

## Book Review

Robert F. Barsky, *Clamouring for Legal Protection: What the Great Books Teach Us About People Fleeing from Persecution*, Oxford: Bloomsbury Publishing, 2021, pp. 271, \$90 (hardback).

Reviewed by Cori Alonso-Yoder

In his latest book, Robert F. Barsky makes a plea for empathy toward those seeking humanitarian protection by deepening our understanding of the humanities. In *Clamouring for Legal Protection: What the Great Books Teach Us About People Fleeing from Persecution*, Barsky suggests that the plight of refugees and other border crossers can be better understood by reference to classic literature. While his study is based in the law and literature movement, the book is accessible to those without that specialized background. Indeed, Barsky has crafted a book that, according to the back cover synopsis, will appeal to “law students, lawyers, social scientists, literary scholars and general readers who are interested in learning about international refugee law and immigration.” Barsky makes the point that literary theory and storytelling serve as antidotes to the sometimes impersonal and mechanical application of laws, regulations, and dry court decisions that predominate in immigration law. He argues that students and practitioners can use literary texts to move beyond the legal texts to rehumanize the experiences of migrants. The core of Barsky’s thesis about the humanizing and persuasive effect of storytelling in the law is well founded and has been championed by a number of scholars including Gerald P. López,<sup>1</sup> Margaret Montoya,<sup>2</sup> Richard Delgado,<sup>3</sup> Robin West,<sup>4</sup> and Patricia Williams.<sup>5</sup>

In this review, I suggest that a clear limitation of the book, identified by Barsky as well, is the somewhat constrained literary canon from which it draws.

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1. Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984).
2. Margaret E. Montoya, *Mascaras, Trenzas, y Grenas: Un/Masking the Self While Un/Braiding Latina Stories with Legal Discourse*, 17 HARV. J. L. & GENDER 185 (1994).
3. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).
4. Robin West, *Communities, Texts, and Law: Reflections on the Law and Literature Movement*, 1 YALE J.L. & HUMAN. 129 (1988).
5. Patricia J. Williams, *On Being the Object of Property*, 14 J. WOMEN CULT. & SOC. 5 (1988).

Particularly as it relates to centering the stories of outsider perspectives, it is critical to expand the canon to embrace the works of authors from historically excluded groups. While Barsky acknowledges this concept, there are points in the book where I suggest he could have reached further to incorporate those narratives. Despite this critique, I found Barsky's book to be of great value as a teaching tool on narrativity in advocacy, particularly in the context of immigration law. As efforts to further limit asylum access and chill migration dominate the headlines, Barsky reminds us of the power in stories, told and untold.

### Journeying Through the Text

Themes in literature and their importance for the modern refugee crisis are where Barsky lays his scene. In addition to his introduction and conclusion, Barsky organizes these intersections into five chapters that situate migrant experiences into themes from literature. Chapter 1 discusses the limitations on movement and migration that are the results of pandemics and disease, Chapter 2 looks at the importance of guides or intermediaries in the migrant and literary journeys, Chapter 3 examines the breaching of walls, doors, and boundaries. In rounding out the journey, Barsky's fourth chapter looks at the outsider's arrival to an inhospitable destination, and finally, Chapter 5 compares the monsters from literature with the problem of migration.

In taking the reader through this journey, Barsky focuses primarily on the canon of Western literature. Given Barsky's expertise in English, French, and Italian literature, works in these traditions are natural points of departure. Yet in a much subtler way, these languages and the societies in which they are spoken account for the countries to which many of the world's estimated 82.4 million<sup>6</sup> refugees arrive, and of this Barsky is acutely aware. As he wonders, "what does it take to convince someone in France that they are not fundamentally dissimilar from someone who had once led a middle-class life in Aleppo" (47)? With the release of his book in 2021, Barsky did not yet have the example of the West's response to the refugee crisis caused by the Russian invasion of Ukraine as a reference. In that conflict, many commentators have remarked on the exceptionally sympathetic reception of Ukrainian refugees who are "like us."<sup>7</sup> By contrast, people fleeing Africa, Haiti, Central America, and the Middle East continue to be met with general apathy or outright hostility. By invoking the texts these receiving countries hold dear, Barsky seeks to inspire compassion and self-identification with the societal other.

