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LEGAL STORIES: THE ART OF ARGUMENT IN THE WORK OF RUTHANN ROBSON

*Sima Rabinowitz**

INTRODUCTION

This paper explores the legal themes and structures in the (alleged) non-legal writing—fiction, creative nonfiction, poetry—of Ruthann Robson and finds that Robson’s creative work is as much a product of her original and sophisticated legal thinking as her legal scholarship. Jurisprudence informs Robson’s work on four distinct, but related levels: 1) as a profession for her fictional characters (or, in the special case of creative nonfiction, as her own occupation); 2) as an element, both major and minor, of plot (or, in the special case of creative nonfiction, as part of her own life’s story); 3) as an organizing principle in the world (or, in the special case of her creative nonfiction, as her personal perspective); and 4) as language, as narrative structure, as text and meta-text (both directly and indirectly as argument: “Being a writer, like being a dyke, is essentially selfish. . . . In both instances, one must put oneself first and foremost. . . . *But I want to argue* for the significance of another kind of selfishness, call it capital ‘S’ Selfishness.”¹). This last category is the most significant, as well as the most compelling. Robson’s use of legal tactics and theories to craft her non-legal prose and poetry, to construct a language that is both persistently poetic and persuasive—the frequency of hypotheticals, a focus on derivation of meaning, the tendency to theorize, the presentation of relevant cases, references to precedents, language as evidence, etc.—renders her work unique and exemplary in contemporary American letters. Robson’s approach to creative texts is an extension of her approach to her legal teaching and writing—or as Rob-

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¹ Ruthann Robson, *Striving to Be Selfish*, J. OF LESBIAN STUD., Dec. 2000, at 125, 125-27 (emphasis added).

son would almost certainly counter—is Robson’s approach to her legal texts an extension of her creative work?

EVERY ANSWER IS A (/N AUTHENTIC) QUESTION

“i thought fiction was poetry/it is theory/i thought theory was a solution/it is practice,”² asserts the speaker in Ruthann Robson’s poem *authenticity*, with lines that embody what is most original and exciting, most provocative, and most emblematic of Robson’s creative work in every genre in which she writes: poems, short stories, novels, fiction-theory, poetry-theory, creative essays, legal scholarship. Robson always asks us to think and to rethink, to double-back, to circle and encircle an issue, to question, and finally, to argue.³ To argue for what is correct factually (authentic as in right), to argue for what is smart (authentic as in true to self), to argue for what makes sense (authentic as in plausible), to argue for what is just (authentic as in reasonable), to argue for deeper understanding and for original answers—to argue for answers because everything (every person, place, or thing, every situation, every set of circumstances) is, in essence, a question and the search for original answers is always, in the most creative sense, a sort of argument.

Robson raises the art of argument to its most creative level with every question she posits, with every story she tells, and with every verse she composes. By this I mean that Robson doesn’t ask us to simply change our minds, she doesn’t attempt to persuade directly (or even indirectly) because that would constitute a case statement or a summary judgment, not fiction, not poetry, perhaps not even theory. Instead she asks us, compels us to consider what we know or what we think we know and then to consider, instead, new ways of thinking. She makes it difficult, if not impossible, in fact, not to think differently (perhaps not to feel differently), not to question, not to wonder, not to ask. Not to argue.

In this manner, Robson’s creative work is as much a product of her original and sophisticated legal thinking as her legal scholarship, equally as radical, equally as challenging, and equally as significant. What I want to *argue* here is that in Robson’s creative work argument is art and (her) art is, at its most tantalizing, most compelling, and most original, nearly always argument.

² RUTHANN ROBSON, *authenticity*, in MASKS 129, 131 (1999).

³ I use the term “argue” in its broadest possible sense throughout this essay: to reason, to debate, to give evidence, to persuade.

JURISPRUDENCE AS TEXT/TEXT AS JURISPRUDENCE

Jurisprudence informs Robson's work on four distinct but related levels: 1) as a profession for her fictional characters (or, in the special case of creative nonfiction, as her own occupation); 2) as an element, both major and minor of plot (or, in the special case of creative nonfiction, as part of her own life's story); 3) as an organizing principle in the world (or in the special case of creative nonfiction as personal perspective); and 4) as language, as narrative structure, as text and meta-text (in nearly every case, both directly and indirectly, as argument).

