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“I Must Tell the Whole World”:¹ Septimus Smith as Virginia Woolf’s Legal Messenger

RILEY H. FLOYD*

INTRODUCTION

One hundred years after the “global cataclysm”² of the First World War, there is no shortage of scholarship on the Great War.³ Narrowing the scope of inquiry to international law and its relationship to the war winnows the field.⁴ On the eve of the war, international law was, compared to prior wars, relatively advanced.⁵ Despite this advancement, international law remained exceedingly malleable. With broadly phrased rules (i.e., treaties) operating at the state level, the belligerents attempted to “define, systematize, and reduce to writing many of the rules governing the conduct of war on land and sea” in field manuals.⁶ States’ reputational concerns influenced this attempt at restraint.⁷ Killing was permissible; inhumanity was condemned.⁸

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1. VIRGINIA WOOLF, *MRS. DALLOWAY* 59 (David Bradshaw ed., Oxford Univ. Press 2009) (1925).

2. Timothy William Waters, Seminar in International Law: Logics and Legacies of the Great War I (unpublished syllabus) (on file with the Indiana Law Journal).

3. A Westlaw search (conducted on June 3, 2016) of law reviews and journals returned 9879 results for the search term “World War I.”

4. A Westlaw search (conducted on June 3, 2016) of law reviews and journals returned 1203 results for the search phrase “‘World War I’ /p ‘international law.’” The search phrase “‘World War I’ /s ‘international law’” returned 451 results.

5. James Garner provides a particularly appropriate characterization:

From a body of tradition and custom, the law of war has gradually developed . . . into a fairly definite system of rules, many of which are now embodied in international conventions and declarations, and in official manuals or ordinances issued by States for the guidance of their military and naval commanders.

1 JAMES WILFORD GARNER, *INTERNATIONAL LAW AND THE WORLD WAR* 2 (1920).

6. *Id.* at 12.

7. Coleman Phillipson defined international law along reputational lines:

[International law consists of] a body of jurisprudence which is supported not by the sanction of the policeman, but by the greater sanction of universal opinion, universal consent, universal conviction, universal will, added to the universal recognition that violation of the rules thus laid down will in the long run bring evil on the violator himself.

COLEMAN PHILLIPSON, *INTERNATIONAL LAW AND THE GREAT WAR* 51 (1915).

8. *See, e.g.*, 2 JAMES WILFORD GARNER, *INTERNATIONAL LAW AND THE WORLD WAR* 473 (1920) (“[T]he killing by a soldier of a person belonging to the enemy’s forces or the taking of private property in occupied territory are lawful acts of war only when they are done in the

While the field manuals cemented the legality of individuals' actions on the battlefield, the manuals did not account for the personal toll those actions would take. The manuals did not address the moral qualms that arise when mass, state-sanctioned violence (made possible by brutalizing technological developments) becomes permissible. This Note explores the moral uncertainty that riddles the space between the formal rules in the manuals and the soldiers' individual pangs of conscience.

This Note explores the disjunctive moral gap between a civilian ethic of mutual responsibility⁹ and the laws of war that eschew that ethic. To illustrate that gap, this Note conducts a case study of Virginia Woolf's rendering of shell shock in her 1925 novel *Mrs. Dalloway*. The war put mass, mechanized killing at center stage, and international law permitted killing in war.¹⁰ But Woolf's character study of Septimus Smith reveals that whether war-associated killing is "criminal" requires more than legal analysis. An extralegal approach is especially meaningful because it demonstrates the difficulty of processing and rationalizing global conflict that plays itself out in a localized way—on the consciences of individual soldiers. Law may constrain war, but law does not constrain pangs of conscience. Woolf's novel illustrates this salient reality.

"I have—I have . . . committed a crime——." ¹¹ So says Septimus Smith, the shell-shocked British veteran in *Mrs. Dalloway*. Three of Woolf's interwar novels¹² contain themes or plots related to the war, but *Mrs. Dalloway* provides the most extensive treatment of the war.¹³ Septimus, before he eventually commits suicide, notes that the postwar world is one where "there is no crime."¹⁴ Septimus's preoccupation with having committed a crime (despite legalized fighting) suggests a "sensibility"¹⁵ beyond law. This sensibility represents Woolf's "normative" claim¹⁶ that fighting a war flatly contradicts a fundamental rule of civilian life: that killing is illegal. Septimus kills himself because of, at least in part, a perceived "crime."¹⁷ But Septimus's crime is not a legal one. It is a moral one. Septimus's pangs of conscience demonstrate the deeply human sensibility with which the laws of war conflict.

manner and subject to the conditions prescribed by international law, otherwise they are murder or theft . . . and their authors are liable to punishment as criminals.")

9. Ravit Reichman describes this ethic in relation to Woolf's novel. *See infra* note 20.

10. *See infra* text accompanying note 93.

11. WOOLF, *supra* note 1, at 82.

12. Woolf published five novels during the interwar period: *Night and Day* (1919), *Jacob's Room* (1922), *Mrs. Dalloway* (1925), *To the Lighthouse* (1927), *Orlando* (1928), *The Waves* (1931), and *The Years* (1937). Of Woolf's interwar novels, *Mrs. Dalloway* is the only one that renders, in detail, a soldier's experience in the war.

13. *See infra* Part II.B–C (providing brief summary of the novel's plot).

14. WOOLF, *supra* note 1, at 21, 57.

15. *See* RAVIT REICHMAN, *THE AFFECTIVE LIFE OF LAW: LEGAL MODERNISM AND THE LITERARY IMAGINATION* 7–8 (2009).

16. According to Reichman, "Woolf's preoccupations with responsibility and memory after the war posit her as a profoundly normative novelist rather than just a sensitive observer of modern life." *Id.* at 7. This Note builds on Reichman's work by claiming that Woolf's normative tone implicates the laws of war.

17. WOOLF, *supra* note 1, at 82.

If fiction can show that "a normative world is built over a scaffolding of affect,"¹⁸ Woolf's novel is one piece of that scaffolding. This Note situates itself in the law and literature field and takes a three-part approach. Part I describes existing law and literature scholarship and how that scholarship relates to Woolf's novel. Part II discusses Woolf's rendering of the postwar world, her treatment of Septimus, and how her approach uses the language of illegality. Part III conducts a law and literature analysis of Woolf's method explained in Part II. This three-part analysis reveals that Septimus may not have committed a crime—at least, not according to contemporary international law. But Septimus's concern with criminality calls into question the massive, state-sanctioned violence of the Great War. The violence of war elides the "ethic of responsibility"¹⁹ Woolf's novel apparently urges.²⁰ Viewing this elision through the lens of law and literature analysis suggests a more imaginative way of looking at the laws of war. And this Note advocates for that more imaginative way.

I. THE LAW AND LITERATURE APPROACH EXPLAINED

A. Two Frameworks

Put simply, "[l]iterature has its place in the study of law."²¹ What began as an effort to understand how law and legal doctrines manifest themselves in literature²² gradually evolved into a broader field of study with several facets. Two distinct frameworks emerged: law-as-literature and law-in-literature.²³ Law-as-literature "considers the applications of rhetoric and literary theory to the law."²⁴ Law-in-literature "considers literature about legal subjects (e.g., Kafka's *The Trial*, Camus's *The Stranger*, or Lee's *To Kill a Mockingbird*) and law about literature (e.g., defamation, obscenity, or copyright)."²⁵ Additional permutations exist.²⁶ Even within

18. REICHMAN, *supra* note 15, at 12.

19. *Id.* at 7.

