented in a generally favorable light, but this is balanced by the sharply antipathetic depiction of other Jews, such as Kramer, who is unethical, envious, vain, horny, and in the end ridiculous; Lopwitz, the Wall Street *parvenu*; the tabloid publisher nicknamed the “Dead Mouse”; and Maria's husband, Ruskin, the cuckold who operates a charter service for pilgrims to Mecca and who, in one of the best scenes in the book, dies in a fancy restaurant. (His corpse lies on the floor next to his table, and the waiters, after some initial hesitation, learn to skip gracefully over the corpse on their way to serve the other diners.) On the other hand, the English journalist Fallow—a lush, sponge, and anti-Semite—is the single most despicable character in the book, and if I had to guess which if any of the satirized groups Wolfe *actually* dislikes, it would be the English (which of course would be consistent with his fondness for the Irish). I am tempted to say that Wolfe is like Nietzsche, of whom it is difficult to say whether he dislikes Jews or anti-Semites more, but of course Wolfe may hate no group, and may simply wield a wicked pen.

The ecumenical character of the satire saves it from being vicious. And,

vicious or not, it is redeemed, for me anyway, by a handful of brilliant scenes: “the wagon-train recess” at the Bronx County Criminal Court,<sup>3</sup> the trading floor at McCoy’s brokerage firm; the society dinner at the Bavardages, with its “bouquets” of guests, its “Social X-Rays” (the anorectic middle-aged society women) and “Lemon Tarts” (the mistresses or young wives of rich old men); the logistics of getting to a party a few blocks from one’s home (a limousine is *de rigueur*); the restaurant death scene; Fallow’s improbable journalistic coup in uncovering the details of McCoy’s “crime”; and my favorite scene of all—arguably Dantesque but at least worthy of Dickens, and certainly of Kafka—enacted when in the course of an investigation Kramer asks to use the phone in a police station:

Gordon motioned toward an open door that led into the Detective Bureau, which was an office off the main room. Inside were three dismal Government Work Gray metal desks. At each desk sat a black man in his thirties or forties. Each had on Bronx street garb a bit too funky to be true. Kramer thought of how unusual it was to come across an entire bureau made up of black detectives. The one at the desk nearest the door wore a black thermal vest and sleeveless black T-shirt that showed off his powerful arms.

Kramer reached toward the telephone on his desk and said, “Use your phone?”

“Hey, what the fuck, man!”

Kramer pulled his hand back,

“How long I gotta sit here chained up like a fucking animal?”

With that, the man raised his powerful left arm with a terrific clattering. There was a manacle on his wrist, and from the manacle a chain. The other end of the chain was manacled to the leg of the desk. Now the other two, at the other desks, had their arms up in the air, clattering and yammering. All three of them were chained to the desks.

“All I did was *see* the motherfucker whack that sucker, and he was the motherfucker that *whacked* the sucker, and I’m the one you got chained up like a fucking animal, and that motherfucker”—another terrific clatter as he gestured toward a room in the rear with his left hand—“he’s sitting back there watching fucking TV and eating ribs.”

Kramer looked to the back of the room, and sure enough, back there in a locker room was a figure sitting on the edge of a chair lit by the hectic flash of the television set and eating a length of barbecued rib of pork. And he was indeed leaning forward daintily. The

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3. The judges and other court personnel park their cars a few blocks from the courthouse. They are afraid to go there after dark. So if it appears that court will run late, they interrupt the proceedings for what they call a “wagon-train recess,” in which all court personnel go get their cars from the lot and park them outside the court. The recess is signaled by one of the bailiffs’ chanting “Yo-ohhhhhhh” (p. 178).

sleeve of his jacket was tailored to show a lot of white cuff and gleaming cuff link.

Now all three were yammering. *Fucking ribs . . . fucking chains! . . . fucking TV!*

But of course! The witnesses. Once Kramer realized that, everything, chains and all, fell into place. (pp. 223–24)

*The Bonfire of the Vanities* is a good book, not a great one. Its plot and character are merely threads connecting a series of tableaux such as the one I have just quoted; this failing may reflect Wolfe's journalistic background. The prose is pedestrian, as the passage just quoted also brings out; "lit by the hectic flush of the television set" is the only memorable phrase in the passage. The novel's characters are shallow—this is related to Wolfe's misanthropy—and are revealed by the too simplistic device of making the reader privy to their thoughts. And about two-thirds of the way through the novel the author's energy flags; so inferior is the last third to the first two-thirds that it is as if Wolfe had died and left the book to be completed by a hack. The restaurant death scene is the only bright spot in the last third, as satire increasingly gives way to broad and eventually tedious burlesque. The scene in which a courtroom mob attacks Judge Kovitsky for dismissing the indictment against McCoy is overdone and implausible; the halo around Kovitsky's head at this point shines too brightly. And the hints of redemption for McCoy that Wolfe starts to drop are maudlin. The book peters out; Wolfe seems to have had no idea how to end it.

A book concerned with displaying the foibles of human nature, particularly one set in the extraordinary social laboratory that is New York City in the 1980's, is unlikely to come to grips with law in its metaphorical, jurisprudential, or even social aspects. The law for Wolfe is simply another scene—no different from a dinner party on Park Avenue, or a dinner at a fancy restaurant, or the "ant colony" where Larry Kramer lives with his wife, infant, and *au pair* on his meager civil servant's salary—in which people parade their weaknesses. Although the politicization of prosecutors' offices and the assembly-line character of criminal justice in the nation's big cities are genuine social problems that the novel vividly depicts, there is no suggestion that any of these problems might be alleviated, let alone solved. On the contrary, the reader is led to believe that the existing criminal justice system of the Bronx will soon give way to one dominated by the minority that is already a majority in the Bronx, and that *that* system will be even worse than the present one, for there will be no Kovitskys in it. This is not a book of social criticism; it is not a summons to social reform in the manner of Dickens. To foment social reform an author must convey an impression that he believes there are at least some good people in the society. If there are none, not only is reform unlikely to succeed, but, more important, there is no reason we should

want it to succeed—the people do not deserve a better life. New Yorkers, as depicted by Tom Wolfe, are with minor exceptions freaks and monsters; they neither deserve a better system nor would profit from it, save perhaps in the most mercenary sense.