THE LEGAL PROFESSION

Jurisprudence informs Robson's work: 1) *as a profession for her fictional characters (or, in the special case of creative nonfiction, as her own occupation)*. For Robson's fictional characters, the **legal profession** serves a variety of purposes: it is a means of improving their economic and/or social status (law student Margaret Smyth in *a/k/a* finances her law school education with income from her job as a lesbian sex worker;⁴ Angie, in *Another Mother*, an attorney for the nonprofit Futures for Families, Inc., defends women as poor as she once was⁵); and it is means of changing the world (Andi is a lawyer for Community Economic Development in *Atlantis V*;⁶ *Poverty: A Story* centers on the nameless staff of the displaced not-for-profit Street Legal Services, which functions as its name would suggest⁷).

As a profession, the law is not only a means of earning a living, but also a way of earning respect (self-respect and the respect of others), a means for altering one's living conditions, and a method of approaching self and the world: "Besides, I've decided I'm staying with Street Legal Services, come hell or high water, or both. With a day job, I can afford to flaunt literary conventions. As for other conventions, being unconventional is virtually part of the job description at Street Legal Services."⁸

In the special case of her creative nonfiction, the law is, of course, Robson's profession, it is her livelihood, and it informs her

⁴ RUTHANN ROBSON, *A/K/A* (1997) [hereinafter ROBSON, *A/K/A*].

⁵ RUTHANN ROBSON, *ANOTHER MOTHER* (1995) [hereinafter ROBSON, *ANOTHER MOTHER*].

⁶ RUTHANN ROBSON, *Atlantis V*, in *THE STRUGGLE FOR HAPPINESS* 71 (2000).

⁷ RUTHANN ROBSON, *Poverty: A Story*, in *EYE OF A HURRICANE* 69 (1989) [hereinafter ROBSON, *Poverty: A Story*].

⁸ *Id.* at 76. The relationship between literature and the law is one which this story takes up as a central theme: law as narrative, life as narrative, narrative as convention, convention as interpretation, etc.

own approach to self and the world: "Almost everyone I know advised me to sue. Their advice was not casual, because almost everyone I know is an attorney. As am I. At 42, I'd been an attorney half my life."⁹ In Robson's work, on the most fundamental level, for her characters and for herself, the law is a way of constructing a life.

THE LAW AS PLOT AND/OR THEME

Jurisprudence informs Robson's work: 2) *as an element, both major and minor, of plot (or, in the special case of creative nonfiction, as part of her own life's story)*. Legal matters are important and frequent components of **theme and plot** in Robson's texts. Both novels *Another Mother* and *a/k/a* revolve largely around legal themes, court cases, and the work of attorneys—the law as it affects both those whose job it is to interpret it and those who live, often despite themselves, outside of it.¹⁰

In her short fiction, as Robson's characters maneuver inside the realms of the law as a profession and as a way of life, they lead us to consider what the law represents (and what it doesn't) in the world: in *Lake Hudson's Daughter*, for example, the law as arbiter of custody;¹¹ in *Listen to the Dance of the Mango*, the law as arbiter of environmental concerns (simultaneously invisible to an attack on nature and an attack on women);¹² in the long narrative poem, *Witchcraft in the Nuclear Age: thirteen accounts*, the law as a method of dealing (unsuccessfully) with abuse ("in a power plant when a man put his mouth/to her left breast and his hand over her mouth/she screamed and bit him and left a scar/he was something called a boss/she prosecuted him and she was found guilty");¹³ and in the special case of Robson's creative nonfiction, the law as potential arbiter of the medical malpractice to which she herself has been subjected:

Damages are the key element in any cause for medical practice. It is not enough that the doctors have made mistakes; these mistakes must cause damages to the patient. Although in some cases causation can be difficult to prove, in my difficult case,

⁹ Ruthann Robson, *Notes from a Difficult Case*, 21 CREATIVE NONFICTION 6, 6 (2003) [hereinafter Robson, *Notes from a Difficult Case*].

