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Book Review Essay

What We Talk About When We Talk About War

BARBARA STARK*


"Some vassal would come along and spear the bastard in the name of love. Or whatever the fuck it was they fought over in those days."

Raymond Carver

When we talk about war, we talk about the latest atrocity we saw on the news or about the underlying political situation. We might even

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1 THOMAS EHRLICH & MARY ELLEN O'CONNELL, INTERNATIONAL LAW AND THE USE OF FORCE (1993) [hereinafter USE OF FORCE]. In addition to the main text, a collection of case studies [hereinafter VOL. II] is available from the authors on Sub-Saharan Africa, the Persian Gulf War (Iran vs. Iraq), the United States bombing of Libya, the United States invasion of Grenada, the Vietnamese invasion of Cambodia, the Soviet intervention in Afghanistan, the conflict in Ethiopia, and the Libyan intervention in Chad.

2 RAYMOND CARVER, WHAT WE TALK ABOUT WHEN WE TALK ABOUT LOVE, IN WHAT WE TALK ABOUT WHEN WE TALK ABOUT LOVE 137, 149 (1981).

3 Carver's we specifically refers to two married couples. See Meredith Marsh, THE MUTABILITY OF THE HEART, NEW REPUBLIC, Apr. 25, 1981, at 38, 39 ("For the most part, however, Carver writes about ordinary people, bingo players and motel managers, rather than the highly introspective..."
discuss our own personal experience with war. But we do not talk about law. Even those of us who, as lawyers, habitually rely on legal frameworks when we talk about money, sex, or death, rarely do so when we talk about war.

Instead, we consider war part of “foreign policy,” an esoteric branch of politics best left to the President and his experts. This reflects—and reinforces—a profound cynicism. Americans who reject “might makes right” at every level of domestic discourse, take it for granted in connection with foreign affairs. We don’t need to debate the law of war or even ascertain what it is. Whatever is in the United States’ best interest

we that the title seems to promise.”). Cf. Robert Towers, Low-Rent Tragedies, N.Y. REV., May 14, 1981, at 37 (“Carver’s people are not grotesque or notably eccentric, nor rascally or amusingly loquacious . . . . Their ordinariness is unredeemed, their failures and fatalities are the sort that go unnoticed . . . .”). Carver’s we is also rhetorical, reaching out to introduce his “people” to a broader community.

In this Essay, we refers to three nested communities. First, we are the small, transitory communities who meet in law school classrooms, where we get to know each other as both students and teachers. Second, we are those in the broader legal community who are interested generally in the law’s ability to deter the use of force, or more specifically in law and literature or in international law. Third, as in Carver’s story, we is also a rhetorical device, used to reach out and introduce the law of the use of force to a broader community.

For a similarly tortured treatment of the pronoun, see Brenda Cossman, Family Inside/Out, 44 U. TORONTO L. J. 2-3 n.4 (1994) (noting the tension between “false objectivism of the detached author” and “universalistic” notions of identity and community).

4 Article 2(4) of the U.N. Charter prohibits “the threat or use of force” rather than “war” because “[w]ar has a technical (but imprecise) meaning in international law, and states often engage in hostilities while denying that they are [at] ‘war.’” MICHAEL AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 259 (6th ed., 1987); see U.N. CHARTER art. 2, ¶ 4. As Professor Damrosch has pointed out. Congress has insisted on “its Constitutional prerogatives with respect to introduction of U.S. forces into hostilities, whether or not those hostilities are denominated ‘war.’” LORI FISLER DAMROSCH, The Constitutional Responsibility of Congress for Military Engagements, 89 Am. J. Int’l L. 58, 67 (1995).

5 Even a leader who believes in the rule of law may decline to bind himself by it. See, e.g., Jonathan A. Bush, How Did We Get Here? Foreign Abduction After Alvarez-Machain, 45 Stan. L. Rev. 999, 1002 (1993) (“[T]o the chagrin of many international lawyers, even American leaders firmly grounded in the tradition of legal-minded liberal internationalism, such as Woodrow Wilson, Franklin Roosevelt, Henry Stimson, Jimmy Carter and Cyrus Vance, have willingly subordinated international legal concerns to diplomatic objectives and domestic political realities.”).

National security concerns have also been used to justify the removal of the use of force from the public arena. But, as Theo Van Boven has pointed out:

It is a matter of the greatest concern that in most societies . . . everything regarding research, development, production and trade of weapons is surrounded by walls of secrecy. The reasons for this are obvious, but this state of affairs does not make the world a safe place. To a large extent, the vital issues of decision-making and the processes leading to military build-up are withdrawn from effective democratic and public control.


7 From the playground, see VIVIAN GUSSIN PALEY, YOU CAN’T SAY YOU CAN’T PLAY (1992), to the White House. Whitewater: New Ground, N.Y. TIMES, July 23, 1995, at E14 (“It is comforting to learn that after the suicide of Vincent Foster . . . someone in the Government recognized that the White House was contaminating the investigation and had the integrity to say so.”).
will be the law. It may be true that, "[i]f law does not recognize power it will be marginalized,"9 but if power does not recognize law it will be despised.10

As Congress decided after Vietnam, war is too important to be left to the Executive.11 Congress, however, cannot hold the Executive accountable, and the electorate cannot hold Congress accountable, without coherent domestic debate. Such debate requires norms against which to assess politics.12 Just as domestic law shapes as well as reflects norms on violence between individuals,13 international law shapes and reflects...
norms of violence between states. The recent text by Thomas Ehrlich and Mary Ellen O’Connell, *International Law and the Use of Force* ("Use of Force") explains these norms, the rules which embody them, and the processes through which states enforce, violate, and change them. *Use of Force* enables us to talk about law when we talk about war.

It does so by effectively grappling with three critical problems. First, it addresses the question of identity, or what Pierre Schlag has referred to as "the problem of the subject." Who actually makes the law in this context? What is the source of their normative authority? Second, the authors frankly discuss the conceptual limits, as well as the practical gaps, in the law on the use of force, what I will refer to as its "negative space." I draw on Raymond Carver’s short story, *What We Talk About When We Talk About Love* ("What We Talk About") because it grapples with, and illuminates, similar problems of identity, "negative space," and rhetoric. Like the authors, Carver understands that answers are shaped by who asks the questions; how open, indeterminate and even unanswerable the questions may be; how rhetoric can bridge the gaps, and why everyone affected should join in the rhetoric-building process. In *What We Talk About*, Carver’s characters are trying to "talk about love." Gradually, uncomfortably, they realize how hard it is for them to do so, in part because there is no metanarrative, no "grand story," that resonates for

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14 *Use of Force*, supra note 1, at 3 ("A primary thesis of these materials is that law can and should have an impact on decision-making concerning vital issues of war and peace, just as on decision-making relating to major questions on the domestic scene.").

15 Few law schools offer courses on the law on the use of force, *Use of Force*, supra note 1, at 4, and this text is intended either to make it easier to do so or to supplement public international law classes. The authors note on the law that they have used it with students who have no background in international law, and even with political science students who have no background in any kind of law. *Use of Force* is an accessible introduction to international law for students who might otherwise never be exposed to the subject in law school. *But see Martti Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument* xxv (1989) ("[T]here is a tension between [themes relating to war, human rights and international organization] and the rest of the law.").


19 "Metanarrative" is used by postmodernists to describe and distinguish the disconnected, "little" stories of "postmodernism" from the totalizing descriptions or theories of modernism.
them all. If there is going to be a story, it is going to be a small one ("petit-narrative"), and they will have to write it themselves. Use of Force, which includes materials for a series of in-class exercises, leads students through a similar process to a similarly rich, if disquieting, understanding.

This essay also draws on law school experience, including my own and that of my students, with role-playing, problem-solving and experiential learning exercises taken from Use of Force. I conclude by drawing on recent psychoanalytic work on war to explain why these exercises were so effective and at the same time so frustrating, and why it was so important for them to be both.

I. IDENTITY

A. In Carver's Story

Carver's story opens with two couples deciding where to go for dinner: "[S]itting around the kitchen table drinking . . . . The gin and the tonic water kept going around, and we somehow got on the subject of love." Carver's narrator is credible, sympathetic but objective. While he sees himself primarily as an observer, he is also a participant. Carver reminds us that stories are always told by human subjects, whether they are visible within the story or hiding outside of it.

The dominant voice in the story is not the narrator's, however. The reader is told in the first line: "My friend Mel McGinnis was talking. Mel McGinnis is a cardiologist, and sometimes that gives him the right." The understated sarcasm undermines Mel's authority. Why does his profession give him a "right" to talk, to be heard, about anything besides cardiology? Perhaps Mel thinks his "right" arises from his money, or his own sense of importance, but the other couple and his wife concede that "right" grudgingly. They let him talk, but they do not let him talk for them. They will listen as long as he can hold their interest, but he has no normative authority.