6. UNHCR, *Figures at a Glance*, <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

7. Kenan Malik, *The People of Ukraine Need Our Solidarity. But Not Just Because They're 'Like Us,'* THE GUARDIAN (Mar. 6, 2022), <https://www.theguardian.com/commentisfree/2022/mar/06/people-of-ukraine-need-our-solidarity-not-just-because-theyre-like-us> (quoting British politician Daniel Hannan, who decried the Russian invasion on Ukrainian citizens who "seem so like us.").

### On Legal and Literary Admission and Exclusion

In advancing this thesis, Barsky is appropriately aware of the limitations of his own expertise and the problem of understanding individuals from multicultural, often non-Western, lived experiences through the lens of literature authored primarily by white American and European authors. In his introduction, Barsky acknowledges the controversial task of deeming a work of literature to be among the “Great Books.” As he observes, “[p]eople might debate whether *the* canon should contain Toni Morrison’s *The Bluest Eye*, or James Baldwin’s *Another Country* instead of (or alongside), say, Ralph Ellison’s *The Invisible Man*, or Alice Walker’s *The Color Purple*; but whichever texts are ultimately chosen, a canon emerges” (9).

Despite invoking this collection of African American authors, Barsky ultimately focuses his analysis and commentary on works “such as Sophocles [sic] *Oedipus Rex*, Dante’s *Divine Comedy*, Mary Shelley’s *Frankenstein*, or Bram Stoker’s *Dracula*,” explaining that these texts “creat[e] a sense of shared experience [. . .] even if the text to which their name refers remains, for the vast majority of the population, unread” (9). Indeed, this challenge was identified early into the law and literature movement. In his 1988 book *Law and Literature: A Misunderstood Relation*, Richard Posner bemoans the lack of emphasis on the classics of Western literature in most law students’ undergraduate studies. According to Posner, this is due in part to fields of study including computer science, economics, and mathematics that have “crowded out curricular space formerly devoted to literature,” as well as to the rise of popular culture and new media.<sup>8</sup> But Posner also points to the politics of defining the classics, observing that “professors of literature have lost confidence in their authority to prescribe a fixed canon of classical works in the face of demands by women and members of minority groups for admission of works by the members of their groups to the canon.”<sup>9</sup>

It is statements like this that make Barsky’s project all the more important and insightful. In a wonderful bit of playful double meaning, Barsky titles his introductory chapter “Opening Up the Great Books.” By using this label, Barsky simultaneously acknowledges the literary texts that have gained admission into the canon while urging a broader understanding of potential admittees to that corpus. This is a delightful approach, because it is also an artful metaphor for the text of immigration law and its questions of admission to and exclusion from the United States. In her scholarship on law and literature, Robin West has spoken of the voices, perspectives, and experiences that are excluded from textual communities in the law and in literature.<sup>10</sup> In the text of the U.S. Immigration and Nationality Act, such exclusion is explicit and laid out in bitter detail among the classes of “inadmissible aliens” enumerated in § 212.<sup>11</sup>

A system of more liberal admission is central to Barsky’s project in *Clamouring for Legal Protection*. While Barsky tends to focus his commentary on the plight

8. RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* 360 (1988).

9. *Id.*

10. West, *supra* note 5.

11. Immigration & Naturalization Act § 212, 8 U.S.C. § 1182 (2020).

of those seeking protection from persecution, he also stresses the importance of freedom of movement regardless of the precipitating factors. In Chapter 2, “Following Pathways, Networks and Guides,” Barsky explores (among other works) Franz Kafka’s *The Trial* and the bureaucratic hurdles navigated by its protagonists: “[L]ike desperate refugees in new lands, both Jude and K constantly commit missteps as they search for a resolution to their cases.”<sup>12</sup> By contrast, Barsky invokes the journey of Alice in Lewis Carroll’s *Alice in Wonderland* as the ideal parable for the experience of human migration:

[Alice] reminds us that travel should be a choice, and should neither be imposed upon us by horrifying circumstances, nor controlled by draconian regulations. I would like us to look forward to a world in which freedom of movement isn’t a pie-in-the-sky utopian dream, but rather a part of life that we exercise at our own will, when we want it, to the destination we desire, and for no other reason than, say, to enjoy unexpected experiences with new acquaintances. A portion of the population lives with this expectation, and so should everyone.

