

Book Reviews

The Burden of Proof by Scott Turow, Penquin, 1991. Paperback, \$12.95 (RRP)

Some time ago, I presented a paper at the First Australian Law and Literature Conference on the ideological functions and effects of *LA Law*.¹ In discussions at the end of the day's meetings, I was told that I missed and misjudged a large section of the audience because, according to my interlocutor, "barristers and judges don't watch television, they read books". I am certain that the purveyor of these words of wisdom might also have chosen to add that they do not read just any books but that they prefer "literature", Shakespeare, Dickens and other dead, European males. If this apparent *snobism* of the bar and the judiciary is a real indicator of the cultural proclivities of these sections of the profession then this review will, like my *LA Law* paper further annoy them. On the other hand, or more precisely, at the same time, this review, I hope, will point out the error of their ways. For it is in the cultural space occupied by popular literature that the most dominant and important messages about law, lawyers and judges, especially criminal law, criminal lawyers and criminal law judges are to be found. It is this cultural space, and the semiotics of "law" and "literature" which should and must occupy our attention if we have any hope of developing some critical understanding of the social, political and ideological significance of "law" and of the signifying functions which we serve and occupy within and without the "law".

Scott Turow, on American attorney and author stands quite clearly in a position of importance in this interpretive matrix. His two previous books, an account of his experiences as a first-year student at Harvard Law School, *One-L*,² and his best-selling novel *Presumed Innocent*,³ about a prosecutor accused of murdering a colleague, are virtually compulsory reading for American law students and lawyers. *Presumed Innocent* was adapted for the screen and last year became a high-grossing Warner Brothers release starring Harrison Ford.⁴ By the sheer numbers of those who have read his work or seen it in the movie theatres of the United States and Australia, Turow *signifies* what lawyers do and who they are.

Now Turow has written yet another best-seller about law and lawyers, *Burden of Proof*. And let me make one thing clear from the outset — this is a good book. People should, and no doubt will, read it. In all likelihood it will make it onto the big screen. It has all the correct attributes — well-drawn characters, clear and compelling prose and enough plot-twists to keep the reader turning the pages. For lawyers, and others fascinated by the law, it is compulsory reading.

1 *Sex, lies and videotape: Images of lawyers in popular culture*, unpublished manuscript.

2 *One L: An Inside Account of Life in the First year at Harvard Law School* (1978).

3 (1988).

4 For the discussion, see my "Lawyers in Love" (1990) 10(4) *Communications Law Bulletin* 38.

Burden of Proof follows the trials and tribulations of Aljandro “Sandy” Stern, the defence lawyer from *Presumed Innocent* as he copes with a tense and potentially disastrous family tragedy and its aftermath. But the problem which Stern faces is not strictly private and personal. Rather, the private is ultimately linked, in more ways than one, with the public. As the plot unravels, Stern must defend his brother-in-law, Dixon Hartwell, from a federal probe into his shady business dealings. Hartwell, a commodities broker, is investigated for “trading ahead” of his customers on futures contracts. He faces censure, imprisonment and potential RICO Forfeiture of his life’s work. In the era of corporate collapses, the new, revised and improved ASC, CTRA reporting and cultural climate in which white-collar crime features as part of daily newspaper headlines and cocktail party conversation, who could resist a taut, well-written novel on the subject by someone like Turow, himself a writer and a former federal prosecutor of white-collar criminals?

The most important messages in *Burden of Proof*, however, are to be found in Turow’s attempts to deal with the fundamental psycho-social dilemmas facing his protagonist. From the epigram⁵ which begins his novel, Turow’s characters find themselves caught up in the maelstrom of the public/private dilemma⁶ as they attempt to cope with the conflicts between the demands of the legal system and the moral requirements of family life. Even within the criminal justice system itself, the public/private conflict must be confronted. Stern is a defense attorney, established in his own firm, surrounded by the luxurious perks of private practice. His opponents are public officials, assistant United States attorneys. Yet with all the power of the United States criminal justice system behind them:

The reception area of the US Attorney’s Office was shabby. From the looks, one would have thought he was visiting a solo practitioner down on his luck. The shag carpet was reminiscent of an animal afflicted with the mange; the wooden arms of the rectilinear furniture had begun to splinter; and the inhabitants were the usual town-square gathering.⁷

Despite the contrast in outward appearances, however, the US Attorney’s office “had always struck Stern as a happy place”. While it is Sandy who must suffer the emotional turmoil of his wife’s suicide, Oedipal struggles with his son Peter and the potential break-up of his family because of Dixon Hartwell’s apparent manipulation of the futures exchange.

In reality, *Burden of Proof* is not so much a novel about criminal law and retribution, about the public ordering of private affairs as it is a novel about sin and redemption, about the private ordering of public affairs. It is a novel about the morality play of the criminal justice system which serves to mask, obfuscate and interfere with our private moral obligations. In exposing the private beneath the layers of the public, the emotion, trauma and pain underlying the objective dispassion of the system, Turow relies on a common device in American fiction, especially in American fiction about lawyers,⁸ the

5 [Our] decisions have respected the private realm of family life which the state cannot enter. *Prince v Massachusetts* 321 US 158, 166 (1944).