20. Reichman's analysis of *Mrs. Dalloway* hinges on this point:

The figure of the stranger directs us to the law's very limits by suggesting that the opportunity for responsibility often presents itself at the very moment when legal reasoning holds that no one is responsible. For Virginia Woolf, I will be arguing, this moment is the very basis of ethics. The most radical potential for remaking a normative world, *Mrs. Dalloway* suggests, lies in the capacity to extend a duty of care to strangers who might otherwise fall between the cracks of "official" responsibilities—to take responsibility, in other words, when one does not know the person on whose behalf one acts.

Id. at 49.

21. Gretchen A. Craft, Note, *The Persistence of Dread in Law and Literature*, 102 YALE L.J. 521, 521 (1992).

22. Susan L. Brody, *Law, Literature, and the Legacy of Virginia Woolf: Stories and Lessons in Feminist Legal Theory*, 21 TEX. J. WOMEN & L. 1, 3–4 (2011).

23. See generally Robert Weisberg, *The Law-Literature Enterprise*, 1 YALE J.L. & HUMAN. 1 (1989).

24. Kenji Yoshino, *Suspect Symbols: The Literary Argument for Heightened Scrutiny for Gays*, 96 COLUM. L. REV. 1753, 1757 n.9 (1996).

25. *Id.*

26. See, e.g., *id.* at 1757 & n.9 (advancing a "literature-in-law" approach using literary

these seemingly stable categories, academic debate persists over where to draw the line between what is literature and what is law.²⁷

This Note accepts the law-in-literature label as a stable one and proceeds from that starting point. Kenji Yoshino's broad definition of law-in-literature as "literature about legal subjects" helpfully provides an initial characterization that invites a more complex analysis. No quantitative threshold determines how much a literary text must discuss or implicate law to open the door to law-in-literature analysis. But Ravit Reichman adeptly proposes a helpfully subjective approach:

[L]aw is not limited to what happens in the courtroom. Its reaches run far deeper: we live in a legal world, inhabit a legal culture, even if we never come before a jury or witness a trial. Just as a legal opinion can be literary without discussing a novel, so can a work of literature be juridical (and, I believe, is more likely to be so) without depicting a trial.²⁸

Law and literature analysis informs the interpretation of war novels—even those without explicit discussions of courts martial, military justice, international law, or other legal concepts. Literary interpretation brings legal subjects to the surface of an analytical inquiry.²⁹ Admittedly, interpretation is a subjective enterprise:

Interpretation, whether it be in the law or literary domains, is neither a wholly discretionary nor a wholly mechanical activity. It is a dynamic interaction between reader and text, and meaning the product of that interaction. It is an activity that affords a proper recognition of both the subjective and objective dimensions of human experience; and for that reason, has emerged in recent decades as an attractive method for studying all social activity.³⁰

Some judges have criticized the call for subjectivity.³¹ But law does not exist in a vacuum. Even the logical realities of a legal opinion are not immune to choices.³² Novels allow for more imaginative glances.

symbols as equal protection arguments).

27. *See id.* at 1757–63 (discussing three views of the relationship between law and literature and arguing that, although helpful distinctions may be drawn between them, law and literature are not hermetically sealed categories).

28. REICHMAN, *supra* note 15, at 7–8 (footnote omitted).

29. For an exploration of interpretation and the level of objectivity it requires, see Owen M. Fiss, *Objectivity and Interpretation*, 34 STAN. L. REV. 739 (1982).

30. *Id.* at 739.

31. *See, e.g.*, J. Harvie Wilkinson III, *Subjective Art; Objective Law*, 85 NOTRE DAME L. REV. 1663, 1679 (2010) ("Empathy has no place in the typical factual determination."). Compare RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* 242 (1988) (arguing that "chaos would threaten" if lawyers and judges resorted to "personal reading[s]" of statutes), *with id.* at 251 (acknowledging that "there are also reasons why the [statutory interpreter] should on occasion feel more free than the [literary critic]").

32. Consider, for example, textualism. Even a textualist interpreting a statute based on "original intent" or "history" must determine where that original intent can be located and how far the parameters of the historical inquiry may extend. Take, for example, the Second Amendment. In *District of Columbia v. Heller*, Justice Scalia's majority opinion split the

B. The Novel as Particularly Appropriate Analytical Vehicle

Martha Nussbaum has it right: "Literature is in league with the emotions."³³ Reading and emotion are intertwined precisely because, as Nussbaum argues, novels urge "a normative sense of life."³⁴ Perceiving that "normative sense" requires emotional engagement. Nussbaum's argument forms the basis for what Reichman calls "legal modernism"—a framework devised to explain the idea that novelists did more than just "respond[] . . . in the face of modern warfare."³⁵ Instead, authors like Woolf made normative claims:

[Woolf] pursues an ethical vision of how a world tragically altered by World War I can be inhabited along normative lines, emphasizing *how* to live rather than *what* is wrong. From this vantage, I argue that Woolf's preoccupations with responsibility and memory after the war posit her as a profoundly normative novelist rather than just a sensitive observer of modern life.³⁶

Woolf did more than just excoriate the war as a stand-in for "tragic senselessness" and "pointless mass death."³⁷ Reichman's legal modernism thesis argues that Woolf's fiction, particularly *Mrs. Dalloway*, does meaningful social work because it urges members of a community to take responsibility for each other even though the law does not require them to do so.³⁸ According to Reichman, Woolf's work illustrates the postwar coping process in which law and literature influence each other: "[W]e come to restructure our world in the aftermath of catastrophe through fiction, in narratives that begin in literature but leave their mark on our culture's experience of law."³⁹ To substantiate this claim, Reichman links Woolf's ethic of

amendment into "its prefatory clause and its operative clause." 554 U.S. 570, 577 (2008). The Court's opinion then addressed the operative clause first and the prefatory clause second. *See id.* at 579, 595. This approach led the Court to "start . . . with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans." *Id.* at 581. I question whether this presumption would be as strong (or would exist at all) if the analysis proceeded the other way around. Unsurprisingly, the dissent criticized the majority's reading as "strained and unpersuasive." *Id.* at 638 (Stevens, J., dissenting).

As far as history goes, how should a judge—like a Supreme Court Justice reading the dueling amici briefs filed in support of each side in *Heller*—choose between competing historical glosses? Justice Breyer's dissent acknowledged that deciding which side of the historical scale has more weight than the other requires a choice: "There are no purely logical or conceptual answers . . ." *Id.* at 687 (Breyer, J., dissenting).

33. MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 53 (1995).

34. *Id.* at 2.

35. REICHMAN, *supra* note 15, at 1 (emphasis omitted).

36. *Id.* at 6–7 (emphasis in original).