For a general introduction to narrative, see ROBERT SCHOLES & ROBERT KELLOGG, THE NATURE OF NARRATIVE 4 (1966) ("For writing to be narrative no more and no less than a teller and a tale are required."). For a comprehensive overview, see James R. Elkins, A Bibliography of Narrative, 40 J. LEGAL EDUC. 203 (1990).

20 See VOL. II, supra note 1.
21 CARVER, supra note 2, at 137.
22 Id.
23 Indeed, he later gently mocks himself, only to be furiously outdone by his wife. Id. at 149.
24 See Roger C. Cramton, Beyond the Ordinary Religion, 37 J. LEGAL EDUC. 509, 514 (1987) [hereinafter Beyond the Ordinary Religion] ("He who claims to have 'the truth' is a person, we have learned, to be feared, unless with genuine humility he is willing to expose his truth to the data, arguments, and experience of others.").
Mel's identity shapes his narrative, just as his narrative reveals who he really is. Mel yearns for a universal standard with which to measure love. He is convinced that he has found a paradigm in an old couple’s faithfulness. Their story, he believes, will “make us ashamed that we think we know what we’re talking about when we talk about love.” The premium he puts on faithfulness shows us how hard it is for him to be faithful and how hard it is for him to have faith. He questions his attachment to his second wife, Terri, and wonders whether he would be more attached if he were instead married to Laura, the narrator's wife. He not only questions the integrity and constancy of his own feelings, but whether love itself can ever be absolute.

Terri, Mel’s wife, disagrees. She insists that because “people are different” love cannot be measured by universal, objective standards. She describes how “the man she lived with before she lived with Mel loved her so much he tried to kill her.” Unlike her doubting husband, Terri is certain that love is subjective, and defies Mel to prove her wrong.

Terri’s story is a story of victimhood, of powerlessness. She nevertheless insists on the validity of her own subjective experience and her autonomy, her “right,” to set her own normative standards based on that experience. Mel, in contrast, seeks a universal standard which he assumes will incorporate and legitimate his perspective. At the same time, he recognizes the costs of too much power, the risks of too many choices. He also seeks a universal standard to save him from his own doubts, his own internal conflicts.

25 As philosopher Charles Taylor explains, “My identity is defined by the commitments and identifications which provide the frame of horizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose. In other words, it is the horizon within which I am capable of taking a stand.” CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY 27 (1989).

26 Mel does not know their story, and the reader never hears it. See infra text accompanying notes 78-80.

27 CARVER, supra note 2, at 146.

28 See id. at 137-38 (“He said he’d spent five years in a seminary before quitting to go to medical school. He said he still looked back on those years in the seminary as the most important years in his life.”).

29 Id. at 150-51.

30 Id. at 144 (“There was a time when I thought I loved my first wife more than life itself. But now I hate her guts. I do. How do you explain that? What happened to that love?”).

31 Id. at 138.

32 Id. Terri continues, “He beat me up one night. He dragged me around the living room by my ankles. He kept saying, ‘I love you, I love you, you bitch.’ He went on dragging me around the living room. My head kept knocking on things.” Id.

33 Like the “subjects” described by Professors Schlag and Balkin, supra note 16, Mel takes it for granted that his point of view will be represented, whether because he will participate in crafting such a standard or simply because it is “right.” Because Terri, unlike these subjects, has been and probably still is subordinated, she assumes that her point of view will not be represented.
B. In the Law School Classroom

1. The Text

Use of Force tells us that nation states are the subjects, the narrators, the we, of the law on the use of force. The major world powers resolved to create law to govern the use of force in horrified response to the mass destruction of World War II. The post-World War I attempt to create a legal regime had failed, but the new regime would have more "muscle."

Article 2(4) of the U.N. Charter prohibits the use of force by a state against any other state. The only exception is "self-defense." What amounts to a "use of force"? What is the appropriate scope of self-defense? Like Carver, the authors of Use of Force recognize that the subjects shape the story. Since states are the only subjects in the discourse on the use of force, the rhetoric on the use of force is appropri-

34 KOSKENNIEMI, supra note 15, at xxiii ("We don't choose the concepts of international law when we enter international legal discourse. Rather, we must take a preexisting language, a preexisting system of interpreting the world and move within it if we wish to be heard and understood.").

35 USE OF FORCE, supra note 1, at 205. It has been argued that the justice at Nuremberg was "victors' justice"; that is, that the "crimes against humanity" for which the Nazis were convicted were not "crimes" until the Germans and the Japanese lost the war. See, e.g., Max Frankel, The War and the Law, N.Y. TIMES MAG., May 7, 1995, at 48. This argument was in fact raised and rejected at Nuremberg. Jonathan A. Bush, Nuremberg: The Modern Law of War and Its Limitations, 93 COLUM. L. REV. 2022, 2085 (1993) (reviewing TELFORD TAYLOR, THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR); See also Morris B. Abram, Chair, U.N. Watch, Letter to the Editor, N.Y. TIMES, May 21, 1995 ("[If we await perfect justice, none will ever be meted out. Until a world government is established with a legislature and judiciary, what would Frankel want allied powers in World War II and the U.N. today to do with captured monsters? Shoot them on the spot? Turn them loose? Try them by set rules in an open court?").

36 The League of Nations was the "first global attempt to restrict by law the rights of states to wage war." USE OF FORCE, supra note 1, at 205.

37 The U.N. Charter has more textual "muscle" than the Covenant of the League of Nations because it prohibits the use of force, while the Covenant's "pious, if limited, restrictions on the use of force . . . were not matched by the development of procedures and methods to make them effective." Id. at 205-06. The Charter regime has more political "muscle," not only because the United States is a member, but because the Security Council (which had no analog under the Covenant regime) "was allocated greater powers than any other international entity in history." Id. at 207.

38 "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." U.N. CHARTER art. 2, ¶ 4.

39 U.N. CHARTER arts. 51, 52. This includes "collective self-defense"; that is, other states may come to the aid of a victim state which has requested aid.

40 At what point does "nuclear preparedness," for example, amount to a use of force? Some have suggested that if a state is reasonably convinced that it is going to be attacked, it can pre-emptively "respond." As Professor Henkin notes, "Fortunately . . . the issue has remained academic." USE OF FORCE, supra note 1, at 543.

41 What "self" has the state? See generally SUSAN GRIFFIN, A CHORUS OF STONES: THE PRIVATE LIFE OF WAR 278 (1993) ("The identity crisis they are talking about is probably one of national boundaries. But of course there are other identities placed in jeopardy now, such as the identity of the warrior.").

42 As Professor Henkin has summarized: "[E]ntities other than states had no status, no rights, duties or remedies, no claim to membership in international organizations, no standing before international bodies." ASIL NEWSL., Nov. - Dec. 1993, at 1, 3. Indeed, states are still the
ately "stately"; that is, grand and abstract. States, for example, lose "troops"; they do not lose husbands and fathers, sons and daughters.

Just as human interests shape Carver's story, state interests shape the narrative on the use of force. Under pre-Charter international law, for example, if civil war erupted other states were only allowed to support the already-recognized government, not a rebellious faction. Sovereign states had a clear self-interest in preserving the stability of other sovereign states.

The pre-Charter law was challenged, however, by states that had formerly been colonial territories. In the colonial context, aiding the already-recognized government was tantamount to support for the continuing oppression of colonized people. A new norm of "self-determination" gradually emerged. This, too, reflects the self-interest of "states," but it incorporates the perspectives of new states as well as their colonizing predecessors. Through carefully selected and edited excerpts, Use of Force explains how "a new law of non-intervention in internal affairs" replaced pre-Charter law.

While sovereign states are "equal," some states are more equal than others. Just as Mel dominates the conversation in Carver's story, the United States dominates the conversation internationally as the only remaining superpower. Without United States support, U.N. military operations become impossible. When the United States speaks, other

only parties who may appear before the International Court of Justice. For a forceful argument that "obligations and entitlements are no longer the sole attributes of states but first and foremost pertain to human beings and to people," see Van Boven, supra note 5, at 58.

Although states are obviously represented by a changing cast of human actors, the states themselves remain the subjects and states have their own set of interests. Thomas Ehrlich suggests that the use of force is a "testing case for the legal process in decisionmaking on U.S. foreign policy." A Testing Case, in USE OF FORCE, supra note 1, at 157.