¹⁰ ROBSON, *ANOTHER MOTHER*, *supra* note 5; ROBSON, *A/K/A*, *supra* note 4.

¹¹ RUTHANN ROBSON, *Lake Hudson's Daughter*, in EYE OF A HURRICANE 59 (1989).

¹² RUTHANN ROBSON, *Listen to the Dance of the Mango*, in EYE OF A HURRICANE 99 (1989).

¹³ RUTHANN ROBSON, *Witchcraft in the Nuclear Age: thirteen accounts*, in MASKS 63, 66 (1999).

causation is unquestionable. Damages are my difficulty.¹⁴

THE LAW AS ORGANIZING PRINCIPLE IN THE WORLD

Jurisprudence informs Robson's work: 3) *as an organizing principle in the world (or, in the special case of creative nonfiction, as personal perspective)*. In Robson's work the law is a **system of categorizing people and experiences**, a way of **defining reality**. Even in stories with few or no legal themes whose characters are unconnected to the law, the law is a *de facto* way of approaching even the most ordinary of everyday situations: in *Marbalo, Lesbian Separatism & Neutering Male Cats*, the first story in *Cecile*, Robson's least overtly legal fiction, the narrator responds to her son's cries when shampoo gets in his pretend friend's eyes by trying "the remorse and restitution tactic."¹⁵

As a key **organizing principle** in Robson's work, the law is escape and entrapment: in *a/k/a*, Margaret Smyth flees not only law school, but the law, with the help of law professor Gertrude Yarnes and the love of an actor who portrays an attorney on a television soap opera;¹⁶ in *His Sister*, Jolene Fields finds that even as a criminal defense attorney she cannot flee the ever-present link to her criminal twin, there is no escape.¹⁷ The law creates the consummate insiders and the consummate outsiders: in *Close to Utopia*, Kia is "a black-white girl from some Florida swamp" whose new-found sense of competence as an attorney helps her defy the law in order to do what she believes is right and necessary, what the law can't or won't do.¹⁸ The law serves as a catalyst for change and as keeper of the status quo: in *For Love or Money*, the state is being sued for demanding more identification for drivers' licenses from Hispanic applicants than from white ones, while at the same time Florida is "not an equal opportunity employer when it comes to the matter of sexual preference," the lesbian narrator, meeting with the attorneys about the anti-Hispanic discrimination case, bitterly notes.¹⁹

And in the special case of her creative nonfiction, the law, as it represents Robson's personal perspective as a survivor of medical malpractice, offers relief and imposes restraints: "The failure to di-

¹⁴ Robson, *Notes from a Difficult Case*, *supra* note 9, at 9-10.

¹⁵ RUTHANN ROBSON, *Marbalo, Lesbian Separatism & Neutering Male Cats*, *CECILE* 9, 10 (1991).

¹⁶ ROBSON, *A/K/A*, *supra* note 4.

¹⁷ RUTHANN ROBSON, *His Sister*, in *THE STRUGGLE FOR HAPPINESS* 59 (2000).

¹⁸ ROBSON, *Close to Utopia*, in *THE STRUGGLE FOR HAPPINESS* 135, 184 (2000) [hereinafter ROBSON, *Close to Utopia*].

¹⁹ RUTHANN ROBSON, *For Love or Money*, in *CECILE* 83, 84 (1991).

agnose. The lost chance doctrine, allowing some recovery for terminally ill patients. . . . The enforcement of a gag order.”²⁰ It is precisely the relationship between language and the law that proves to be the most complex, compelling, and original aspect of Robson’s creative work.