While Barsky argues that the texts of classical literature can humanize the experience of those escaping humanitarian crises, he is also sympathetic to the broader questions of freedom, self-determination, and privilege that characterize movement across borders. Though he positions this loftier aspiration within the literary context of outsiders seeking in-group admission, he simultaneously cracks the door open to a broader group of literary texts to join the narratives by which we understand the common human experience of migration. Yet I found that despite Barsky’s rhetoric of inclusion, he missed opportunities to further nudge the door open.

The work of celebrated authors who have navigated the experience of immigration and persecution could have served as important additions to Barsky’s project and its emphasis on the literature of asylum and migration law. Authors Isabel Allende and Julia Alvarez have both experienced flight from political persecution and explored those themes in their literary works. In his introduction, Barsky names Allende among other notable refugees but suggests that her work is outside of the scope of his project. After including her name along with the likes of Anne Frank, Albert Einstein, M.I.A., and Freddie Mercury, he notes, “[h]owever, I am focusing instead on literary texts, and the characters therein, and proposing that fiction might serve a complementary role of stimulating empathy in regards to flight and the crossing of borders” (3). This rejoinder seems to discount Allende’s literary work and characters. Her most famous novel, *The House of the Spirits*, reflects some of the themes Barsky explores, including in particular the opening of doors and scaling of walls from Chapter 3. According to one commentator, “Allende’s characters tend to inhabit the borderlands, and her fiction constitutes a series of battles for agency and inclusion that take place in physical contact zones and the symbolic spaces of writing.”<sup>13</sup>

12. Barsky, *supra* note 1, at 146.

13. KAREN WOOLEY MARTIN, ISABEL ALLENDE’S HOUSE OF THE SPIRITS TRILOGY: NARRATIVE GEOGRAPHIES 43 (2010).

Of course, Barsky does not claim to do a review of all relevant or important works that reflect the themes of migration and asylum seeking. And, as explored later in this review, he does spend considerable time analyzing the work of Ariel Dorfman, who was exiled from Chile following the military coup that also led to Allende's flight from her home country (247). Yet, this lack of engagement with Allende, despite invoking his awareness of her importance to the themes of his book, seems like a missed opportunity.

At other points in the book, Barsky seems not to appreciate the perspectives of the historically excluded. In Chapter 2, Barsky juxtaposes the motifs of travel on a quest to find treasure with the narrative of travel to promised lands. For the first theme, Barsky discusses Robert Louis Stevenson's *Treasure Island*. Barsky asks, "who wouldn't be tempted to embark upon a journey that promised treasure [. . .] whatever this treasure might be [. . .] shouldn't it be possible to pursue it?"<sup>14</sup> This question invokes some of the settler-colonial history that has set the stage for today's U.S. immigration restriction. Colonists and settlers arrived to the United States in search of treasure while displacing, removing, and ultimately excluding its original inhabitants. This romanticized vision of the pursuit of treasure is partially why the Great Books are susceptible to greater expansion from new perspectives.

### **"From Vulnerable to Unwanted and Diseased"**

One of the major and most timely themes explored in Barsky's fascinating exploration of law and literature is how pandemics in the classics explain modern immigration policy. Barsky discusses how disease, isolation, and especially fear provide important opportunities for the shaping of narratives drawn from literature to mold modern politics. His discussion of the coronavirus pandemic, a theme that emerged during his time crafting the book, offers an important example of the fear-based counternarratives wielded against asylum seekers. Barsky points to plagues in literature, including in texts such as Fyodor Dostoevsky's *Crime and Punishment*, to explain how the pandemic offers a rhetoric of blame that, through narrative, transforms the "vulnerable to unwanted and diseased" (37). When the firsthand accounts of millions of asylum seekers are suppressed, the rhetoric of exclusion is all the more potent.