David J. Scheffer, The Great Debate of the 1980s, in USE OF FORCE, supra note 1, at 114 ("The sides may become so balanced that to call one a government and another an insurgency would be patently unresponsive to the facts. The classical rule is that no one may aid either side in a civil war"); see also Thomas Ehrlich, Measuring Line of Occasion, in USE OF FORCE, supra note 1, at 129 (urging "modification of traditionalist positions to make the law more realistic and thus perhaps more effective").


But see Louis Henkin, The Use of Force: Law and United States Policy, in USE OF FORCE, supra note 1, at 340, 341 [hereinafter Henkin, The Use of Force] ("With colonialism no longer an important concern, the pressure for a 'self-determination exception' to the law of the Charter has subsided.").


Just as Mel provides the gin, the United States provides the arms and what is widely recognized as the best-trained and best-equipped fighting force in the world. See generally USE OF FORCE, supra note 1, at 216-39; see also Bryan Hall, Blue Helmets, Empty Guns, N.Y. TIMES MAG., Jan. 2, 1994, at 18 (summarizing the problems confronting 72,000 U.N. soldiers involved in peacekeeping operations in Cambodia, Rwanda, Haiti, the former Yugoslavia, and elsewhere throughout the world).
states pay attention, although they do not necessarily agree. Like Mel, the United States lacks normative authority. Its wealth and power, or its own sense of importance, may lead some in this country to think it "has a right," but other states concede that right grudgingly. They do not recognize wealth and power as a legitimate source of normative authority. Some states resent and contest American claims to the contrary, just as Mel's companions resent and contest his.

Like Mel, the United States has an interest in a universal standard, which it assumes will incorporate and legitimate American perspectives. For example, some American commentators argue that "humanitarian intervention" should be recognized as a legitimate exception to the Article 2(4) prohibition on the use of force. John Norton Moore proposes specific standards for evaluating the legitimacy of such intervention.

Other states are concerned that the United States might find it difficult to be faithful to such standards, especially in view of the many opportunities for stretching them. As British scholar Ian Brownlie notes, under Professor Moore's standards, "[T]he opportunities for intervention will be very many. It is also the case that only a few powerful states will have a choice of voluntary intervention of this kind." Richard Lillich counters with a "plea for constructive alternatives." Use of Force concludes this discussion with an excerpt from Louis Henkin's Right v. Might: "At bottom, all suggestions for exceptions to Article 2(4) imply that, contrary to the assumptions of the Charter's framers, there are universally recognized values higher than peace and the autonomy of states. In general, the claims of peace and state autonomy have prevailed." While Use of Force does not explicitly endorse Professor Henkin's view, the range and vigor of these excerpts show that no other values have achieved the acceptance accorded "peace" and "state autonomy." Much like Mel, many American commentators are deeply drawn to simpler, less conflicted paradigms. They are drawn to these simpler paradigms either to support American interests (which some conflate with world interests) or to bind the United States, to protect us from

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50 Some of the materials suggest that U.S. failure to comply with international law has undermined the normative authority the United States once enjoyed. See supra note 10. The authors include arguments to the contrary, however, such as the excerpt from Anthony Clark Arend noting violations by over 100 states of the Article 2(4) prohibition. USE OF FORCE, supra note 1, at 200, 201.

51 USE OF FORCE, supra note 1, at 331. For a provocative, but ultimately unpersuasive argument that human rights violations constitute "threats to the peace" sufficient to trigger Charter- endorsed "coercive action," see W. Michael Reisman, Haiti and the Validity of International Action, 89 AM. J. INT'L L. 82, 83 (1995).

52 Ian Brownlie, Humanitarian Intervention, in USE OF FORCE, supra note 1, at 327, 332.

53 Richard Lillich, Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives, in USE OF FORCE, supra note 1, at 333, 337-38 (finding no support for Brownlie's preference for U.N. intervention "in the events of the past decade").

54 USE OF FORCE, supra note 1, at 942.

55 Not even "democracy" has achieved the same degree of acceptance, although the rhetoric is increasingly robust. See, e.g., Thomas M. Franck, The Democratic Entitlement, 29 U. RICH. L. REV. 1 (1994).

56 See, e.g., Scheffer, supra note 44, at 118 (describing views of the "allied school"): 
the consequences of our own political vagaries. The law on the use of force, however, neither provides such paradigms nor permits the United States (or any other state) to unilaterally establish them.

Instead, in deference to state autonomy, the law on the use of force leaves it to the victim state to "declare itself to have been the object of an armed attack" and to "request . . . assistance in collective self-defense."57 Like Terri, victim states remain the arbiters of their own experience.58 They remain autonomous59 and retain the right to set their own normative standards based on that experience. Richer and more powerful states, like Mel, cannot unilaterally impose some ostensibly objective standard.60

2. The Students

Unlike both Carver's story and the law on the use of force, the law school classroom is usually dominated by one voice, whose authority is accepted, if not always unquestioned. It belongs to the law school professor, and unlike Mel and the United States, he61 often enjoys

Like the United States Constitution, the Charter is an ever-expanding document that must respond to a rapidly changing world, one where the collective security arrangement of the immediate post-World War II era has collapsed . . . . That means revising international law so that it remains compatible with the foreign policy objectives of the United States and its allies.

57 Henkin, The Use of Force, supra note 46, at 340, 344 (citing the International Court of Justice in the Nicaragua case). As David Scheffer explains, "traditionalists argue that a third state may have the right to counterintervene to protect the independence and territorial integrity of the 'invaded' country, provided that it is exercised in collective self-defense in a manner faithful to the procedural framework of Article 51 of the United Nation's Charter." Scheffer, supra note 44, at 114-15.

58 The determination of the victim state remains subject to judicial review, however, as Lauterpacht argued and the Nuremberg Trials confirmed. USE OF FORCE, supra note 1, at 251-52.

59 The price of this autonomy may well be further victimization, as it may be for Terri.

60 The implication that the relations between developed and developing states in the context of the use-of-force regime are gendered is intentional. Because this is not addressed in USE OF FORCE, unfortunately, I merely note it here. This may be considered part of the text's "negative space," however, and those wishing to supplement it should see Judith Gail Gardham, The Law of Armed Conflict: A Gendered Regime?, in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW (Dorinda G. Dallmeyer ed., 1993) [hereinafter RECONCEIVING REALITY]; Christine M. Chinkin, Peace and Force in International Law, in id. at 203. See infra Part III.

This is, of course, a specific application of a very old theme. For a still powerful introduction, see VIRGINIA WOOLF, THREE GUINEAS (1938). I am not suggesting that women are inherently less bellicose than men. Rather, peace-making and reconciliation skills, like nurturing skills in general, are culturally attributed to women and women are expected to promote them. See, e.g., Ann Scales, Militarism, Male Dominance and the Law: Feminist Jurisprudence, 12 HARV. WOMEN'S L.J. 25 (1989).

61 The use of the masculine pronoun here is deliberate. See Catharine W. Hantzis, Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching, 38 J. LEGAL EDUC. 155, 156 (1988):

For many students, [Kingsfield's] central place in the popular conception of legal education legitimates his classroom style and renders marginal and suspect efforts by others to adopt different instructional techniques. The problem this poses for many thoughtful law school teachers is especially acute for women because the Kingsfield image is so exclusively male. If a man who resembles Kingsfield leaves a student confused and suffering from low self-esteem, that is to be expected. If, on the other hand, a
normative authority. A few brave students may question doctrine, and many more may question their own understanding of it, but they rarely question the professor's authority to say what it is. The professor's authority is based on, even as it confirms, the normative authority of domestic law.

Law students understand that the normative authority of the law can be challenged, of course, but they soon learn that such challenges must be supported by statutory authority or common law precedent, precisely drafted and carefully directed to the appropriate branch of government. A law professor knows where such challenges are most likely to arise and how the system deals with them. When he lectures about domestic doctrine, citing legislative history on the scope of the statute, quoting appellate court opinions on the law and trial court decisions on the facts, he replicates the process of domestic law. The law professor is like a cardiologist talking about the human heart during surgery, or discussing surgery he has done in the past.

A law teacher lecturing about the law on the use of force is more like Mel, more like a cardiologist talking about love. International law governs the use of force between states, just as domestic law governs the use of force between individuals, but in striking contrast to domestic law, international law is applied and interpreted by the parties themselves. As Professor Henkin has noted, "International law is made by the states themselves, not by a legislative body representing them. It is made by 'unanimity', not by majority votes. Under traditional principles, a state is bound only by law to which it has itself consented." Until and unless the Security Council finds a threat to "international peace and security," the resolution of a particular conflict is left to the states involved.

Role-playing exercises, in which students assume the roles of various states, replicate the diffusion of normative authority and the need for consensus which characterize the law on the use of force. In addition, woman teacher fails to make confusing material crystal clear, the student's confusion is the result of her bad teaching.