37. ISABEL V. HULL, *A SCRAP OF PAPER: BREAKING AND MAKING INTERNATIONAL LAW DURING THE GREAT WAR* 3 (2014).

38. *See* REICHMAN, *supra* note 15, at 49.

39. *Id.* at 1.

responsibility to the development of the duty of care in tort law.⁴⁰ Septimus grapples with this ethic of responsibility and the difference between its presence in the civil world and its unfamiliar absence in the military one.

More than any other character in *Mrs. Dalloway*, Septimus contends with “the experience of *feeling* responsible.”⁴¹ Woolf’s use of the novel to render that “feeling” capitalizes on what Nussbaum identifies as the novel’s particular strengths: “[N]ovel-reading . . . can be a bridge both to a vision of justice and to the social enactment of that vision.”⁴² Thus, Woolf’s treatment of Septimus in *Mrs. Dalloway* implicates the laws of war that make killing permissible and illustrates the social value of that implication.

Critics have countered each of Nussbaum’s arguments in support of the novel’s resonance.⁴³ The problem, of course, is that perceiving Septimus’s plight requires “empathetic imagining.”⁴⁴ This “empathetic imagining” relies on affect theory—a theory that “understands [the authorial] project as an intimate contract between reader and writer: the ‘best reader’ is not a passive recipient but a form of witness.”⁴⁵ But being a party to this intimate contract makes law and literature a “distinctively fraught enterprise.”⁴⁶ For every affective *positive* Nussbaum associates with reading novels, there is an equal and opposite *negative*.⁴⁷ Indeed, “[t]he plural of anecdote is not data.”⁴⁸ And literature’s requirement of “emotive responses” makes literature “less permeable to effort. As conventionally told, one can learn and replicate a logical argument, but one does not epiphanize one’s way to an epiphany.”⁴⁹ Nevertheless, law and literature is a valuable combination because law is not solitarily confined. As Paul Gewirtz notes: “Law is not all reasoning and analysis—it is also emotion and judgment and intuition and rhetoric. It includes knowledge that cannot always be explained, but that is no less valid for that.”⁵⁰ Even in the arena of everyday legal practice, law and literature manifest

40. *Id.* at 15–65.

41. *Id.* at 12 (emphasis in original).

42. NUSSBAUM, *supra* note 33, at 12. Susan L. Brody agrees. See Brody, *supra* note 22, at 6.

43. “Nussbaum defends her focus on novels in her discussion of empathy in public rationality by noting three distinguishing characteristics of the novel—its imaginative, particularistic, and emotional aspects. These virtues, however, can transmute into their nearest vices, which . . . are literature’s untrue, unrepresentative, and non-analytic aspects.” Yoshino, *supra* note 24, at 1766 (citing Daniel A. Farber & Suzanna Sherry, *Telling Stories out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 809 (1993)).

44. Yoshino, *supra* note 24, at 1766.

45. JULIE TAYLOR, *DJUNA BARNES AND AFFECTIVE MODERNISM* 9 (2012).

46. See Kenji Yoshino, *The City and the Poet*, 114 YALE L.J. 1835, 1839 (2005) (noting the “[l]aw’s simultaneous need and inability to banish literature”).

47. See *supra* note 43.

48. Yoshino, *supra* note 24, at 1768.

49. *Id.* at 1769.

50. Paul Gewirtz, *On “I Know It When I See It,”* 105 YALE L.J. 1023, 1044 (1996). Gewirtz argues that legal analysis can benefit from these extraneous pursuits:

But too many of us in the academy today seem to have lost a balance that I think the study of law needs, a balance between the rational and the nonrational, analysis and common sense, generalization and particularization, the ideal and the real.

themselves. For example, Yoshino wrote an entire law review article analogizing courts' refusal to consider victim impact statements to the parable of Plato banishing the poet from the city.⁵¹ As in practice, narrative also has a rightful place in legal scholarship.⁵² The following analysis occupies the ground for which Yoshino's analysis paved the way.

II. WOOLFIAN MORALITY: WOOLF'S TREATMENT OF SEPTIMUS SMITH

Woolf sets her treatment of Septimus in *Mrs. Dalloway* against the backdrop of a changed postwar society. Understanding Septimus's preoccupation with criminality in the context of the novel requires examining the historical context in which Woolf wrote. This Part provides a brief overview of that context before proceeding to an explanation of Woolf's critique of it.

A. A Brief Historical Background

The horrific casualties of the war speak for themselves.⁵³ More than nine million military personnel and five million civilians died.⁵⁴ "[T]he variety of new and ingenious instruments of destruction employed by the contending belligerents"⁵⁵ made this mass death possible. But the war's toll was more than quantitative; it was qualitative. *How* the tools of warfare caused death raised serious questions about legality, enforcement, and the limits of war. Even Winston Churchill acknowledged the war's pernicious lethality: "Much as war attracts me and fascinates my mind with its tremendous situations, I feel more deeply every year – & can measure the feeling here in the midst of arms – what vile & wicked folly & barbarism it all is."⁵⁶ Beyond

This is the balance that makes up wisdom and good judgment, and that, I think, our present and future judges need to hear in our writings and in our teaching.

Id. at 1045.

51. Yoshino, *supra* note 46.

52. "To put it gently, the function of a law review is different from the function of a capital trial. Legal scholarship can be seen as a venue in which reflection and experimentation can occur without threat to the consistency of the law." *Id.* at 1894.

53. Following the theme of Reichman's tort analysis, one could even say that the mass death of the war is an example of *res ipsa loquitur* writ large.

54. MARTIN GILBERT, *THE FIRST WORLD WAR: A COMPLETE HISTORY* xv (Holt Paperbacks 2004) (1994).

55. GARNER, *supra* note 5, at 262. "[D]um-dum bullets, explosive projectiles and bombs, asphyxiating and poisonous gases, liquid fire, charged electric wires, submarine mines, and submarine torpedo boats" are illustrative examples of the contemporary implements of warfare. *Id.* Garner's tone in describing these implements is not an approving one: "The progress of invention in modern times has produced one diabolical instrument after another for destroying men and inflicting agonizing and incurable wounds . . ." *Id.*

56. GILBERT, *supra* note 54, at xviii. On this point, German General Friedrich von Bernhardt apparently agreed: "It is an incontestable fact that war temporarily disturbs industrial life, interrupts quiet economic development, brings widespread misery with it, and emphasizes the primitive brutality of man." GENERAL FRIEDRICH VON BERNHARDI, *GERMANY AND THE NEXT WAR* 10 (Allen H. Powles trans., Edward Arnold 2d prtg. 1912).

the walls of cabinet rooms and war departments, citizens had to contend with the war's effects.⁵⁷ In that respect, "[t]he war changed the map and destiny of Europe as much as it seared its skin and scarred its soul."⁵⁸ Woolf's novel renders that searing and scarring in fiction.

B. Woolf's Postwar World

"[S]et on an imaginary . . . and very hot Wednesday in June 1923,"⁵⁹ *Mrs. Dalloway* is a story of subtly interconnected characters. As Clarissa Dalloway prepares to give a party, her guests go about their daily London routines in unknowing synchronicity with each other. Characters pass each other in the streets and in the parks. And although Septimus is not one of Clarissa's guests, many of the guests encounter (and comment on) Septimus and his wife. From the start, Woolf alerts readers to the fact that things have changed since the war's end: "This late age of world's experience had bred in them all, all men and women, a well of tears. Tears and sorrows; courage and endurance; a perfectly upright and stoical bearing."⁶⁰ If this "stoical bearing" is the norm, Septimus is the exception.