6 For a detailed discussion of this issue in American literature, see my *I Fought The Law and The Law Won* (1988-89) 5 *Australian Journal of Law and Society* 153.

7 At 148.

conflict between the written nature of the law and oral tradition of private discourse. Contrasted with the written laws and securities regulations, the last will and testament of Stern's wife Clara and the severity of the written commandment of the *subpoena duces tecum*⁹ which brings to a head Stern's public/private turmoil, is the power of the word,¹⁰ the oral promise.

In the highly regulated law-bound world of the futures exchange, what really matters was the value of a promise:

For Dixon, like the others on the exchanges, his word given was exalted. To someone's back a knife could be freely applied, but a deal made eye to eye could not be broken.¹¹

Here, the two most powerful psycho-social signs which determine and delimit our existence, the gaze of the other¹² and the word combine to impose an obligation which transcends the power of any legal authority. In his insistence on the power of the promise, Turow, through Dixon, revisits the familiar theme of honour among thieves. In the recent film *Miller's Crossing* one gangster bemoans the lack of "ethics" among his colleagues. What is the world coming to, he wonders, when "a fixed fight don't stay fixed"? Without the reliability of promises, the underworld is thrown into a sense of indeterminacy with which it cannot cope.

The importance of the promise extends beyond the public realm of business deals on the futures exchange or in the underworld of fixed prize fights¹³ into the private world of family obligations. Indeed, the most crucial plot development, the unravelling of the "trading ahead" scam and the motivation for Clara's suicide, is equally tied with Dixon's sense of moral obligation to keep his word. Not even Sandy's attempt to absolve Hartwell can release him from his overriding tie to the dead Clara:

I release you, Dixon.
What?
I release you from this bargain. It was truly valorous. You were dealing for Clara's life, but in spite of your brave efforts, you failed. You may be released.
Dixon shook his head.
I promised her.
Dixon.
I promised.
I cannot permit this, Dixon.
I didn't ask for your permission.¹⁴

8 See above n6.

9 For a description of the power of such written legal texts, see Yablon, "Forms" (1990) 11 *Cardozo Law Review* 1348.

10 See Jacques Derrida, *Of Grammatology* (1976) and *Limited Inc* (1988) and Derrida, "Force Do Lio: Le 'Fondement Mystique De' Autorite'" = "Force of Law, 'The Mystical Foundation of Authority'" (1990) 11 *Cardozo Law Review* 920.

11 At 92.

12 See Jacques Lacan, "The Mirror State as Formative of the Function of the I" in (1977) *Ecrits* 1.

13 See above n6 for a further discussion. See also the dilemma raised by the breakdown at the "Favor bank" in Tom Wolfe's *Bonfire of the Vanities* (1987).

14 At 550-51.

Nothing — not the power of the grand jury, the US Attorney, a *subpoena duces tecum* can release Dixon from his word, for the word, in the end, is all he, or, as Sandy comes to understand, any of us can have. If *Burden of Proof* is a novel about criminal justice and personal redemption, about the public and the private, it is also *about* something which is not. In postmodern terminology,¹⁵ it is about the *presence* of *absence* and the *absence* of *presence*. As with *Presumed Innocent*¹⁶ the major failure of Turow's work is his inability to successfully deal with the power of the Female, of Female sexuality unleashed in the dimension of the Law.¹⁷ Here, yet again, the primary female protagonist, Clara, is *absent*, a suicide on page four, gone from the book, brought back only through the power of the *word*, Stern's word, Turow's word, the word and world of the male, of the Law of the Father, the Husband, the Son. Yet, in her *absence*, Clara haunts the book, determining the plot twists — the search for the missing bank cheque which explains everything about the promise and about "trading ahead" of the customer — the absent female whose written, male presence explains all. But what really haunts the novel is Clara's sexuality which after her death lives on, symbolised by the virus which eats away at Sandy and Dixon, which devours everything, which determines the promise and the word.

About half-way through the novel, Sandy asks himself a distinctly postmodern question:

My brother-in-law, thought Stern alone in the room... Brother. In Law. What kind of peculiar term was that?¹⁸

What Stern comes to realise, what Turow tries to come to grips with, is the distinct masculinity of the Law. What they fail to understand, what becomes the book's greatest weakness and greatest strength... is that there is clearly something missing. What is missing is the female, the unwritten, the unspeakable, that which cannot be known by the Law.

DAVID FRASER

15 See above n10.

16 See above n4.

17 See Luce Irigaray, *Speculum of the Other Woman* (1985) and my "Still Crazy After All These Years: A Critique of Diminished Responsibility" in Yeo, S M H (ed), *Partial Excuses to Murder* (1991) 112 at 120 et seq.

18 At 221.