Indeed, students are far more likely to challenge the professor's refusal to say what it is, to construe such refusal as "hiding the ball."

"All teaching, if it is worth anything, involves transmitting values: students learn from professors and professors learn from students. The transmission is rarely an equal interchange, however, because students look to the professor as the classroom authority on all issues, including the value of class contributions." Stephanie M. Wildman, The Question of Silence: Techniques to Ensure Full Class Participation, 38 J. LEGAL EDUC. 147, 148-149 (1988).

This "precise drafting" often requires particular legal "terms of art"; i.e., a formal, explicitly agreed-upon language. See, e.g., RICHARD WYDICK, PLAIN ENGLISH FOR LAWYERS 19 (3d ed. 1994).

How many student challenges, for example, are countered by a professorial query, "Isn't that a question for the legislature?"


It also redistributes responsibility. See Barbara Bennett Woodhouse, Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life, 91 MICH. L. REV. 1977, 1986 (1993) (describing the value of moot courts and role-playing in the classroom: "Short of actual client representation, nothing focuses a student's attention like the eye of the camera, a well-prepared opposing
role-playing enables students to explore state identity from the "inside." What shapes state identity? The case studies contained in Volume II allow students to explore a wide range of political, geo-political and historical factors which have produced various hot-spots throughout the world, as well as to distinguish state identity from "American" identity. Through role-playing, students discover how self-interest shapes state narratives. Which states want to strengthen the Charter paradigm and which seek to challenge it? Which state dominates the conversation? Why do the others allow it to do so? Finally, as Stephanie Wildman has pointed out, role-playing allows students to forget themselves and their anxieties about their performance in law school, freeing them to explore these questions creatively.69

Role-playing exercises challenge teachers as well as students. Many law teachers are more comfortable guiding students toward what we know is the "right" answer than allowing them to grope for their own.70 Even if the teacher can shed his role, moreover, teacher-participation in the role-playing exercise may make it harder for students to shed theirs. By instead assuming a passive role, a law teacher can give students room to play more active roles.71 Even students' occasional panic can be instructive. States, too (or at least the humans who represent them) may panic when thrust into situations for which they are unprepared, situations for which there may in fact be no precedent.

II. "NEGATIVE SPACE"

A. In Carver's Story

Carver's story depends on negative space, on who is not speaking, on

counsel, and the scrutiny of a 'judge'."); see generally Paul Bergman et al., Learning From Experience: Nonlegally-Specific Role Plays, 37 J. LEGAL EDUC. 535 (1987).

69 Professor Wildman suggests "encouraging [a student afraid to ask a question] to forget herself and play a role—for example, 'What would you argue if you were defendant's lawyer?'" Wildman, supra note 63, at 151-52. For a description of simulation exercises used to encourage students to "place less stock in lawyerly constructions," see Charles Lawrence, III, The Word and the River: Pedagogy As Scholarship As Struggle, 65 S. CAL. L. REV. 2231, 2244-47 (1992). Mary Marsh Zulack has described how clinical students have worked with representatives of community groups and studied the groups' decision-making processes. This suggests a useful focus for role-playing in the international context as well. Mary Marsh Zulack, Rediscovering Client Decision-Making: The Impact of Role-Playing, 1 CLINICAL L. REV. 595, 602-03 (1995).

70 The silence that ends Carver's story, moreover, is the last thing most law teachers want in the classroom.

71 My role has been more what Peter Shane has described as "provocateur." Peter M. Shane, Prophets and Provocateurs, 37 J. LEGAL EDUC. 529, 531 (1987) ("The role I, therefore, prefer to play is one of provocateur, not prophet. I share Cramton's commitment to bringing to the surface the value presuppositions of the law, whether tacit or explicit, and inviting students to compare those presumptions to their own.") I pass notes to the participants, sometimes to "level the playing field," sometimes to destabilize an improbable settlement. Once or twice, a last minute absence has prompted me to assume a role. This changes the balance of power in the exercise. Students are understandably more alert and receptive to my reaction or comments as "teacher" than as "state."
what is not said and what cannot be said:72 "In Carver there is a prevailing absence, a silence, an empty space between the lines that the text invites us to fill."73 The characters have no story—not even a "boy meets girl" petit-narrative—to give shape to their inchoate feelings; they have no agreed-upon narrative framework to structure their thoughts. It is not even clear whether they have enough in common to construct such a framework. These characters are neither bound nor supported by the metanarrative of any foundational belief system.74 At the end of What We Talk About, they sit in the dark silently, the gin bottle empty, listening to their own "human noise": "I could hear my heart beating, I could hear everyone's heart. I could hear the human noise we sat there making, not one of us moving, not even when the room went dark."75

Mel thinks that long ago it was different. Knights and ladies lived within a metanarrative that protected them like armor, like their castle walls. Rhetoric, the art of persuasion,76 flourished within that metanarrative, and bought order and grace to messy human relations. The rhetoric of courtly love, for example, made romantic love possible and gave dignity and meaning to loss and renunciation. Although Mel understands that the rhetoric flourished within a brutal feudal system to which few would willingly return, he continues to marvel at it and proffers a postmodern iteration.77

Mel's paradigm of human love—an old couple in the hospital after a car accident—epitomizes negative space.78 Because both old people lie completely encased in casts, he does not even know what they look like; they are so badly injured that only one of them speaks. The husband is inconsolable because he cannot see his wife:

[Notes and citations follow]:

72 Henry Moore's sculpture, for example, is famous for its negative space, which is often the focus: "Because I was trying to become conscious of spaces in the sculpture—I made the hole have a shape in its own right . . . sometimes the form was only the shell holding the hole." PHILIP JAMES & HENRY MOORE, HENRY MOORE ON SCULPTURE 118 (1966).
74 Professor Williams has described a "[n]ew epistemology, consist[ing] of a broad and diverse intellectual movement that rejects a range of long-standing Western verities . . . Perhaps the core element of the new epistemology is its rejection of an absolute truth accessible through vigorous, logical manipulation of abstractions." Joan Williams, Deconstructing Gender, 87 MICH. L. REV. 797, 805 (1989).
75 CARVER, supra note 2, at 154.
76 James Boyd White, Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life, 52 U. CHI. L. REV. 684, 684 (1985) (citing Gorgias, the ancient rhetorician, who defined rhetoric "as the art of persuading the people about matters of justice and injustice in the public places of the state").
77 This is a wonderful example of Derrida's aphorism, "iterability alters," which, as Professor Balkin has explained, "is a shorthand way of saying that once the signifier leaves the author's creation and is let loose upon the world, it takes on a life of its own in the other contexts in which it can be repeated." J.M. Balkin, Deconstructive Practice and Legal Theory, 96 YALE L.J. 743, 772-77 (1987).
78 Runyon notes the evolution from the knight's armor to the old couple's casts. RUNYON, supra note 73, at 133. Indeed, this old couple is almost a parody of the courtly tradition. It is not parody, however, because it is "devoid of irony." See infra note 152 and accompanying text (describing "pastiche").
Even after he found out that his wife was going to pull through, he was still very depressed. Not about the accident, though... because he couldn't see her through his eye hole.... Can you imagine? I'm telling you, the man's heart was breaking because he couldn't turn his god damn head and see his god damn wife.\textsuperscript{79}

The old woman is never heard, and the brief quote about the old man, despite Mel's energetic insistence, is ambiguous. Mel's story fails as rhetoric, the "art of persuasion," since his wife and friends remain skeptical.\textsuperscript{80} It is not easy to "talk about love," to find rhetoric that resonates with disparate experiences and values.\textsuperscript{81}

Carver shows how Mel's frustration shapes his initial efforts. It is precisely the roughness of these efforts, however, and the resultant awkward gaps, that invite others to contribute their own stories. Mel's relationship with the others is like Carver's relationship with his readers. As one critic has described it, Carver "teases us into a collaboration."\textsuperscript{82} The silence in which the story ends offers the reader "negative space" in which to consider her own story, the rhetoric from which it is constructed, and the metanarrative of which it is (or is not) a part.

B. In the Law School Classroom

1. The Text

The law on the use of force is also shaped by its negative space—who is not speaking, what is not said, and what cannot be said. Since states alone are the subjects, there are no "human voices" in the law on the use of force. The language of this law does not reflect the human experience of war.\textsuperscript{83} Instead, it distances war, surveying war from a state, rather than a human, perspective.\textsuperscript{84}

\textsuperscript{79} CARVER, supra note 2, at 151.

\textsuperscript{80} What makes the old man's obsession any truer or better than that of Ed, Terri's former lover, who "loved her so much he tried to kill her"? See CARVER, supra note 2, at 138.