For Septimus, "[t]he world wavered and quivered and threatened to burst into flames."⁶¹ Septimus's experience contrasts with his wife's expectation for a veteran: "And it was cowardly for a man to say he would kill himself, but Septimus had fought; he was brave; he was not Septimus now."⁶² Septimus's wife so associates her husband's identity with war that—absent manifestations of the bravery she expects of him—she perceives Septimus's identity differently. Septimus's experience contrasts sharply with that of Clarissa's husband (a nonveteran): "Really it was a miracle thinking of the war, and thousands of poor chaps, with all their lives before them, shovelled together, already half forgotten; it was a miracle."⁶³ The war may be over at the start of the novel, but Septimus's experience of the war is anything but.

57. Gilbert identifies this dual aspect of the war:

Two very different wars were fought between 1914 and 1918. The first was a war of soldiers, sailors and airmen, of merchant seamen and civilian populations under occupation, where individual suffering and distress were on a massive scale, particularly in the front-line trenches. The second was a war of War Cabinets and sovereigns, of propagandists and idealists, replete with political and territorial ambitions and ideals, determining the future of Empires, nations and peoples as sharply as the battlefield.

GILBERT, *supra* note 54, at xv.

58. *Id.*

59. David Bradshaw, *Introduction to VIRGINIA WOOLF, MRS. DALLOWAY* xi (David Bradshaw ed., Oxford Univ. Press 2009) (1925).

60. WOOLF, *supra* note 1, at 8.

61. *Id.* at 13.

62. *Id.* at 20.

63. *Id.* at 98.

*C. Who Is Septimus Smith and What Did He Do?*⁶⁴

We can glean from the text several key details about Septimus's military service. "Septimus was one of the first to volunteer[,]"⁶⁵ and Septimus fought in France "in the trenches."⁶⁶ But Septimus did not *just* serve. He served with distinction: "he had won crosses."⁶⁷ Woolf's narrator explains that Septimus "developed manliness; he was promoted; he drew the attention, indeed the affection of his officer."⁶⁸ Woolf depicts Septimus as learning something from the war: "The War had taught him. It was sublime. He had gone through the whole show, friendship, European War, death, had won promotion, was still under thirty and was bound to survive. He was right there. The last shells missed him. He watched them explode with indifference."⁶⁹ When the officer with whom Septimus became so close was killed in Italy "just before the Armistice," Septimus "congratulated himself upon feeling very little and very reasonably."⁷⁰ But when readers first meet Septimus, his mental state is terribly unstable "because Septimus had said, 'I will kill myself'; an awful thing to say."⁷¹ Against the backdrop of these biographical hints as to Septimus's character, his mental illness stands in sharp relief.

Septimus's mental illness manifests itself both in his mental soliloquies (rendered by Woolf's omniscient narrator) and in his speech. Septimus acutely perceives the changes inherent in the postwar world. For Septimus, "the world was entirely changed" by the realization that "there is no crime."⁷² Septimus insists that the postwar world is devoid of criminality. Yet Septimus is convinced he had "committed an appalling crime and been condemned to death by human nature."⁷³ Further analysis reconciles this apparent duality.

Septimus's obsession with criminality is not facially juridical. "[H]uman nature,"⁷⁴ not a court, condemns him. For Reichman, Septimus's concern with violating some sort of natural norm likely results from his perception of a violated mental-health norm.⁷⁵ Woolf's characterization of Septimus's crime supports Reichman's reading:

64. During nearly every class of my first-year Criminal Law course, Professor Joe Hoffman began the discussion of each case with the same question: "Who is [last name of defendant], and what did s/he do?" Because this Note examines Septimus's concern with criminality, I take creative license to treat Septimus as the defendant in his own cause of action.

65. WOOLF, *supra* note 1, at 73.

66. *Id.*

67. *Id.* at 75. These crosses were likely the Military Cross and the Victoria Cross (Britain's "highest award for heroism in battle"). Bradshaw, *supra* note 59, at xv (citing STANLEY C. JOHNSON, *THE MEDAL COLLECTOR: A GUIDE TO NAVAL, MILITARY, AIR-FORCE AND CIVIL MEDALS AND RIBBONS* (1921)).

68. WOOLF, *supra* note 1, at 73.

69. *Id.*

70. *Id.*

71. *Id.* at 13.

72. *Id.* at 57.

73. *Id.* at 82.

74. *Id.*

75. See REICHMAN, *supra* note 15, at 59. Josephine O'Brien Schaefer similarly interprets

So there was no excuse; nothing whatever the matter, except the sin for which human nature had condemned him to death; that he did not feel. He had not cared when Evans was killed; that was worst; but all the other crimes raised their heads and shook their fingers and jeered and sneered over the rails of the bed in the early hours of the morning at the prostrate body which lay realizing its degradation; how he had married his wife without loving her; had lied to her; seduced her . . .⁷⁶

But this list of Septimus's "crimes" cannot be exhaustive. Septimus's persistent self-indictment flatly contradicts Septimus's insistence that the postwar world is one in which there is no crime. In a world without crime, one cannot be a criminal.

Septimus's guilt stems from being a willing participant in the creation of a world where there is no crime. For Septimus, this participation is profoundly disjunctive.⁷⁷ Septimus's distaste for the war and for what it represents becomes plain during an exchange between Septimus and his doctor: "'You served with great distinction in the War?' . . . 'The War?' the patient asked. The European War—that little shindy of schoolboys with gunpowder? Had he served with distinction? He really forgot. In the War itself he had failed."⁷⁸ Septimus's failure results, in part, from the inability to feel.⁷⁹ But it also results from what Septimus perceives as complicity in upending the social order, in creating a world where there is no crime. As Septimus repeatedly "stammer[s]"⁸⁰ his self-indictment ("I have—I have . . . committed a crime——"⁸¹), he condemns the laws of war—laws that contradict his moral compass. And Woolf's portrayal of Septimus as a helpless victim of his own crime indicts that contradiction.

Septimus's madness: "[Septimus] lived up to the code of emotional repression which 'was an essential aspect of the British masculine ideal.' But five years later he feels he committed a crime against humanity, the crime of not feeling." Josephine O'Brien Schaefer, *The Great War and "This Late Age of World's Experience" in Cather and Woolf*, in VIRGINIA WOOLF AND WAR: FICTION, REALITY, AND MYTH 134, 144 (Mark Hussey ed., 1991) (citation omitted) (quoting ELAINE SHOWALTER, *A LITERATURE OF THEIR OWN: BRITISH WOMEN NOVELISTS FROM BRONTË TO LESSING* 169 (1977)).