THE LAW AS TEXT AND META-TEXT

Jurisprudence informs Robson’s work: 4) *as language, as narrative structure, as text and meta-text (in nearly every case, both directly and indirectly, as argument)*. Robson relies on **legal tactics and theories** to craft her non-legal prose and poetry—frequent use of hypotheticals, attention to derivation of meaning, the tendency to theorize, presentation of relevant cases, references to precedents, language as evidence, legal diction, rhetorical devices designed to build an argument, and related techniques—constructing a language that is both persistently poetic and persistently persuasive. On the simplest level there is an abundance of **legal diction** even in stories in which the law plays only a minor role, as in *black squirrels* where the breakup of a relationship is deemed “amicable,” the narrator defines an emotional state as related to a “tangible argument,” and the relationship with a new girlfriend is defined as one with a “co-conspirator.”²¹ The use of legal diction, however subtle, creates a context that leads the reader to consider the story’s scenes and characters “legalistically,” to consider legal issues and matters, to think, essentially, in terms of legal arguments (what is right, what is just, what is fair, what can be measured, where the evidence lies, what reasonable conclusions can be drawn), even as the story’s larger concerns may rest outside the law (what is illness, what is health, what is love, what is loyalty, how do people, or more accurately, how do women make relationships).

On a related, but more profound level Robson works frequently and skillfully with **derivation of meaning**, a tactic at which she is so adept and which plays such an important role in her writing, a longer study should certainly be devoted to analyzing it. *Studies in the Subjunctive* links the “death” of the grammatical form to considerations of her own “death,” neither of which are literal, both of which are plausible, if not possible.²² She deconstructs

²⁰ Robson, *Notes from a Difficult Case*, *supra* note 9, at 18.

²¹ RUTHANN ROBSON, *black squirrels*, in *THE STRUGGLE FOR HAPPINESS* 1, 3, 4, 30 (2000) [hereinafter ROBSON, *black squirrels*].

²² Ruthann Robson, *Studies in the Subjunctive*, *BELLEVUE LIT. REV.*, Spring 2003, at 114 [hereinafter Robson, *Studies in the Subjunctive*].

grammar and the circumstances of her own life as *if they were* (Robson would surely note here that the subjunctive is clearly not dead) a form of argument (“what if, if not”). One story sets up the expectation of (re)interpretation of language with its title *re-view*.²³ An early piece of fiction theory, *Nightshade* considers the ways in which “world” dissolves into “word,”²⁴ and in *text*, the whole of which is an exploration of derivation of meaning at its deepest and most essential level, the speaker asserts: “Risk is a noun. Risk is a verb.”²⁵

Robson’s preoccupation with the multiple functions a phrase or word can serve transforms much of her work into an extended argument in the truest sense of the word, as dialogue, as dialectic, one in which she engages the reader again and again: risk can be a verb, risk can be a noun, *what do I mean, what do you understand*, she seems to be asking. Naturally, she is also asking, *what do you mean by risk*, as she implicates us in every assertion, every question, every answer, in every argument.

Asking “what if, if not?” is natural for and central to explorations of the subjunctive in *Studies in the Subjunctive* as it is the grammatical device that allows for consideration of **hypotheticals**.²⁶ But variations of “what if, what not” figure largely, as well, even in much of the work not linked directly to interpretations of language. As a tactic in legal arguments, hypotheticals may serve, paradoxically, both to enlarge and to narrow a discussion, and in Robson’s texts, they work in much the same manner, shifting attention away from the evidence or emotions or ideas immediately before us and then refocusing our attention on them, however changed, once again. Robson’s narrators and characters (and Robson as herself in the case of her creative nonfiction) argue with themselves, argue with her readers, and argue with “reality” through their incessant questioning, their relentless preoccupation with “what if.”

In the middle of lovemaking, the narrator in *Lives of a Long-Haired Lesbian: Four Elemental Narrations* considers the evidence on-hand (“We share the same sexual proclivity Our proclivity is toward similarity Here we are. The rain. The lavender ocean. The clean quilt. Our earrings clink against each other. A crisp tongue runs along my fisted knuckles. I scratch an edge of beard

²³ RUTHANN ROBSON, *re-view*, in *THE STRUGGLE FOR HAPPINESS* 45 (2000).

²⁴ RUTHANN ROBSON, *Nightshade*, in *MASKS* 107 (1999) [hereinafter ROBSON, *Nightshade*].