At the time of this writing, the U.S. government is expelling asylum seekers attempting to enter the United States without offering them the opportunity to present their claims for protection. Under the authority of U.S. Code 42 U.S.C. § 265, also known as Title 42, people seeking protection may never have the opportunity to tell their stories. They are certainly far less likely to have a lawyer to help them even if given the chance. This provision of federal public health law has permitted the U.S. government to expel millions of people seeking to cross the U.S. border since the early months of the coronavirus pandemic in March 2020.<sup>15</sup> While the government premised this action on the need to limit

14. *Id.* at 115.

15. John Gramlich, *Key Facts about Title 42, The Pandemic Policy That Has Reshaped Immigration Enforcement at U.S.-Mexico Border*, PEW RES. CTR. (Apr. 7, 2022), <https://www.pewresearch.org/>

the spread of the coronavirus, related policy decisions reveal how the narrative of disease management is merely a pretext. In February 2023, with the government's pandemic-related policies planned to sunset, the Biden administration announced a new proposal to limit asylum seekers' entry to the United States.<sup>16</sup> In turning them away, the government not only denies protections provided for under U.S. and international laws, it also assures that it will never have to reckon with these people's stories.

### Reframing the Narrative of the Monstrous

There is, of course, a proliferation of narratives that we may hear in the absence of the firsthand accounts of those who cross borders seeking protection. While the pandemic offers an immediate instance of fear-based rhetoric, Barsky looks to other literary examples to expose this theme more generally and how it operates in immigration policy. Consider the language of invasion advanced by far-right leaders such as Donald Trump in the United States<sup>17</sup> and Viktor Orbán in Hungary.<sup>18</sup> Yet when it comes to understanding the worldview of Trump, Orbán, and those to whom they appeal, Barsky suggests that literary texts like Bram Stoker's *Dracula* are instructive. Stoker's gothic novel warns of the foreigner whom the unsuspecting and naïve welcome into their midst only to be rewarded with death and destruction. Indeed, even the spread of vampirism resonates with governments' efforts to limit the spread of the pandemic and to characterize immigrants as the carriers of a dreaded and life-altering disease.

The Chilean playwright Ariel Dorfman's play *Death and the Maiden* also figures into Barsky's chapter "Encounters with Aliens, Monsters, Terrorists." I initially struggled with this chapter, as it seemed to backslide from Barsky's central thesis that literary works can create empathy for migrants and refugees. Comparing their experiences with those terrifying or monstrous creatures of literature seemed an invitation to dehumanization of the immigrant experience. In the end, I finished the chapter feeling that it did the most to advance my understanding of our culture's reaction to migrants and migration. Barsky makes the point that fear and hatred of the other is an ultimately self-destructive response to the alien, the monster—a being who at its core exists only in our own collective imagination. Returning to *Death and the Maiden*, Barsky points to Dorfman's assessment of the play's characters: "They wonder, as I do, if we

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fact-tank/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/.

16. Rebecca Santana, *How New Biden Asylum Rule Affects Immigration, Compares to Trump*, PBS NEWS HOUR (Feb. 22, 2023), <https://www.pbs.org/newshour/politics/how-new-biden-asylum-rule-affects-immigration-compares-to-trump>.
17. Ben Zimmer, *Where Does Trump's 'Invasion' Rhetoric Come From?*, THE ATLANTIC (Aug. 6, 2019), <https://www.theatlantic.com/entertainment/archive/2019/08/trump-immigrant-invasion-language-origins/595579/>.
18. Elżbieta M. Goździak, *Using Fear of the "Other," Orbán Reshapes Migration Policy in a Hungary Built on Cultural Diversity*, MIGRATION POL'Y INST. (Oct. 10, 2019), <https://www.migrationpolicy.org/article/orban-reshapes-migration-policy-hungary>.

will be able to find a way out of the endless cycle of hatred and retribution in which our species seems to be trapped.” (250). In *Clamouring for Legal Protection*, Barsky uses literature to demonstrate how our politics of fear and exclusion does less to keep the monsters out than it does to unleash the monsters within.