76. WOOLF, *supra* note 1, at 77.

77. Ernest Hemingway renders a similar disjunct in *A Farewell to Arms*. Frederic Henry, an American ambulance driver on the Italian front, expresses his disillusion with a war-fighting enterprise that society urges is honorable:

I had seen nothing sacred, and the things that were glorious had no glory . . . There were many words that you could not stand to hear and finally only the names of places had dignity. . . . Abstract words such as glory, honor, courage, or hallow were obscene beside the concrete names of villages, the numbers of roads, the names of rivers, the numbers of regiments and the dates.

ERNEST HEMINGWAY, *A FAREWELL TO ARMS* 185 (Scribner Trade Paperback 2003) (1929).

78. WOOLF, *supra* note 1, at 81.

79. Reichman's analysis of Septimus follows this characterization. *See supra* note 75 and accompanying text.

80. WOOLF, *supra* note 1, at 83.

81. *Id.* at 82.

III. WOOLFIAN LEGALITY: APPLYING THE LAW AND LITERATURE APPROACH TO
MRS. DALLOWAY

Woolf's concern with the postwar sociopolitical scene validates my reading of Septimus's concern with the laws of war. One of Woolf's 1923 diary entries illuminates the fact that Woolf wrote with social critique in mind: "In this book I have almost too many ideas. I want to give life and death, sanity and insanity; I want to criticize the social system, and to show it at work, at its most intense."⁸² Writing that critique required an authorial finger on the contemporary political pulse.⁸³ This political concern colors Woolf's meaning when, as she continued to work on the novel in May of 1924, she said that *Mrs. Dalloway* was "becoming more analytical."⁸⁴ Woolf's analytical bent informs Reichman's legal modernism in which law is inextricably bound up in sociopolitical critique because literature and law "exist in a *contingent* relationship."⁸⁵ That contingent relationship characterizes the link between Woolf's novel and the development of the duty of care in tort (as Reichman argues).⁸⁶ It also characterizes the link between Woolf's novel and the legality of fighting a war.

After a brief overview of contemporary conceptions of international law and the laws of war, this Part explores Woolf's biography—what she knew about the war and the laws governing it and what she might have thought about them. Taking the approach discussed in Part I as a model, this Part then explains Septimus's concern with criminality in the context of Woolf's authorial moment. This Part concludes with a discussion of the value of Woolf's approach.

A. *Making Sense of Contemporary International Law*

According to Isabel V. Hull, "'common people' everywhere saw what was at issue" as a result of the "'dangerous challenge to the fundamental principles of public law' that defeated Germany had posed."⁸⁷ British Prime Minister Herbert Asquith characterized Britain's war goal as seeking "'to fulfill a solemn international obligation . . . not only of law, but of honour'—to uphold the law against force."⁸⁸ Whether perceived as "a conflict over the rule of law"⁸⁹ or not, the war effort drew hordes of British men to enlist.⁹⁰ On the battlefields on which they fought, soldiers

82. VIRGINIA WOOLF, *A WRITER'S DIARY: BEING EXTRACTS FROM THE DIARY OF VIRGINIA WOOLF 57* (Leonard Woolf ed., 1953).

83. Woolf made it quite plain that politics and the authorial project are intertwined: "That the writer is interested in politics needs no saying. . . . [T]he novelist turns from the private lives of his characters to their social surroundings and their political opinions." 2 VIRGINIA WOOLF, *The Artist and Politics*, in *COLLECTED ESSAYS* 230, 230 (1966).

84. WOOLF, *supra* note 82, at 62.

85. REICHMAN, *supra* note 15, at 2 (emphasis in original).

86. *See id.* at 15–65.

87. HULL, *supra* note 37, at 2–3.

88. *Id.* at 40 (alteration in original).

89. *Id.*

90. Enlistment surged in August 1914: the volunteer rate jumped from less than 100 per day to more than 1500 per day. GILBERT, *supra* note 54, at 37–38.

had to reckon with the personal consequences of “fulfill[ing] [the] solemn international obligation” Asquith identified. But, if Septimus’s experience is any indication, the soldiers who sought to “uphold the law against force” did not realize the moral and conscientious qualms that might soon plague them. In asserting that the foundation for international law is not solely legal, Edward Carr hints that something more than law was at stake in the war: “Law cannot be self-contained; for the obligation to obey it must always rest on something outside itself.”⁹¹ But for Coleman Phillipson, the “something” Carr identifies is not morality: “[B]y international law is meant the body of rules which States *must* observe [I]nternational morality implies those rules which States *ought* to observe [F]or practical purposes the rules of international law are compulsive, those of international morality optional.”⁹² The gap between morality and legality at the state level parallels Septimus’s individual experience. Septimus has not committed a legal crime, but his conscience tells him that he has committed a moral one.

Concerned though he may have been with committing a crime, Septimus did not commit a crime merely by fighting in the war or by killing enemy soldiers. Military necessity allowed for war-associated killing:

In the majority view, military necessity was what permitted killing and destruction in war at all. Francis Lieber, writing the U.S. military code of 1863, had expressed the usual variant of this broader view of the concept: “Military necessity, as understood by modern civil nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.” Thus, military necessity was what made causing death in combat permitted killing and not murder. But as the second part of Lieber’s sentence made clear, the permission covered by military necessity was embedded in and thus limited by the larger parameter of law.⁹³

Septimus describes his torment in criminal terms. That description raises the question of whether the “larger parameter of law” was really a “limit[.]” at all. Septimus’s anguish embodies the ethical consequences of what Phillipson identifies as “optional” international morality.⁹⁴ Septimus’s concern with criminality (absent any overt violation) demonstrates what Carr calls the “something outside itself”⁹⁵ on which the obligation to obey the law is based. The laws of war could not account for the pangs of each soldier’s conscience. And Septimus’s experience illustrates that those pangs *were* at work in the trenches. Woolf’s novel, then, demonstrates that the

91. EDWARD HALLETT CARR, *THE TWENTY YEARS’ CRISIS, 1919–1939: AN INTRODUCTION TO THE STUDY OF INTERNATIONAL RELATIONS* 178 (Harper Torchbook 1964) (1939).

92. PHILLIPSON, *supra* note 7, at 50–51 (emphasis in original).

93. HULL, *supra* note 37, at 67 (quoting Francis Lieber, *Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, 24 April 1863*, at art. 14, in *THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS* (Dietrich Schindler & Jiri Toman eds., 1988)).

94. PHILLIPSON, *supra* note 7, at 51.

95. *See supra* text accompanying note 91.

ethic of responsibility Reichman identifies did not magically cease to operate with the donning of a military uniform.