²⁵ RUTHANN ROBSON, *text*, in *MASKS* 101, 102 (1999) [hereinafter ROBSON, *text*].

²⁶ Robson, *Studies in the Subjunctive*, *supra* note 22.

and ear. The hair on our shins ruffle.”²⁷) and constructs an argument based on what is and what isn’t apparent (“If Chris is a man, then I must be a man. If I am a woman, then Chris must be a woman. An anthropologist might call this sex. A sociologist might not.”²⁸). As the argument progresses, the questions shift: *is this character a lesbian? And if/since she is, what is a lesbian?* the reader asks. Lesbians do/can have sex with men. Lesbians do not/cannot have sex with men. Plot becomes argument, argument becomes plot.

Robson opts for a tactic that functions successfully in many of her most accomplished pieces—she converts the hypotheticals into a form of conflicting evidence through statements, rather than questions: “It would be easy to say I loved her, easier to say I did not;”²⁹ “Everything leads them away from this moment./And nothing does;”³⁰ “It looks like rain. Perhaps. In a few days. Or perhaps not;”³¹ “[T]hat’s what happens when you live in Queens,’ I would say to Marisa. Or maybe I wouldn’t;”³² “Every self-portrait I’ve done has been/someone else.”³³

I can argue either way she tells us, both arguments are valid, both realities are true. *Believe what I am telling you here. Don’t believe it. Argue with my text, argue with me, (argue with yourself)* she seems to be saying or perhaps demanding. Derivation of meaning and the use of hypotheticals represent merely two of numerous legal tactics these texts employ. Robson, her narrators, and her characters theorize, summarize evidence, build, deconstruct and rebuild arguments through a rich and diverse range of techniques and tactics, which include, but are not limited to, **repetition**: “It helps me pass the time. It helps me convince myself that I am still interesting It helps me to ignore the carcasses of my frost-crucified tomato plants It helps me to ignore the songs of the birds . . . ;”³⁴ “you who say words without a color/you who says ‘stranger’/you who say words you cannot mean/you who say ‘property’/you who try to hide your smile;”³⁵ “Each can hear the sounds of the outside:

²⁷ RUTHANN ROBSON, *Lives of a Long-Haired Lesbian: Four Elemental Narrations*, in EYE OF A HURRICANE 105, 109 (1989) [hereinafter ROBSON, *Lives of a Long-Haired Lesbian*].

²⁸ *Id.* at 109.

²⁹ RUTHANN ROBSON, *The Room(s)*, in CECILE 23, 25 (1991).

³⁰ RUTHANN ROBSON, *historicity*, in MASKS 116, 128 (1999).

³¹ ROBSON, A/K/A, *supra* note 4, at 276.

³² ROBSON, *Close to Utopia*, *supra* note 18, at 144.

³³ RUTHANN ROBSON, *Self-Portrait of Frida Kahlo Without a Mustache*, in MASKS 58, 59 (1999).

³⁴ ROBSON, *black squirrels*, *supra* note 21, at 6-7.

³⁵ RUTHANN ROBSON, *neolithic*, in MASKS 7, 19 (1999).

traffic and sirens. Each can hear the sounds from the other side of the door . . . Each can hear the other's breath;"³⁶ **interpretation of textual evidence or documentation:** lines of letters from a hospital in *story time*;³⁷ the tape of an interview in *Inter/views*;³⁸ a phrase from Nicole Brossard in *Nightshade*;³⁹ catalogue copy in *Another Mother*;⁴⁰ criminal indictments in *a/k/a*;⁴¹ citations from Fowler's *A Dictionary of Modern English Usage* in *Studies in the Subjunctive*;⁴² the directions on a can of vegetables in *Artichoke Hearts*;⁴³ and **questioning/interrogation/debate:** "If you were a student (as all readers are) and I were a professor (which is, in fact, how I earn a living), and I asked you to identify the main ideas in the preceding paragraph, what would you answer?";⁴⁴ "But what about poetry?/What about the poem and the poet?//What about the lesbian lesbian:/constructed in her essentials;/essential in her constructions?";⁴⁵ "I'd had hepatitis as a college student, couldn't the lesions on my liver be a result of that? . . . No, my oncologist insisted. No. No. No. No. No. . . . Do you have any symptoms? No. No. No. No. No. No."⁴⁶ Question. Answer. Question. Answer. Question. Answer. Question. Answer. Every poem, every story, every work of fiction theory, every essay is both question and answer, answer and question, an endless, artful argument.