\textsuperscript{81} Cf. GRIFFIN, supra note 41, at 46 ("[I]t may be that what we have to tell is something no one wants to know because what we say does not fit into the scheme of things as they are understood to be.").

\textsuperscript{82} SUSAN LOHAFER, COMING TO TERMS WITH THE SHORT STORY 65 (1983).

\textsuperscript{83} As the authors note in their introduction, "the rules governing armed conflict fall into two broad categories: Those concerning how armed conflict is conducted and those relating to when force may be used." Use of Force is explicitly limited to the second category. Law governing the first category, the conduct of armed conflict, reflects more of the human experience of war because it includes the law governing the treatment of civilians and enemy prisoners. See Chris af Jochnick & Roger Normand, The Legitimation of Violence: A Critical History of the Laws of War, 35 Harv. Int'l L.J. 49, 54-55 (1994).

\textsuperscript{84} For descriptions of the often surreal result, see GRIFFIN, supra note 41, at 46. This is consistent with the notion that violations of human rights do not overcome the Charter prohibition. This does not mean that other states cannot respond to violations of human rights, genocide, or any other "use of force" by a state against its own people. Use of Force devotes a section to actions short of force, USE OF FORCE, supra note 1, at 268-304, including sanctions and exclusion from international regimes, to influence the behavior of offending states.
As in Carver's story, there is no agreed-upon rhetorical framework for the law on the use of force. The Charter was drafted to promote international peace, but it provides no definition, no positive conception of "peace." Rather, under the Charter the states simply agree to agree. Under Article 43, for example, the states agree to "undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities." The contemplated agreements have never been drafted. Such agreements would have required the states to generate rhetorical frameworks, not only to reconcile the broad mandate of the Charter with domestic law and to reassure domestic constituencies, but to clarify the terms "armed forces," "assistance," and "facilities." As the recent carnage in Rwanda has demonstrated, the mere absence of the use of force by one state against another is not enough to ensure "peace."

Finally, like Carver's story, the Charter regime is not grounded in any foundational belief system; it refers to no larger, coherent "story." There is no metanarrative. The only values promoted by the law on the use of force are "peace" and "state autonomy." It is not easy to talk about "peace," to generate rhetoric that resonates with the disparate experiences and values of the more than 185 member states of the United States. Use of Force also discusses "humanitarian intervention" and "massive violations of human rights," concepts which refer to human subjects. As exceptions to the use-of-force regime, however, these present great risks. As Professor Henkin has pointed out, the temptation for a state to intervene to further its own interests, using "humanitarian intervention" or "massive violations of human rights" as an excuse, may well present greater threats to international peace and security than the violations which initially justify such intervention. Whether multilateralism might reduce such threats—and whether the international community has the political will for such multilateralism—remain open questions. The international community is unlikely to "have the will" unless the United States supports it, however, and the United States is unlikely to support it unless there is domestic consensus. See supra text accompanying notes 11-14 (discussing how consensus depends on debate).


See supra note 19.

As Professor Henkin noted in his General Course at the Hague, "[The Charter] declares peace as the supreme value... more compelling even than human rights or other human values." LOUIS HENKIN, INTERNATIONAL LAW: POLITICS, VALUES AND FUNCTIONS 146 (1990). Professor Glennon succinctly concludes, "[a]bsent safeguards that do not yet exist, [the] principle should be non-interference in the internal affairs of sovereign states as embodied in the United Nation's Charter." Michael J. Glennon, Sovereignty and Community After Haiti: Re-thinking the Collective Use of Force, 89 AM. J. INT'L L. 70, 74 (1995).
Nations. As it is for Mel trying to discuss love, initial efforts to develop a working framework for talking about war are likely to be frustrating. It is precisely the roughness of these efforts, however, and the resultant awkward gaps, that invites discussion.

2. The Students

Whether or not a metanarrative underlies domestic law, the law's density keeps most law students too busy to even ask the question. For them, domestic law itself provides a sufficient normative framework: "This is what 'fault' is in marriage"; "The burden is on the state to prove guilt beyond a reasonable doubt." For many, the "ordinary religion" described by Roger Cramton is enough. For other students, the basic premises of the Judeo-Christian tradition still provide a common set of values which need never be made explicit. Even the most alienated students can get through law school without grappling with the question of metanarrative.

In stark contrast, the law on the use of force has no metanarrative nor the illusion of metanarrative. The only agreed-upon values are the

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90 Because the Cold War froze the discussion, efforts to develop a narrative have been delayed for fifty years. Unlike their predecessors, few world leaders today have shared the unifying experience of World War II. See Quincy Wright, A Study of War 388-430 (1965) (an historical compilation of efforts following wars to prevent their recurrence).


93 Nor is this the most urgent question for their teachers, who, law teacher-like, tend to frame their answers carefully: "To the extent there is, it is male," say the feminists; "To the extent there is, it is racist," say the critical race scholars; "Just the loose, flexible metanarrative of liberalism," say the liberals; "Just the self-serving rhetoric of liberalism," say the Crits; "Not any more," say the postmodernists.

94 See Roger C. Cramton, The Ordinary Religion of the Law School Classroom, 29 J. LEGAL EDUC. 247, 248 (1978) [hereinafter The Ordinary Religion]

The essential ingredients of the ordinary religion of the American law school classroom [are] ... skeptical attitudes towards generalizations; an instrumental approach to law and lawyering; a "tough minded" and analytical attitude toward legal tasks and professional roles; and a faith that man, by the application of his reason and the use of democratic processes, can make the world a better place.

See also Beyond the Ordinary Religion, supra note 24, at 512 ("Although there obviously is much truth in aspects of the 'ordinary religion,' two fatal flaws undermine it. The first is that it remains outside the agenda. We suggest that something is true without explicitly addressing it ... The second flaw is that The Answer is not the whole truth."); see Katharine T. Bartlett, Teaching Values: A Dilemma, 37 J. LEGAL EDUC. 519, 520-21 (1987):

[We] have not succeeded in teaching our students about who they are and how they will relate to their profession unless we have truly helped them to find their own answers to the questions Cramton asks ... imposing our current versions of ourselves on our students perversions of the ordinary religion in which difference should be celebrated.

95 After all, it is not on the bar exam (neither is international law). Those students who questioned the premises of the dominant discourse before law school are often dismayed to discover the extent to which these premises remain unquestioned in law school. See The Ordinary Religion, supra note 94; Beyond the Ordinary Religion, supra note 24.
prohibition on the use of force and the basic premise of state autonomy. It is therefore critical to understand the function of a shared metanarrative, in order to find or create a functional substitute. For example, to the extent that a metanarrative facilitates conflict resolution by filling in the gaps, other means must be found for filling in those gaps.

While domestic law may be similarly thin when first adopted, it is fleshed out by judicial interpretation. Domestic judicial interpretations draw on precisely the kind of metanarrative missing here. In international law, for example, the major judicial interpretation on the use of force is the lengthy and carefully written opinion of the International Court of Justice in the Nicaragua case. Although the Nicaragua decision is widely cited, I.C.J. opinions are not binding precedent.

Nor can we depend upon other organs of international law to generate the missing jurisprudence. The General Assembly is not properly a lawmaking body. The Security Council has “primary responsibility for the maintenance of international peace and security” and broad powers with which to carry out its duties. Since the Security Council was basically dormant during the Cold War, however, Security Council “jurisprudence” remains in its infancy. There is still considerable uncertainty, and commensurate caution, about the process for invoking Security Council jurisdiction, as well as the scope and authority of such jurisdiction.

The absence of metanarrative in the U.N. Charter is not an oversight. Rather, it represents a deliberate pre-emption of the metanarrative of “justifiable war.” The only public policy, the only relevant “intent,” the only goal is lasting peace for autonomous states. The law on the use of force promotes this goal in two ways: first, by identifying it not only as legitimate but as paramount; and, second, by providing objective criteria. As Use of Force shows through two case studies, the United States’ invasion of Panama and Iraq’s invasion of Kuwait, the absence of metanarrative simplifies the legitimating function of the law. The Gulf War was widely hailed as an effective application of the law on the use of force. Although it drew on much of the same rhetoric, however, the
invasion of Panama brought on international condemnation. Some commentators saw both as part of a cynical metanarrative, that of the furtherance of United States interests. Others saw both as part of a noble metanarrative: saving innocent people from tyrants and protecting democracy. Neither metanarrative is recognized under the Charter, however. Instead, as the international community understood, the only relevant legal question under the Charter was whether either invasion violated the Article 2(4) prohibition and, if so, whether either fell under the self-defense exception.