B. The Woolfian Vision

Woolf need not have written with the Hague Conventions, battlefield manuals, and international legal treatises by her side to imbue her novel with the effect (and affect) I suggest. Positing ultimate textual truth claims is a fruitless endeavor because authorial intent "is both futile and unnecessary."⁹⁶ Short of an ultimate textual truth claim, biography provides a valuable window into Woolf's authorial context.⁹⁷ Woolf's husband, Leonard, was a member of the Fabian Society and the League of Nations Society.⁹⁸ And the title of a manuscript in the Leonard Woolf archives is written in Virginia Woolf's shorthand: "In^L. Reⁿ. , & we embody it in general precepts called In^L Law."⁹⁹ This manuscript "would have placed Leonard Woolf (and Virginia Woolf . . .) in the center of the intellectual and political debate over British foreign policy during the war and over the formation of foreign policy on the creation of . . . a 'League of Nations.'"¹⁰⁰ Wayne K. Chapman and Janet M. Manson argue that, in the essay, Leonard "declares international law to be the basis for international relations and defines it as the body of rules governing relations between states."¹⁰¹ Instead of condemning the use of military force altogether, Leonard argues that "law, with its implicit threat of force, is necessarily the basis both of government and of all human society."¹⁰² Nevertheless, Leonard "takes to heart, at last, the validity of pacifist arguments; and for that reason, he maintains that force must be used only in the last resort to preserve peace."¹⁰³ Chapman and Manson claim that, in a separate essay, "The Framework of Peace," Leonard argues:

96. DONALD E. HALL, LITERARY AND CULTURAL THEORY: FROM BASIC PRINCIPLES TO ADVANCED APPLICATIONS 19 (2001). Hall provides four reasons why ultimate textual truth claims are fruitless:

- (1) Writers do not always understand or consciously plan every aspect of their work
- (2) Intentions are misleading, since outcomes often diverge from them significantly
- (3) Texts are larger than and bear meanings beyond those of their creators
- (4) Even if an "intention" is carried out, the text itself must provide the proof of its own meaning

Id.

97. New Historicism allows for this kind of approach but demands that its application be of "very limited scope" because using an author's biography to interpret that author's writing is "far from definitive." *Id.* at 300.

98. Wayne K. Chapman & Janet M. Manson, *Carte and Tierce: Leonard, Virginia Woolf, and War for Peace*, in VIRGINIA WOOLF AND WAR: FICTION, REALITY, AND MYTH 58, 63 (Mark Hussey ed., 1991).

99. *Id.* The full manuscript was destroyed, and no definitive translation exists. All that exists in the archives is Woolf's handwritten shorthand. Presumably, the shorthand stands in for "International Relation, and we embody it in general precepts called International Law."

100. *Id.*

101. *Id.* at 64.

102. *Id.*

103. *Id.*

[G]overnment exists through a system of rules, or laws, that citizens are compelled to obey; that this system preserves peace on the local level; and that it has within it the capacity to prevent war on the international level, as well. He concluded, therefore, that the legitimate alternative to the misuse of force by individuals or states is highly controlled use of force by governments.¹⁰⁴

Leonard's essays suggest that the Woolfs were keenly interested in prescriptions for and proscriptions of war. Virginia's assistance with Leonard's manuscripts (and the conversations the couple likely had regarding them) suggests that the Woolfs engaged in a "complexly reciprocal" sphere of influence.¹⁰⁵ While Leonard's essays made sociopolitical arguments, Woolf's fiction and essays made similar arguments—but with emotional rather than legal currency.

Published after *Mrs. Dalloway*, Woolf's *Three Guineas* reveals more of her attitude toward war. Written with a decidedly feminist bent, the essay situates itself as an answer to a question (posed in a letter from a man to a woman) of how women can prevent war.¹⁰⁶ Woolf's answer is that contemporary women, relegated to the margins of education and political influence, could prevent war only by influencing the minds of men.¹⁰⁷ Woolf identifies the reasons for fighting as being unique to men.¹⁰⁸ But Woolf establishes ground common to both genders by asserting that men *and* women respond similarly to photographs depicting the destruction of war.

Viewing the photographs leads both men and women to characterize the images as ones of "horror and disgust."¹⁰⁹ Seeing "the same dead bodies, the same ruined houses" leads men and women to the same conclusion: that war "is an abomination; a barbarity; war must be stopped."¹¹⁰ The response to the photographs is Woolf's counter to the lament that there is "no absolute point of view[,] . . . [no] moral judgment which we must all, whatever our differences, accept[.]"¹¹¹ To Woolf, the lack of a single prevailing moral authority does not diminish the belief that "[a] common interest unites us; it is one world, one life."¹¹² In that one life, the public and the private "are inseparably connected."¹¹³ But the laws of war sever this connection. In *Mrs. Dalloway*, Woolf renders the result of that severing. Septimus's private moral sensibility (which matches the "public" sensibility in a civilian context) collides with his new "public" context: the military. In that context, the civilian sensibility gets turned on its head. What was illegal becomes legal—even necessary—for the sake of survival. Viewed through the lens of Woolf's assertions

104. *Id.* at 67.

105. *Id.* at 76.

106. VIRGINIA WOOLF, *THREE GUINEAS* 3 (Harcourt, Brace & Co. 1938).

107. *Id.* at 18.

108. Woolf identifies three reasons that drive men to fight wars: "[W]ar is a profession; a source of happiness and excitement; and it is also an outlet for manly qualities, without which men would deteriorate." *Id.* at 10.

109. *Id.* at 15.

110. *Id.*

111. *Id.* at 13.

112. *Id.* at 217.

113. *Id.*

in *Three Guineas*, Septimus's obsession with criminality questions the morality of the laws of war.

Woolf's character study of Septimus "provide[s] evidence of the interior sensibility of honor and shame . . . as motivations for soldiers and police in relation to the laws of war."¹¹⁴ Despite being a decorated veteran, Septimus is ashamed. And that shame ultimately drives Septimus to jump to his death from a window.¹¹⁵ Reichman's central claim that Woolf's normative argument takes hold at the precise moment where no one is legally responsible¹¹⁶ sheds light on Septimus's anguish. Indeed, strangers are different from military combatants. And that is the root of Septimus's problem. The civilian world urges that strangers be treated with care;¹¹⁷ the world of war urges that they be treated with malice. For returning soldiers who had been trained to use technology that made mass, mechanized killing acceptable and expected, this disjunctive reality became painfully apparent.¹¹⁸ Septimus's conscience stubbornly tells him that he somehow deviated from true north during the war, but military necessity¹¹⁹ detaches that sense of wrong from any legal framework for assigning culpability.

Coping with the suspension of certain civilian legal norms on the battlefield was not a problem unique to World War I. The problem, what David Wood calls "moral injury,"¹²⁰ continues today. Coined by Jonathan Shay, a Veterans Affairs psychiatrist, the term describes the "sense of betrayal" as a result of entering a war thinking that the war is a good or just cause and leaving it with a sense of guilt.¹²¹ Soldiers experience moral injury when they "have seen or experienced things which violate their own sense of who they are, their own sense of right and wrong, their own sort of moral compass."¹²² When soldiers confront the reality that the laws of war condone what civilian law condemns, the result is a "dual moral code, where something you are required to do, even rewarded for doing in combat, back in civilian life, it's not OK."¹²³ Septimus, a decorated veteran, simply cannot process this stark difference. Interestingly, like the British committee that refused to acknowledge shell shock,¹²⁴ neither the U.S. Department of Defense nor the U.S. Department of Veterans Affairs recognizes moral injury as an affliction.¹²⁵

114. Laurie Rosensweig, *International Law and Literature*, 91 AM. SOC'Y INT'L L. PROC. 116, 117 (1997).

115. WOOLF, *supra* note 1, at 127.

116. *See supra* note 20.