Although there is a great deal of truth in Wolfe's portrayal of big-city criminal justice in America, circa 1987, there is also a good deal that is false. This is in sharp contrast to Dickens,<sup>4</sup> and it weakens any claims the book might seem to make to be serious social criticism. The plea-bargaining scene and the trial of Herbert 92X for homicide are finely done. But Judge Kovitsky's spitting at the black prisoners who taunt him from their paddy wagon is out of character for Kovitsky and for judges in general, even harried judges of big-city criminal courts.<sup>5</sup> The mob scene in the courtroom when the first indictment against McCoy is dismissed is unconvincing. And the last thing a lawyer with a celebrity client would do would be to drop the client between the client's first trial and retrial, as Killian drops McCoy, merely because the client had run out of cash. Defending a celebrity is the greatest lawyer advertising there is, and is well worth the expense of carrying the celebrity even after draining him dry, especially since the advertising will boomerang if the lawyer leaves the celebrity in the lurch.

What does the novel tell us about how lay people view the law? I think nothing beyond what is obvious from finer fictional works, such as *The Brothers Karamazov* and *Pickwick Papers*: that they expect technicalities to matter (and it is on a technicality that the first indictment against McCoy is dismissed); that they are not surprised when miscarriages of justice occur (McCoy, remember, is innocent of the charges against him, and the real culprits are used as false witnesses by the prosecution); that they expect legal proceedings to be interminable and excruciatingly expensive; and that they are unillusioned about the moral and intellectual qualities of judges, lawyers, jurors, and other participants in the machinery of legal justice, and about the corrosion of that machinery by political and personal ambitions and fears. Judge Kovitsky does get to make a Law Day speech to Larry Kramer: "What makes you think you can come before the bench waving the banner of community pressure? The law is not a creature of the few or of the many. The court is not swayed by your threats" (p. 676). But Kovitsky is duly punished for his independence: he is denied renomination.

Whether Americans actually view their legal system in quite so bleak a

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4. See LAW AND LITERATURE, *supra* note 1, at 128–31; W. HOLDSWORTH, CHARLES DICKENS AS LEGAL HISTORIAN (1929).

5. This is not to say that judges don't do some wild things. There was a judge—in New York City, in recent memory—who flipped coins to decide cases and who invited a criminal defendant into his home, and another one who ordered the arrest of a street vendor for selling him a bad cup of coffee. But *spitting* at defendants?



light is unclear. The average reader of *The Bonfire of the Vanities* may simply be grateful that he doesn't live in New York City; and even New Yorkers may react by thinking, thank goodness it isn't *that* bad! For Wolfe does exaggerate, and one of the things he exaggerates is the sordidness of the criminal justice system of the Bronx.

From what I have said so far it should be plain that *The Bonfire of the Vanities*, for all its considerable charm, has no more to say about the great issues of jurisprudence than about the small ones. This is a book of surfaces rather than resonances. Wolfe is not a Dostoyevsky, whose depiction of the criminal process in *The Brothers Karamazov* is designed not to provide local color or narrative suspense, or even to expose the process as scandalous or sordid, but instead to compare rational inquiry, exemplified by the criminal justice system, with religious insight—to the disadvantage of the former.<sup>6</sup> The only religions in *The Bonfire of the Vanities* are Reverend Bacon's extortion racket and the Wall Streeters' worship of Mammon. Of course it is unfair to compare Wolfe to Dostoyevsky. My point is only that a novel by a nonlawyer can have much to teach lawyers about the limits of law and other jurisprudential questions, but that this particular novel, sparkling and acute as it is, does not.

Mindful of Blake's dictum that "To Generalize is to be an Idiot," I hesitate to infer from my sample of one that the depiction of law in popular culture is a barren field for study by the academic lawyer, the anthropologist, the sociologist, and the professor of literature. I am well versed neither in the academic literature on popular culture nor, truth be told, in popular culture itself, for I am a resolute nonreader of popular fiction, nonviewer of television, and nonmoviegoer. The following summary remarks should be discounted accordingly:

1. Popular fiction is likely to reflect rather than to influence the popular understanding of law. The writer of popular fiction is not trying to educate his readers; their prejudices are his givens. So we should not expect popular fiction to influence perceptions of law, and through them perhaps law itself, but we may be able to learn something about the popular understanding of law from popular fiction about law.
2. The law is likely to figure in popular fiction as metaphor, or background, or narrative skeleton, or brooding menace, rather than as an object of interest in its own right. Tom Wolfe, I am convinced, is not interested in law—why should he be? But, qualifying point 1, there are muckraking novels as well as muckraking journalism, and there is no reason why a muckraking novel about law shouldn't be a popular success, although I can think of no recent example.
3. Some subset of popular fiction, impossible to determine at the time of

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6. See LAW AND LITERATURE, *supra* note 1, at 166–71.

initial success, eventually joins another subset, that of esoteric or unpopular fiction, to form what we call literature, the body of writings that are somehow able to speak to people living under other skies, in other times, from those of the author and his original audience. Among the things these works speak about is, on occasion, the permanent and fundamental issues of law that we call jurisprudence. It is on this body of work, I suggest, rather than on the works of popular fiction, that the law and literature movement should concentrate.

