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## Commentary on Matthewson

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# TAKING STORIES SERIOUSLY: A COMMENTARY ON GWEN MATHEWSON'S "OUTDOING LEWIS CARROLL"

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At the end of her paper, Gwen Mathewson argues that defending the law from the incursions of fictional discourse is not what is really at issue in the dissenting judgement of *Lazo-Majano v. I.N.S.* The real issue, she argues, involves defending boundaries in a more literal sense. The boundaries that the dissenting judge seems truly concerned with defending are the very same boundaries whose defence is the task of the I.N.S., namely national borders, and limits to legitimate claims on the political, legal and other resources afforded anyone who has a claim to the protection of a particular nation, in this case the United States.

I agree with Gwen Mathewson's assessment of the factors motivating the dissenting judgment. I also share what I take to be her attitudes towards such motives. In particular, I share her concern about the judgment's implications regarding who is to be allowed safe passage across borders on the one hand, and against whom, on the other hand, the boundaries are to be fortified so as to exclude them all the more effectively.

Mathewson clearly regards certain kinds of exclusions as unjust. Moreover, the use of attacks on the fictionality of certain narratives in order to achieve such exclusions, she regards as a diversionary tactic. And, furthermore, this tactic, is one, she argues, that is based on an unfounded and wrongheaded distinction.

I agree with Mathewson that a clear distinction between fact and fiction, understood as a distinction between facts and their interpretation, is impossible to achieve. However, I think we do need a distinction between kinds of fictions. To put the point as bluntly as possible, we need a distinction between legitimate and illegitimate fictions, or, to put the point another way, between acceptable and unacceptable fictions. I believe Mathewson does implicitly draw such a distinction herself.

A key part of her argument is that fictional discourse, or narrative that of necessity entails the use of imagination, is not only unavoidable, it is a valuable part of legal reasoning. About this I think she is quite right. She goes on, using excerpts from the dissenting judgment in *Lazo-Majano*, to show that elements of fictional discourse can be found even in the reasoning of someone who explicitly repudiates the importation of fictional discourse into the legal arena. About this too, I think she is correct.

I do not think it is enough, however, to argue that fictional discourse is acceptable in law, and therefore that the majority opinion in *Lazo-Majano v. I.N.S.* ought not to be open to criticism in terms of its fictional quality. We need more than this. We need the conceptual tools that would enable us to say something about the quality of the competing narratives provided by the two judgments. We need the resources to justify saying that there is something very wrong with the narrative presented by the dissenting judge. We also need the resources to justify the sort of analysis Mathewson provides of some of the flaws inherent in the majority opinion.

However, since, as Mathewson argues, fictionality is both a necessary and valuable dimension of legal reasoning, we can hardly fault either of the judgments simply by saying that they are too fictional. What are the alternatives?

I want to be able to say that the narrative supporting the dissenting judgment just doesn't ring true, that I know

what it would mean for someone to think that this is the best account of those events but that this reflects significant ideological distortion, self-delusion, false consciousness or something like that. I want also, with Mathewson, to be able to say that the narrative provided by the majority also seems somehow distortive, and to represent interests that tend to misrepresent the truth of experiences like those of Olimpia Lazo-Majano. But, to what can I appeal, to justify such an indignant outburst on my part?

It is worth noting that, in most contexts, unless I have the recourse of appeal to an epistemological standard, or other source of authority, such objections to these kinds of judgments probably would appear as nothing more than indignant outbursts. In part, I think this is a function of the fact that it is so much more difficult to defend yourself against lies told through fictional discourse than it is to defend yourself against the more bold faced variety. The slipperiness of misrepresentation in the realm of fiction threatens to make whoever takes it on look a little ridiculous. This may very well increase the ire of one who finds herself the subject of such fictions, making it even less likely that the content of her indignant outburst be heard over its hysterical tone.

This reminds me of the response I had when I first read the fifth book of Rousseau's *Emile*—the part he entitles "Sophy, or Woman". <sup>1</sup> As I read it, I wanted to cry out, and share my anger, at what struck me as nothing better than rape fantasy masquerading as philosophy.<sup>2</sup> But what provoked me was not that this part of Rousseau's discourse is fictional. The whole of *Emile* is presented in fictional form, as are, at least in part, a great many philosophically valuable works from the Platonic dialogues to the science-fictional thought experiments of Judith Jarvis Thompson. The problem is not simply with the mode of Rousseau's account of the fictional Sophy. The problem is with its content.