117. REICHMAN, *supra* note 15, at 41.

118. Karen L. Levenback gestures toward this assertion: "Septimus left the front with experiences that made sense only in the context of war, yet in the postwar world he keeps the standards of acceptable behavior that had been taught him in the war." KAREN L. LEVENBACK, *VIRGINIA WOOLF AND THE GREAT WAR* 74 (1999).

119. *See supra* text accompanying note 93.

120. *Moral Injury Is the 'Signature Wound' of Today's Veterans*, NPR (Nov. 12, 2014, 9:23 AM), <http://www.npr.org/templates/transcript/transcript.php?storyId=363288341> [<https://perma.cc/YJA3-NBTY>] [hereinafter *Moral Injury*] (transcript of *Fresh Air* interview).

121. *Id.*

122. *Id.*

123. *Id.*

124. *See infra* Part III.C.

125. *Moral Injury*, *supra* note 120.

The acceptability and expectation of wartime violence eschews the ethic of responsibility Reichman identifies.¹²⁶ Septimus goes mad¹²⁷ trying to reconcile the moral duality of the war because the laws of war override his civilian sensibilities. “Law defuses the fear of the unexpected and makes the uncertainty bearable”¹²⁸ only if one has the luxury of knowing what law applies. In the law, “[s]enseless events are assigned their meaning. Law identifies the important facts, the injured and the injurer, and the moment at which a mishap could and should have been avoided.”¹²⁹ Septimus cannot take advantage of these certainties. By illustrating a world in which there is no relief from the guilt Septimus feels, Woolf capitalizes on a crucial aspect of literature’s power to “reveal the hidden force propelling the law, the apprehension of the future and the desire to control it.”¹³⁰ To accomplish that revelation, literature relies on more than logic.

C. Expressing the Inexpressible

What is inexpressible in law is expressible in literature because literature provides a “narrative permission”¹³¹ that the law does not.¹³² Woolf takes advantage of that permission to advance a pacifist sentiment: that killing in war is criminal.¹³³ Through Septimus, Woolf provides the “substructure of sensibility” on which “justice, as an official and unofficial ethic of responsibility, builds itself.”¹³⁴ No international legal doctrine condemns Septimus’s conduct during war. But using

126. For Reichman, “[J]ustice, as an official and unofficial ethic of responsibility, builds itself upon a substructure of sensibility.” REICHMAN, *supra* note 15, at 7. The pain of this “sensibility” pangs Septimus.

127. Sir William Bradshaw, one of Septimus’s treating physicians, highlights the desperate state of Septimus’s mental health: “[I]t was a case of extreme gravity. It was a case of complete breakdown—complete physical and nervous breakdown” WOOLF, *supra* note 1, at 81.

128. Craft, *supra* note 21, at 543.

129. *Id.*

130. *Id.* at 545.

131. KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS 57 (2006). Yoshino expands on the inherent value of this notion: “Law wields a brutal coercion literature cannot approximate. Yet literature has a power to get inside us, to transform our hearts and minds, in a way law cannot.” *Id.* at 26.

132. Judge John Noonan advances a similar argument regarding the relationship of law to history: “I became increasingly conscious of the neglect of the person by legal casebooks, legal histories, and treatises of jurisprudence. Only in the response of person to person, so it seemed to me, did history have a significance to law.” REICHMAN, *supra* note 15, at 42 (quoting JOHN T. NOONAN, JR., PERSONS AND MASKS OF THE LAW: CARDOZO, HOLMES, JEFFERSON, AND WYTHE AS MAKERS OF THE MASK, at xv (University of California Press 2006) (1976)).

133. Woolf’s pacifism sheds light on the idea of fighting a war as a criminal act. As Alex Zwerdling notes, “[Woolf] was an instinctive pacifist who found it impossible to imagine a situation that justified the use of force. While others were carefully distinguishing between ‘just’ and ‘unjust’ wars . . . all she could feel was an involuntary revulsion for the whole business. . . . [Woolf’s] idea of legitimate defense did not include killing; for ‘the moment force is used, it becomes meaningless & unreal to me.’” ALEX ZWERDLING, VIRGINIA WOOLF AND THE REAL WORLD 272–73 (1986).

134. REICHMAN, *supra* note 15, at 7.

literature to render Septimus's pangs of conscience "overcom[es] the limitations of legal judgment."¹³⁵ This rendering has social value because of the "contingent relationship"¹³⁶ Reichman identifies. In that dynamic relationship, literature informs the law because law and culture are necessarily intertwined. Yoshino's argument, couched in the context of civil rights, has equally applicable force here: "Law's inability to apprehend our full human complexity, however, means our culture must do that work."¹³⁷ Woolf's contemporary culture was unwilling to do the work to which Yoshino refers.

In 1922, the British War Office Committee of Enquiry into "Shell-Shock" published its report.¹³⁸ The report was not sympathetic.¹³⁹ Throughout the report, the term "shell-shock" appears in scare quotes because the Committee considered the term "a grievous misnomer for the disorder or disorders grouped under that head."¹⁴⁰ The Committee determined that the term applied to two instances: commotional disturbance (a result of being hit by a shell) and emotional disturbance (a result of mental infirmity).¹⁴¹ The Committee recommended jettisoning the emotional use of the term.¹⁴² "Shell-shock" was a "dramatic" term that attempted to describe nothing more than the "war neurosis[]" practically indistinguishable from the forms of neurosis known to every doctor under ordinary conditions of civil life."¹⁴³ The report echoed the "vulgar stigma"¹⁴⁴ attached to the term: it labeled sufferers "mental defectives."¹⁴⁵ One of the witnesses before the Committee insisted that the term "had done a great deal of harm" because men who had been hit by shells "would have hated being branded as mental cases."¹⁴⁶ Against this unsympathetic backdrop, Woolf employs Septimus's shame to question the frameworks in place for treating shell-shocked veterans.¹⁴⁷

135. Desmond Manderson, *Modernism, Polarity, and the Rule of Law*, 24 *YALE J.L. & HUMAN.* 475, 488 (2012).

136. REICHMAN, *supra* note 15, at 2 (emphasis in original).

137. YOSHINO, *supra* note 131, at 26.

138. ARMY, REPORT OF THE WAR OFFICE COMMITTEE OF ENQUIRY INTO "SHELL-SHOCK" (1922) [hereinafter REPORT].

139. Despite its lack of empathy, the report (ironically) makes itself a prime candidate for law and literature analysis. It cites Shakespeare's *Romeo and Juliet* and *Henry IV* as containing characters who illustrate "war neurosis." *Id.* at 10–12.

140. *Id.* at 4.

141. *Id.*

142. *See id.* at 12 ("Without exception our witnesses condemned the term 'shell-shock' and held that it should be totally eliminated from medical nomenclature.").

143. *Id.* at 5.

144. *Id.* at 23.

145. *Id.* at 145.

146. *Id.* at 23.