The legitimacy of the Gulf War and the invasion of Panama depends on the answers. If an invasion is prohibited by the Charter—as both the invasion of Kuwait and the invasion of Panama were—the victim state can lawfully defend itself and ask other states to join in its “collective self-defense.” Thus, because Iraq’s use of force against Kuwait was prohibited by the Charter, Kuwait could lawfully defend itself, and the multilateral response against Iraq, at Kuwait’s request, was legitimate collective self-defense.

The invasion of Panama, like the invasion of Kuwait, was illegal, but the new Panamanian government, installed with United States support, did not ask other states to join in its collective self-defense. Although there was no multilateral military response against the United States, the invasion was widely condemned and even criticized by some United States allies. The United States lost credibility as a law-abiding state, as well as 25 American lives.

The criteria for determining whether or not the Charter has been violated must be clear and consistently applied. The absence of metanarrative both increases the need for objective criteria and makes it more difficult to establish them, as Use of Force shows in the excerpts from the Nicaragua decision. What exactly amounts to a “use of force”? The International Court of Justice answered this question only after undertaking the most careful and painstaking analysis of the existing international consensus on the law, with particular attention to the parties’ own acts and admissions. Only after this exhaustive review did the Court find that “organization of armed bands for incursion into the territory of another,” “reprisal,” and “terrorist acts” each fell within the Article 2(4) prohibition.

104 This is documented with excerpts from Security Council debates, during which Algeria, Columbia, Ethiopia, Malaysia, Nepal, Senegal, and Yugoslavia submitted a draft resolution deploring the intervention. Use of Force, supra note 1, at 85.

105 U.N. CHARTER art. 52.

106 France “regretted” the U.S. action. Use of Force, supra note 1, at 92.

107 Sweden joined in the G.A. Resolution condemning it. Id. at 96.

108 Lindsey Gruson, G.I.’s in Panama Report Gains in Restoring Order, N.Y. TIMES, Dec. 24, 1989, in Use of Force, supra note 1, at 82-83. 199 Panamanian lives were reported lost. Id.

109 Use of Force, supra note 1, at 184.

110 See generally Wladyslaw Czaplinski, Sources of International Law in the Nicaragua Case, in Use of Force, supra note 1, at 197.

111 Use of Force, supra note 1, at 187.
The lack of metanarrative is further reflected in the lack of established procedures for resolving disputes. Instead, international lawyers have developed a wide-ranging repertoire of methods. These are often surprisingly familiar to American law students, who have learned about them in classes on alternative dispute resolution (ADR).\textsuperscript{112} In groups of five or six,\textsuperscript{113} students in class replicate the open-ended approaches to problem-solving relied on by states.\textsuperscript{114}

They start by breaking problems down into four basic steps developed by Roger Fisher and William Ury:

1. Separating people from the problems.
2. Focusing on interests, not positions.
3. Generating options.
4. Choosing among options by objective criteria.\textsuperscript{115}

While *Use of Force* provides enough information for such exercises, its "negative space" invites students to supplement it. In an international law class last year, we used *Use of Force* as the basis for an exercise on the Bosnian conflict.\textsuperscript{116} The students brought in maps, news clippings, and regional histories to develop the texture of the dispute. They drew on techniques learned in other classes, such as arbitration and mediation, to "generate options."

\textsuperscript{112} ADR has its genesis in international law. New problem-solving tools were required in the international context because the absence of a shared metanarrative left no alternative. See generally ROGER FISHER, INTERNATIONAL CONFLICT FOR BEGINNERS (1969); ROGER FISHER & WILLIAM J. URY, GETTING TO YES: NEGOTIATING AN AGREEMENT WITHOUT GIVING IN (1981); Richard B. Bilder, International Third Party Dispute Settlement, 17 DEN. J. INT'L L. & POL'Y 471 (1989); United Nations, Draft Rules for the Conciliation of Disputes Between States, 90 I.L.M. 229 (1991).

\textsuperscript{113} In my experience this is workable group size. Larger groups become more cumbersome. On occasion I have deliberately put students into larger groups to give them an idea of how much more cumbersome it can get. Professor Wildman suggests having students switch roles in connection with a single exercise. She describes dividing "the entire class into groups, each representing a different special interest lobby that will offer 'testimony' to the legislature about the proposed legislation . . . . After hearing from representatives of all the groups, the legislature convenes. The class members now abandon their previous roles as interest group representatives and debate the appropriate legislative action." Wildman, supra note 63, at 153. See also Woodhouse, supra note 68.

\textsuperscript{114} See, e.g., Anthony D'Amato, The Decline and Fall of Law Teaching in the Age of Student Consumerism, 37 J. LEGAL EDUC. 461, 470-71 (1987) ("Lawyering is pre-eminently problem solving; thinking like a lawyer is having the ability to look at some facts, decide what is missing and what could be added, and relating those facts to 'the law' in such a way as to solve the client's problem."); cf. Zulack, supra note 69, at 613 (explaining why an "attorney-imposed regime" should be avoided where parties "would have to live with and implement their decisions").

There are, of course, other possibilities. For example, students in an exercise may decide to submit the problem to the ICJ. Cf. Wildman, supra note 63, at 152-53 (students convene as a court or as a legislative body).

\textsuperscript{115} FISHER & URY, supra note 112, at 13. Fisher and Ury describe the 1975 Israeli-Egyptian conflict over the Sinai peninsula as an example of problem-solving. Egypt was concerned with sovereignty; Israel was concerned with security. Once their respective interests were clearly identified, they could be addressed separately and the conflict was peaceably resolved.

Students also used law learned in other classes to establish objective criteria. Some tried to draw on the U.S. Constitution, arguing that assurances of political and civil rights would facilitate settlement. Students who had taken international human rights suggested relying on the International Bill of Rights instead, pointing out that the Civil and Political Covenant contains essentially the same assurances and would probably be more palatable to the parties.

In this and other exercises, students also develop criteria using common sense. Is a particular proposal practical? Is it likely to lead to durable peace? Does it make the most of existing resources? Is it too dependent on outside support? Is it likely to appeal to domestic constituencies as well as to the broader global community? Is it likely to be supported by surrounding states? Students are asked to make their criteria explicit, and to explain why those criteria are likely to be accepted by the states involved.

The Bosnian exercise concluded with a class discussion, in which I used the blackboard to chart the issues addressed, the various approaches taken to each, and the range of agreed-upon, albeit partial, resolutions. Although students understood that no agreement has precedential value, like international negotiators they found themselves trying what had worked before, building on prior successes, learning from earlier dead-ends, incrementally adding to a contextualized rhetoric of peace.

III. FAITH IN RHETORIC

A. In Carver's Story

The negative space in Carver's story is part of a larger emptiness—the gaping cavern left by the loss or rejection of metanarrative. Courtly love is an anachronism; it is no longer part of any coherent metanarrative.
tive that can help the characters identify their feelings. Although the rhetoric of courtly love may still have nostalgic appeal for some, even Mel concedes that modernity blew it away long ago: "It was all right being a knight until gun powder, muskets and pistols came along." By "modernity," I refer broadly to the Enlightenment project—the writings of Immanuel Kant, the values of the French Revolution, and a belief in reason, science and human perfectibility. Faith in progress and science replaced traditional belief systems, including religion, as the dominant discourse.

Progress and science added little to the human understanding of love, however, and Carver’s characters seem to have lost their faith in these as well. The “progress” that keeps the two old people in Mel’s hospital marginally alive on high-tech life-support is the same “progress” that smashed into them on the freeway. Progress is illusory and science has not changed human nature. Mel is “just a sawbones”; his mastery of modern medicine gives him no special understanding of the human heart.

Carver’s characters have sloughed off whatever belief systems might once have supported them. They can only believe in the validity of their own experience and in their ability to somehow make sense of it. As philosopher Charles Taylor has described it:

We are now in an age in which a publicly accessible cosmic order of meanings is an impossibility. The only way we can explore the order in which we are set with an aim to defining moral sources is through this part of personal resonance . . . . As our public traditions of family, ecology, even polis are undermined or swept away, we need new languages of personal resonance to make crucial human goods alive for us again.

Carver’s people have not yet found a “new language of personal resonance.” Instead, “their talk is groping, rudimentary. They have no

Facts can be deadly to romance:
But sometimes they suffocated in all that armor, Mel. They even had heart attacks if it got too hot and they were too tired and worn out. I read somewhere they would fall off their horses and not be able to get up because they were too tired to stand with all that armor on them. They got trampled by their own horses sometimes.

CARVER, supra note 2, at 149.