NOT FOR ARGUMENT'S SAKE

Robson does not argue for the sake of argument, just as she does not create art for art's sake. She argues, brilliantly and purposefully, she creates art exquisitely and masterfully, for the same reason she teaches law: to change her readers/students, to change our reading, to change our thinking, and by extension to change us and to change the world:

In my first "trial," a simulated case during a criminal law clinical course, the professor assigned me to prosecute a woman who had allegedly shot her husband while he was assaulting her

³⁶ ROBSON, *A/K/A*, *supra* note 4, at 274.

³⁷ Ruthann Robson, *story time*, 41 *ANOTHER CHICAGO MAGAZINE* 216, 222-23 (2002) [hereinafter Robson, *story time*].

³⁸ RUTHANN ROBSON, *Inter/views*, in *EYE OF A HURRICANE* 29 (1989).

³⁹ ROBSON, *Nightshade*, *supra* note 24, at 107.

⁴⁰ ROBSON, *ANOTHER MOTHER*, *supra* note 5, at 5.

⁴¹ ROBSON, *A/K/A*, *supra* note 4.

⁴² Robson, *Studies in the Subjunctive*, *supra* note 22, at 115.

⁴³ RUTHANN ROBSON, *Artichoke Hearts*, in *EYE OF A HURRICANE* 41, 46 (1989).

⁴⁴ Robson, *story time*, *supra* note 37, at 216.

⁴⁵ ROBSON, *text*, *supra* note 25, at 105.

⁴⁶ Robson, *Notes from a Difficult Case*, *supra* note 9, at 14, 18.

for the hundredth time. I did a commendable job, even making a few sophisticated evidentiary objections. The major criticism, however, was that I did not display sufficient zealousness. The professor told me that he knew I would hate prosecuting the woman, but that he thought I would learn a lot. He was especially interested in teaching me that I could do something well even if it was a cause in which I did not believe. He assured me that with practice, I could learn to demonstrate more zealousness.

I agreed then and still agree that I learned a lot, including the intended lesson. Much of my agreement is attributable to the ways in which I have been domesticated by lawyering skills training. As a teacher, I am often tempted to repeat this lesson on my lesbian law students. After all, I want them to be able to “think like lawyers.”⁴⁷

It's not that Robson wants or expects her readers “to think like lawyers.”⁴⁸ It's that she wants and expects us to think—to question, to debate, to argue, to consider and reconsider, to ask, to answer, and to ask again. In her creative texts Robson relies on the legal strategies, structures, and tactics that emphasize, foster, and even nurture the habits and tendencies that require us to argue (with her, her narrators, her characters, her texts, and with ourselves), the theories (practices?) and practices (theories?) that demand heightened attention to evidence and detail, that force us to examine and re-examine what she tells us, what we know, what we believe, what we feel, and what we think. If this is not her stated or even her intended purpose, it does not matter, for it is one she nonetheless achieves. Again and again. Text after text. Argument after argument.

As Robson conceives of and constructs art as argument and raises argument to the level of art, she challenges and changes not only her readers, but the very nature of both. As she makes a unique and exemplary contribution both to the law and to American letters, Robson engages her readers as she must certainly engage her students, with story, with lyricism, and with deliberate, careful, poetic and artful argument:

⁴⁷ RUTHANN ROBSON, *LESBIAN (OUT) LAW: SURVIVAL UNDER THE RULE OF LAW* 181-82 (1992).

⁴⁸ *Id.*

i am writing a book about post-patriarchal cultures
can you read it?

i am sipping a cup of mottled coffee
can you join me?

i am living my life as if—
will you?⁴⁹

⁴⁹ RUTHANN ROBSON, *the last decade of patriarchy*, in MASKS 93, 98 (1999).