### **The Beginning of a Discussion to be Continued in the Classroom**

While the book offers an important discussion on literature and liberation, Barsky’s awareness of his own limitations in taking on this important conversation serves to underscore the importance of his project. As explained earlier in this review, he recognizes the need to continue to expand the canon and invite commentary from voices historically excluded from law and literature—especially on the topic of asylum seeking and border crossing. With *Clamouring for Legal Protection*, he is beginning a conversation that builds on literary tenets that have formed the unquestioned foundation of Western literature. His hope is that “this book marks the beginning of our discussions, rather than the definitive word on the fascinating overlap between narratives, borders and the laws relating to both” (251).

As Barsky acknowledges, his book uses the cultural texts of the majority to advocate for the rights of the minority. This reflects not only Barsky’s own scholarly expertise, but also the present reality that the powers best positioned to immediately improve the plight of migrants are the adjudicators and lawmakers who most likely share majoritarian cultural influences. Barsky’s reliance on the literary texts of the majority has an important resonance with the *legal* texts of the majority. In law and society, we have a system that preferences majoritarian interests. Those works that are most widely read, critically acclaimed, and commercially successful gain passage into the literary canon. Similarly, those policies that are most popular will generally receive the political support necessary to pass into law within our democratic system. By aligning the experiences of the politically powerless minorities seeking recognition and refuge to well-known literary works, Barsky is appealing to both individual adjudicators as well as law and policymakers. Yet, greater inclusion of marginalized perspectives suggests different stories may soon supplement the existing narratives.

When it comes to narratives associated with the pursuit of a “promised land,” Barsky explores the journey of the Joad family in John Steinbeck’s *The Grapes of Wrath*. Journeying from Oklahoma to California in search of prosperity and the so-called American Dream, the Joads are met with heartbreak and disappointment. To broaden the appeal of this narrative, future generations may find resonance in the Mexica legend of the founding of the Aztec capital Tenochtitlan in modern-day Mexico City. According to this legend, the god Huitzilopochtli directed the Mexica people to leave their home in Aztlan and settle a new homeland. The people would know the location because they would find there an eagle perched on a cactus eating a snake.<sup>19</sup> For the threat posed by admission of foreigners, future scholars may look not to *Dracula*, but

19. *Tenochtitlan*, NAT’L GEOGRAPHIC: RESOURCE | ENCYCLOPEDIA ENTRY, <https://education.nationalgeographic.org/resource/tenochtitlan> (last visited May 20, 2022).

to the history of La Malinche or Malintzin, the Mexica translator who assisted Hernán Cortés and his Spanish conquistadors in the conquest of the Aztec Empire.<sup>20</sup> With the pedagogical expansions represented by ethnic studies in the humanities and critical race theory in the law, possibilities for a broader set of stories are now more accessible. Continued demographic shift<sup>21</sup> will also foster a broader dialogue with a more diverse set of common narratives.

### Narrative and Literature in the Law School Classroom

The image is of a man holding two children, each by one hand, their backs to the camera, walking in the desert. What stories we tell about this trio is critical to determining the ultimate conclusion of their journey. This prompt is one that I have used for several years to introduce students studying immigrant justice to the importance of persuasive narrative.<sup>22</sup> As lawyers, I tell my students, the narrative we develop gives the facts meaning and purpose and provides the decision-maker an opportunity to resolve the story in a way that achieves the client's objective. Ethos, pathos, and logos, the classical elements of persuasion championed by the Greek philosopher Aristotle, are important tools for getting there. I teach my students that an important aspect of the Aristotelian elements of persuasion is to combine one's ethos, pathos, and logos in appropriate measure to appeal to one's audience and its worldview, using stock stories that are familiar to that viewpoint.<sup>23</sup> In their article examining the use of narrative in litigation, attorneys Ty Alper, Anthony G. Amsterdam, Todd E. Edelman, Randy Hertz, Rachel Shapiro Janger, Jennifer McAllister-Nevens, Sonya Rudenstine, and Robin Walker-Sterling observe that:

Stock scripts and stock stories accreted from exposure to the accountings and recountings that continually bombard us—through television, movies, newspapers, books, the internet, and word of mouth from our earliest childhood—provide all of us with walk-through models of how life is lived, how crimes are committed, how reality unfolds.<sup>24</sup>

When teaching students the importance of narrative in lawyering for litigation and policymaking, I have assigned the Alper et al. article, and we have

20. Farah Mohammed, *Who Was La Malinche?*, JSTOR DAILY (Mar. 1, 2019), <https://daily.jstor.org/who-was-la-malinche/>.
21. Jong Zie, *A Mosaic, Not a Monolith: A Profile of the U.S. Latino Population, 2000-2020*, UCLA LATINO POL'Y & POLS. INST. (Oct. 26, 2022), [https://latino.ucla.edu/research/latino-population-2000-2020/#:~:text=Since%20then%2C%20Latinos%20have%20been,population%20\(sec%20Figure%201\) \(reporting that by 2060 "the Latino population is projected to increase to 111.2 million, or 28% of the U.S. population"\)](https://latino.ucla.edu/research/latino-population-2000-2020/#:~:text=Since%20then%2C%20Latinos%20have%20been,population%20(sec%20Figure%201) (reporting that by 2060 ).
22. Professor Jayesh Rathod at American University Washington College of Law introduced me to this exercise in his role as my former co-teacher and Director of the Immigrant Justice Clinic.
23. Ty Alper et al., *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 N.Y.U. CLINICAL L. REV. 1, at 7.
24. *Id.*



also explored narratives from fairy tales and fables. Barsky's work will serve as a helpful complement to some of these resources, particularly given his efforts to update these narratives to account for ongoing and emerging challenges in immigration policy.

The book is of specific value to students studying narrative and persuasion within the context of experiential legal education and immigrant representation. In this context, Barsky's approach may appear at odds with the central precept of client-centered lawyering that animates many clinical legal educators' philosophies of legal practice. By referencing texts displaced in time, geography, and sociocultural status, Barsky risks obscuring the reality of migrants' lived experiences. Again, Barsky addresses this tension in his introduction. He very astutely observes: "There is no lack of narratives about refugees, undocumented migrants and other vulnerable people trying to cross borders to find safety from harm or destitution. What is the value of comparing their plight to well-known characters from canonical works who may have confronted similar challenges?"

The answer, according to Barsky, is relational. People are more likely to give the benefit of the doubt to those they know, or to whom they relate. The familiarity of fictional characters such as Lewis Carroll's Alice can serve as a sympathetic stand-in for the unfamiliar real-life migrant. While this focus on fiction may seem inconsistent to a legal practice that centers a client's lived experience, artful lawyering can structure narratives that provide for successful coexistence. By using the familiar literary themes explored in *Clamouring for Legal Protection*, lawyers can invoke the stock stories that provide structure and meaning to the loose collection of relevant facts presented in a client's experience. By acquainting themselves with some of these themes and motifs, lawyers can draw on a common cultural experience to persuade decision-makers of the righteousness of a client's claim or a need for policy reform.

Until Barsky's book, there have been few resources to tie the important legal skills of narrative theory and storytelling to the context of immigration law.<sup>25</sup> While it is critical to continue to expand the body of authors and works that enter into the literary canon, Barsky has begun an important dialogue. *Clamouring for Legal Protection's* connection of immigration law to literature is unique, insightful, and a much-needed addition in advancing the Kafkaesque, David-versus-Goliath struggle for immigrant justice.

25. For a notable exception, see Stacy Caplow, *Putting the "I" in Wrting: Drafting an A/Effective Personal Statement to Tell a Winning Refugee Story*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 249 (2008).