Williams, supra note 74, at 805; see also Nathan Gardels & Marilyn B. Snell, Debris of the Avant-Garde: The Imagination After Modernity, NEW PERSP. Q., Spring 1992, at 2 (“Modernism was about trading in tradition for the future . . . . Criticism was modernism’s instrument in philosophy, revolution its instrument in politics and the avant-garde in art. Progress was the modern faith that would see us through successive stages of development to Utopia at the end of history.”).

As Terri coolly observes, “[People in the days of chivalry fought over the] same things we fight over these days.” CARVER, supra note 2, at 149.

TAYLOR, supra note 25, at 512-13. For a provocative critique of such reliance, see Joan W. Scott, “Experience”, in FEMINISTS THEORIZE THE POLITICAL 22, 25 (Judith Butler & Joan W. Scott eds., 1992) (arguing that “the project of making experience visible precludes analysis of the workings of [the system which produced it] and of its historicity; instead it reproduces its terms”).
wisdom to purvey."126 They speak in what critic James Atlas describes as the "barren idiom of our time[,] an idiom of refusal, a repudiation of the idea of greatness."127

The story leaves the reader as hungry as the characters, who are still without dinner as it ends. "Carver...[is] so resolute about not saying any more than [he has] to in order to convey a story's import, so aggressive in the suppression of detail, that one is left with a hunger for richness, texture, excess."128 This hunger, however, is precisely the point: "At its best, his willfully simple style concentrates our attention, requires us to supply our own conclusions."129 Embedded in the repudiation of the idea of greatness is an invitation to join in a new conversation, to find or construct rhetoric that reflects lived experience, rhetoric that personally resonates for us, in our own time and in our own contexts.130

The old rhetoric has only limited uses. The rhetoric of courtly love was part of the metanarrative of "the Christianization of the Roman Empire."131 Carver's characters would undoubtedly chafe under its rigid hierarchy, but they need rhetoric to shape their inchoate feelings, to imbue those feelings with socially sanctioned meaning, to make "crucial human goods"—such as love—"alive for them again." They will apparently have to create their own new rhetoric and they sit there, in the dark, waiting for the process to begin. The process does begin when the narrator writes the story we have just read. The narrator writes not because he is a "writer," but because he is human, a social animal who functions in a social context, and in order to experience love he needs to be able to "talk about it," to use rhetoric to make it part of that social context.132 The narrator's unspecified link to the law133 is particularly

126 James Atlas, Less is Less, ATLANTIC MONTHLY, June 1981, at 96 (reviewing WHAT WE TALK ABOUT WHEN WE TALK ABOUT LOVE).
127 Id. at 98. John Barth has described Carver's work as "postmodernist blue-collar" and as "K-Mart realism." John Barth, A Few Words About Minimalism, N.Y. TIMES BOOK REV., Dec. 29, 1986, at 1.
128 Atlas, supra note 126, at 96.
129 Id.
130 This invitation also resonates with American notions of participatory democracy and pluralism. ROBERT BELLAH ET AL., HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE (1985). For an example of such new rhetoric, see Audre Lorde to Adrienne Rich, An Interview with Audre Lorde, 6 SIGNS 713, 714 (1981) ("When you asked how I began writing, I told you how poetry functioned specifically for me from the time I was very young, from nursery rhymes. When someone said to me, "how do you feel?" or "what do you think?" or asked another direct question, I would recite a poem, and somewhere in that poem would be the feeling, somewhere in it would be the piece of information. It might be a line. It might be an image. The poem was my response.").
131 MALCOLM N. SHAW, INTERNATIONAL LAW (1991). This metanarrative was a rich tapestry which accrued over centuries, addressing human relations from intimate human love and the family hierarchy under which it presumably flourished to the divine right of kings, the Crusades, and the notion of divinely ordained "just war."
132 Even where I believe that I see a truth about the human condition that no one else has seen...it still must be on the basis of my reading of others' thought and language...somehow I have to meet the challenge: do I know what I'm saying? Do I really grasp what I'm talking about? And this challenge I can only meet by confronting my thought and language with the thought and the actions of others.
TAYLOR, supra note 25, at 37.
pertinent here because it affirms the lawyer's role as storyteller, as one who is relied upon to create rhetoric.

B. In the Law School Classroom

1. The Text

Like Carver's rhetoric, the rhetoric of the U.N. Charter is arid. Its tone is cool, its voice is carefully passive. Like Carver's language, it is "an idiom of refusal, a repudiation of the idea of greatness." Unlike Mel, the drafters of the U.N. Charter had little nostalgia for the rhetoric of the past. From the emergence of the nation-state in the 17th century until World War I, a state could declare war for any reason. Indeed, a state could declare war for no reason at all, although, for political reasons, such declarations were usually justified by the "vital interests" of the state. This notion of "justifiable war," already dubious by the beginning of World War I, was virtually inconceivable after World War II. After Hiroshima and Nagasaki, the world powers were ready to recognize peace as a paramount value. The rhetoric of the Charter is "an idiom of refusal," a rejection of the metanarratives used to justify war.

Just as the absence of metanarrative in Carver's story leaves Mel's rhetoric open to question, the rejection of the pre-Charter metanarrative of "justifiable war" leaves the rhetoric which had evolved under that metanarrative problematic. Use of Force recognizes the dilemma of pre-Charter principles in the context of post-Charter issues. Yet states draw from these fragments of rhetoric in constructing new rhetoric. Use

133 He met his wife Laura, a legal secretary, in a "professional capacity." While this leaves open the possibility that he is a client, a court reporter or another legal secretary, Mel's inability to intimidate him, as well as his slightly stilted choice of words, suggest that he is probably a lawyer, a judge, a law teacher or law student. See WYDICK, supra note 64, at 3.

134 Cf. USE OF FORCE, supra note 1, at 358 (citing John Quincy Adams for the proposition that a new government should be recognized when "independence is established as a matter of fact so as to leave the chances of the opposite party to recover their dominion utterly desperate").

135 See supra note 127. The dispassionate language of many of the Charter's provisions, see, e.g., U.N. CHARTER arts. 2, 4, 24, 43, 52, contrasts dramatically with the soaring rhetoric of its preamble ("[T]o save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."). The preamble to the U.N. Charter, like that of the U.S. Constitution, has no legal effect.

136 St. Augustine defined a "just war" as one intended to avenge injuries. REBECCA M.M. WALLACE, INTERNATIONAL LAW 217 (1996).


138 Unimaginable destruction, including the literal destruction of the planet, was the obviously untenable alternative. Americans have yet to collectively come to terms with the fact that this country dropped atomic bombs on civilian populations, as shown by the outcry regarding the recent Enola Gay exhibit at the Smithsonian. "In both [Japan and the United States], the facts of wartime atrocities can be uncovered with little effort. What we do not yet know for sure is how we should react to those facts and what they imply about our societies today." John Whittier Treat, Remembering the Bomb, N.Y. TIMES, June 25, 1995, at E15; cf. Mathew Bernstein & Mark Ravina, Film Review, 98 AM. HIST. REV. 1161, 1162 (1993) (reviewing RHAPSODY IN AUGUST (Shochiky Co. 1991), discussed infra note 157) (describing how "eagerness to understand the tragedy of Nagasaki unites rather than divides" a Japanese-American and his Japanese second cousins).

139 See, e.g., USE OF FORCE, supra note 1, at 505-06.
of Force offers cogent, accessible excerpts of original texts, as well as a full range of contemporary interpretation. For example, the authors include a brief excerpt of an article by Jeane Kirkpatrick and Allan Gerson in defense of the "Reagan doctrine," although the "Reagan doctrine" was severely criticized even when he was in office.

Just as it is up to the characters in Carver's story to create rhetoric upon which they can agree, it is up to states to create rhetoric which resonates for all of the parties to a conflict, if it is to be resolved peacefully. The terse language of the Charter, like Carver's language, leaves us with "a hunger for richness, texture, nuance." It invites states to bring culture, history, and psychology into their negotiations, to contextualize the law. Use of Force similarly invites students to supplement its materials, to look for the stories of the human beings actually involved, to explore the ways in which the law on the use of force can be shaped to address human concerns.

2. The Students

Peter Brooks, who teaches comparative literature and lectures in law at Yale, explains how we make sense of our experience by shaping it into stories. The shared rhetoric with which we link our individual stories helps make sense of our communal, public life. War stories are

140 These include several rousing, famous, and infamous, communications, such as Secretary of State Daniel Webster's note to the British Prime Minister in 1842. Use of Force, supra note 1, at 319.

141 Use of Force, supra note 1, at 321.


143 'Making up' a quarrel is a process in which the parties gradually, and often with great difficulty, come to share a common language for the description of their common past, present, and future, including an agreement as to what will be passed over in silence. In this process they reestablish themselves as a community with a culture of their own. James Boyd White, Heracles' Bow: Essays on the Rhetoric and Poetics of the Law 38 (1985).