Rousseau could say whatever he wanted about his Sophy, were he not at the same time intending and effectively saying something about Woman, adding another piece to the dominant interpretive framework within which women's narratives are interpreted. It is something about the way that Rousseau constructs Sophy so as to resonate with a vast body of other narratives about women that so provokes my resistance. These narratives are mostly told by men, though sometimes by women; but even then they seem primarily to serve the interests of men within a male-dominant society. That is to say, the narrative perspective that is authorized by these perspectives is a perspective that assumes and reinforces male dominance. It is, in that sense, a male perspective. Perhaps it is Rousseau's self-serving female impersonation that is so galling.

It is worth making a few comments, here, on what might be meant by "narrative perspective" and "authorization". By "narrative perspective" I mean to refer to the way in which a story is told so as to authorize the experience of the narrator. To "authorize" the experience of a narrator is to legitimate a particular way of organizing information—an interpretation of events that accords with the narrator's sense of what is most salient about them and in what ways they are related to broader contexts.

What, then, if different narrators make honest attempts to describe events so as to accurately represent their experience in narrative form, or have sincere attempts made by others to reconstruct an account of the events for them? What if, in spite of their honest efforts they produce conflicting narratives. We can say that this is what we are dealing with in the case of the judgments in Lazo-Majano, if we assume good will on the part of the judges, some of whom tried to narrate the events in question from what they reconstructed as Lazo-Majano's perspective, and another one of whom represented the events from his reconstructed version of Zuniga's perspective. How are we to judge between these narratives?

I have explicitly excluded the possibility that the narrators are lying, and Mathewson rules out the possibility of deciding between the accounts on the basis of a determination that one is fact and the other is fiction. Are we left

with any alternative ways of resolving the conflict between the competing narratives?

I think we are. We can ask about relevance as well as truth. In particular we can ask about the relevance of the conflict between the truths of the competing narratives.

It is one of the flaws of an adversarial judicial system that only one account is allowed to be true, as if the truth of a narrative were an all or nothing, either/or sort of thing. But, it is hard to imagine any narrative capable of telling the whole truth. At the same time, few narratives, if any at all, are devoid of any truth whatsoever. Given that, we need to ask of the available narratives, whether they offer us enough truths relevant to the kinds of decisions that we have to make in response to the experiences related by the narratives.

Thus, in the case of the narratives that formed the basis of the judgments in Lazo-Majano, we can say that there are probably truths in both of them. Zuniga may have, as the dissenting judge believes he would have, experienced himself as being involved in a purely personal relationship, one that has no political content. This is quite consistent with his likely disinterest or incapacity to empathize with Olimpia Lazo-Majano and how she might be experiencing things. She, on the other hand, is pretty clearly experiencing a political relationship of oppression, manifested in the person and actions of Zuniga.

While these accounts conflict, they are not contradictory, unless we assume that an act must, of necessity, be experienced by whomever it effects in the way that the agent intended. I would argue that not only should we allow for the possibility that a person affected by another's action experiences it differently, we should expect this to be the case. We should expect it particularly in a society in which the narrative perspectives that people are constrained to occupy reflect real conflicts in the interests of the people who occupy them—interests conditioned by class-conflict, by racism, and by male supremacism, and, of course, by the particulars of local political conflicts.

This brings me to the point that I find most interesting about the judgment around which Gwen Mathewson's paper revolves. It is no coincidence that the narrative which is described in that judgment as fictional is a narrative which could reasonably be called a marginalised narrative, notwithstanding the somewhat surprising majority finding. As Mathewson observes, fiction is a pervasive element of legal discourse. Recognizing it as such is a somewhat rarer phenomenon, however. Narratives which resonate with the dominant perspectives can pass for raw fact. Those that don't, stand out as narrative—they look like mere stories, pure fictions—and they thereby have their marginality reinforced and apparently legitimated.

Recognizing both the necessity and the appropriateness of narrative in legal discourse, as Mathewson recommends, may bring us closer to doing justice to marginalised narrators. That is, if we take her recommendations seriously we can focus on learning to listen more carefully to the content of marginalised stories, considering whether and how they move us, rather than worrying about the fact that they must resort to the resources of the storyteller if they are to be able to move us towards understanding at all.

### *Notes*

1. I also recognized a resonance, across the centuries, between the tone of my response and that which Mary Wollstonecraft expressed in response to Rousseau in *A Vindication of the Rights of Woman*. 

2. "[Sophy's] dress is very modest in appearance and very coquettish in reality; she does not display her charms, she conceals them, but in such a way as to enhance them. When you see her you say, "That is a good modest

girl," but while you are with her, you cannot take your eyes or your thoughts off her and one might say that this very simple adornment is only put on to be removed bit by bit by the imagination." (J.J. Rousseau, *Émile*, Barbara Foxley, trans. London: J.M. Dent & Sons, 1969..pp. 356-57) 

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