147. Levenback summarizes the societal attitude toward shell shock: "Living in the postwar world, a combatant, such as Septimus, who lacked a visible wound was expected 'to get on with it' unobtrusively and discreetly." LEVENBACK, *supra* note 118, at 61. But the men who returned from the trenches were "soldiers who could not simply fall into step with their old selves or with life as it had been in 1914." REICHMAN, *supra* note 15, at 50. Interestingly, the doctor who treats Septimus (and insists that his condition can be cured with rest and proper proportion) presses Clarissa Dalloway's husband for a legislative solution to the societal

Ironically, the report undermines its own conclusions. The report argues that “pride and prestige” could prevent shell shock.¹⁴⁸ Yet the report notes that *any* soldier could be susceptible to shell shock.¹⁴⁹ The report’s conclusion that “much can be done by judicious training”¹⁵⁰ and that “pride of regiment[] [and] belief in the cause”¹⁵¹ could prevent shell shock proves the Woolfian point. With enough training, the military could scrub away a soldier’s civilian ethic—an ethic urging responsibility and eschewing killing. Sue Thomas argues that *Mrs. Dalloway*’s implicit commentary on social and medical attitudes toward shell shock makes the novel a “social problem” novel.¹⁵² But the social problem in *Mrs. Dalloway* is more than shell shock. The social problem in *Mrs. Dalloway* is that conflicts between warring states that lead to shell shock are possible at all.

Viewed through the lens of the report, Septimus is a failure. Despite his decoration, Septimus’s civilian ethic remains intact; indeed, it drives him mad. But legally speaking, Septimus is Woolf’s pacifistic messenger. As Yoshino argues, “[w]e cannot understand the law unless we see how its formal texts are embedded in the narratives that accord them shape and meaning.”¹⁵³ *Mrs. Dalloway* is one of those narratives. By rendering one fictional soldier’s experience with shell shock, Woolf “accord[s] shape and meaning” to the shell shock report. Woolf’s novel represents a vision of hope—hope that British law would better assist shell-shocked veterans like Septimus (à la legislative initiatives like “the Bill” Richard Dalloway discusses with

problem of shell-shocked veterans:

He was talking to Richard about the Bill probably, which they wanted to get through the Commons. . . . They were talking about this Bill. Some case Sir William was mentioning, lowering his voice. It had its bearing upon what he was saying about the deferred effects of shell-shock. There must be some provision in the Bill.

WOOLF, *supra* note 1, at 155.

148. Sparing no superlatives, the report claims military pride can overcome the traumas of war:

If we could have an ideal army in which every officer and every man was firmly convinced (and was proud of the fact) that he himself was one of those who formed the best company or squadron of the best regiment of the finest army of the best nation of the earth, we should see very little of “shell shock.” Pride and prestige have a tremendous lot to do with it.

REPORT, *supra* note 138, at 14.

149. Indeed, the report presents this point as one on which witnesses agreed:

Witnesses were agreed that any type of individual might suffer from one or other form of neurosis if exposed for a sufficient length of time to the conditions of modern warfare, and that it is extremely difficult to say beforehand what type of man is most likely to break down, the only certain test being exposure to battle conditions.

Id. at 92.

150. *Id.*

151. *Id.* at 93.

152. Sue Thomas, *Virginia Woolf’s Septimus Smith and Contemporary Perceptions of Shell Shock*, ENG. LANGUAGE NOTES, Dec. 1987, at 49, 56–57.

153. KENJI YOSHINO, *A THOUSAND TIMES MORE FAIR: WHAT SHAKESPEARE’S PLAYS TEACH US ABOUT JUSTICE* xi (2011).

Septimus's doctor) and hope that legal doctrine could somehow contain and restrict war's violence.

Woolf's novel dissents from the legality of war and the doctrines, like military necessity, that untether the rules of criminality from their civilian ethic. Woolf's approach illustrates the power of a dissenting opinion identified by Benjamin Cardozo: "The voice of the majority may be that of force triumphant, content with the plaudits of the hour, and recking little of the morrow. The dissenter speaks to the future, and his voice is pitched to a key that will carry through the years."¹⁵⁴ Woolf accomplishes her dissent not by placing readers "on the bench among the judges"¹⁵⁵ but by placing readers "in the dock with the criminal."¹⁵⁶ Septimus not only indicts himself as a criminal but also transgresses the norms of acceptable behavior outlined in the Committee's report. By rendering Septimus's madness as a concern with criminality, Woolf makes a more affective case for responsibility for war. This more affective case is especially valuable because it is a way to "restructure our world in the aftermath of catastrophe through fiction, in narratives that begin in literature but leave their mark on our culture's experience of law."¹⁵⁷

CONCLUSION

War must be "constrain[ed] . . . with the rule of law."¹⁵⁸ An issue, though, with the Great War was not the absence of law but the extent of constraint the operative law imposed. Law is no stranger to tough choices. In war, those tough choices are especially grave at the margins.

Take, for example, the inherently pliable rule on bombardment. The Germans claimed that the Belgians used the Cloth Hall at Ypres "for purposes of observation."¹⁵⁹ Yet the Germans destroyed more than the Cloth Hall; they destroyed "other historic buildings in the vicinity."¹⁶⁰ Never mind that the town "was entirely undefended."¹⁶¹

The baseline rule for acceptable weaponry was similarly elastic. Article 23(e) of the Hague Convention on land warfare prohibited "arms, projectiles or materials calculated to cause unnecessary suffering."¹⁶² This broad language allows for diabolically crafty arguments. One could argue (as Germany did) that weapons resulting in immediate death are legal precisely because they result in immediate death and, therefore, do not cause "suffering." And in the context of a war—the goal of which is to win—some degree of suffering must be expected.

154. *Id.* at 206 (quoting BENJAMIN N. CARDOZO, *Law and Literature*, in *LAW AND LITERATURE AND OTHER ESSAYS AND ADDRESSES* 3, 36 (1931)).

155. VIRGINIA WOOLF, *How Should One Read a Book*, in *SELECTED ESSAYS* 63, 64 (David Bradshaw ed., Oxford's World's Classics Paperback 2008).

156. *Id.*

157. REICHMAN, *supra* note 15, at 1.

158. YOSHINO, *supra* note 152, at 28.

159. GARNER, *supra* note 5, at 448.

160. *Id.*

161. *Id.*

162. *Id.* at 270.

In postwar London, the issues as a result of these elastic rules were more internal than external. Scarred by the death and destruction in the trenches, British soldiers returned to a relatively pristine cityscape unmarred by the brutal war machine.¹⁶³ Septimus's madness illustrates an admittedly fictional (but perhaps not far-off) attempt to reconcile the atrocity of war with the postwar world to which soldiers had to return.

Woolf's novel has transcendent value as a vivid reminder of war's mental effects. Whether war should be able to inflict those effects and to what extent that infliction may occur is—and should be—an acute concern of the laws of war. Without the constraint of these concerns, war becomes dangerously unmoored from a civilian ethic of responsibility—an ethic of responsibility that, as Septimus Smith proves, the laws of war cannot suppress.

163. Reichman's characterization of postwar London is especially illuminating:

London was a city reeling from the war, still trying to make sense of the staggering death toll and of soldiers who were killed inexplicably, anonymously, and indiscriminately. Because the war had not been fought on British soil, it was also a city struggling to square its unchanged contours—an urban landscape without shell fragments, trenches, graves—with a population of strangers, the soldiers who could not simply fall into step with their old selves or with life as it had been in 1914.

REICHMAN, *supra* note 15, at 50.