144 The authors describe, for example, an emerging consensus as to "embargoes, sanctions and other counter-measures [that] are not prohibited in Article 2(4)." Use of Force, supra note 1, at 269.


146 D'Amato, supra note 114, at 485 n.43 ("As law teachers know, sometimes the classroom itself turns into a large mind. ... The professor then, in a way, becomes just one more input into the classroom mind, which takes over.").

147 I mean literal "war stories." See, e.g., Untold War Stories, N.Y. Times Mag., May 7, 1995, at 58 (collection of first person accounts, commemorating the 50th anniversary of World War II). The common use of the phrase, in ironic quotes, to refer to the stories of legal practice, of early years in a big firm or in legal services, is worth noting. Like literal war stories, these express the values, risks, dangers and rewards of life in a particular community. Feminist legal "war stories" add another twist, describing women's occupation of historically male turf, and doing so through the appropriation of an historically gendered narrative form. Cf. Ann Darr, The Women Who Flew-But Kept Silent, N.Y. Times Mag., May 7, 1995, at 70 (1,074 women pilots were erased from history until 1977).
particularly important. They tell us what our highest values are, what we
are willing to die for. They tell us what we are capable of, from the most
tender sacrifices to the most brutal acts of violence. They enable us to
demonize our enemies, destroy their cities, and kill their children. And
they enable us to exult after doing so, as if we had won a game.

War stories reflect the culture as well as the time of which they are a
part. For a generation, Vietnam became the definitive war story, a
story that undermined the rhetoric of war itself. Many opposed U.S.
involvement because it was unlawful. The norms of the Charter were
already a part of our rhetoric, part of our consciousness. Because there
was no serious question of self-defense or collective self-defense in
Vietnam, there was no credible justification for the United States’ use of
force.

Since the end of the Cold War, the rhetoric of war has become
increasingly unintelligible, as the chaotic struggles in Somalia and
Bosnia have demonstrated. Instead of rhetoric, we have only “pastiche”:

Pastiche is, like parody, an imitation of a peculiar mask, speech in
a dead language, but it is a neutral practice at such mimicry,
without any of parody’s ulterior motives, amputated of the satiric
impulse, devoid of laughter and of any conviction that alongside
of the abnormal tongue you have momentarily borrowed, some
healthy linguistic normality still exists.

Can rhetoric capable of supporting an often fragile peace be con-
structed from this “abnormal tongue”? Can stories that are not only
meaningful, but compelling—stories able to reconcile the bitterest
enemies—be constructed from a “dead language”? The rhetoric of
peace must resonate for those actually involved in the conflict. To
construct such rhetoric, or even to conceptualize a framework from
which such rhetoric might emerge, is at the very least a daunting task,
perhaps an impossible one.

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148 As Professor White has pointed out, in a discussion of the Iliad, “to understand these
actors and events, we need the Homeric words themselves, the language that defines the social
world and the values that give particular meaning to the dispute. Only in the language of this
culture can argument proceed about the issue of justice that has arisen with it.” WHITE, supra
note 143, at 224. For an example of ineffective rhetoric, see FOR THE BOYS (20th Century Fox

149 See Untold War Stories, supra note 147.

150 A compelling legal analysis of the “Viet-Nam situation” by Quincy Wright is included in
USE OF FORCE, supra note 1, at 361.

151 See generally Andrew Tulumello, Rethinking Somalia’s ‘Clanism’, 6 HARV. HUM. RTS. J. 230

152 Fredric Jameson, Postmodernism, or, the Cultural Logic of Late Capitalism, NEW LEFT REV.,

153 An important subtext here is the extent to which we should be constructing it; that is,
while the United States must be a participant, the role of the United States in post-Cold War
peacekeeping remains a very open question. See, e.g., Symposium, International Law for a New
By the time American students come to law school, however, many of them have a fierce faith in rhetoric. This is not surprising; they are, after all, self-selected over-achievers who have spent much of their youth leading debate or moot court teams, editing school newspapers, and running student governments as well as various civic associations. Their law school applications evince an enduring belief in committee meetings, participatory democracy, and the arts of persuasion. They believe that a compromise that all parties can live with is almost always possible. They believe that they can shape the most chaotic experience into coherent legal narratives.

Although law students may have faith in rhetoric, and their own ability to craft it, few have much relevant experience to draw on. We have not had a war in this country within living memory, and few students have ever served in the armed forces. They have seen movies and read books, of course, but everyone knows that is not the same. They lack experience in which to ground their rhetoric. As William Shepard McAninch has pointed out, this is a frequent problem in law school: "Whatever the subject, many of the students are approaching some of the issues abstractly, in a vacuum. By structuring an experience or two for them, we may become much more effective teachers, whatever our usual methodology."

Professor McAninch describes how he structured such an experience for the students in his constitutional law class:

I announced... that it seemed appropriate to begin that session with a prayer. I responded to their startled expressions by assuring them that no one who did not want to need take part, that any such person could stand in the hall until it was over, and that

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154 There are, of course, the cynics; those who question the activities, such as moot court or law review, into which their classmates plunge. In my experience, these often reveal themselves as the most incorrigible idealists.

155 This is based on five years on the Admissions Committee at the University of Tennessee. Law school applications may say as much about what applicants think an Admissions Committee wants to see as about the applicants themselves, of course. See also LAW SCHOOL ADMISSIONS COUNCIL, SO YOU WANT TO BE A LAWYER (1994); LOOKING AT LAW SCHOOL (Stephen Gillers, III, ed., 1990); see generally HELEN POIVEL & ROBERT DIANTONIO, THE ADMISSIONS ESSAY (1995).

156 Doing without frameworks is utterly impossible for us... this is not meant just as a contingently true psychological fact about human beings, which could perhaps turn out one day not to hold for some exceptional individual or new type, some Superman of disengaged objectification. Rather the claim is that living within such strongly qualified horizons is constitutive of human agency, that stepping outside these limits would be tantamount to stepping outside what we would recognize as integral, that is, undamaged human personhood.

157 For a film dealing with this very problem, see RHAPSODY IN AUGUST, supra note 138. Four children, two of them teenagers, are spending the summer with their grandmother outside of Nagasaki, where their grandfather was killed by the atom bomb 45 years earlier. The grandmother tells the children stories, each evoking a particular spot in Nagasaki. The children then visit these sites, from a melted jungle gym transformed into a memorial, to trees in the mountains, struck by lightning. The grandmother's stories are confirmed by the children's physical experience of place, and the places are given meaning by her stories.

no prejudice would attach to any one selecting that option. This assurance was repeated. There were no takers. I then asked them all to rise and face the East and told them to listen as I intoned the prayer: 'There is no God but Allah, and Mohammed is His prophet.' End of exercise.159

How can law students acquire a similarly concrete experience in a class on the use of force?160 A hoax, a false announcement of an attack at the beginning of class, for example, would be too risky if it were realistic enough to be effective.161 As an alternative, students can listen to guest lecturers' first-person accounts of war experience.162 Another way to bring experience into the classroom, as I discovered accidentally in our class on civil war, is simply to allow students to draw on their own history. The materials on civil war in Use of Force include an excellent excerpt by Quincy Wright on the American Civil War.163 Our law school is in the eastern, mountainous part of Tennessee, geographically and culturally more a part of Appalachia than of the South. Unlike the central and western parts of the state, the eastern region was never dependent on cotton or slaves, and many East Tennesseans opposed Tennessee's secession from the Union.164 At the same time, Knoxville was a Confederate stronghold, and a battle site about a block from the law school marks a failed Confederate assault on Union forces.165 Students told stories of great-grandparents who had been the only Republicans in their counties, of the long-term costs of Reconstruction and of Jim Crow, and of their experience with cultural tensions between North and South that remain sharp.166

159 McAninch, supra note 158, at 420.

160 "Paint ball!" a student answered promptly, referring to camps where adults go for a weekend and organize into teams to play a more realistic version of "capture the flag." Players are armed with paint-shooting weapons and those who are "shot" are considered "lost troops." This is precisely the perception we must overcome. Too many Americans already think of war as a game.

161 Indeed, this is close to the paradigm of prohibitable speech, Holmes' famous hypothetical example of a man "falsely shouting 'fire' in a [crowded] theatre." Schenck v. United States, 249 U.S. 47, 52 (1919).

Professor McAninch's exercise is effective because at the very moment students are made uncomfortable, they presumably realize that the prayer is "just an exercise." This presumes, of course, that Professor McAninch's students know that he is not a practicing Muslim, and that his prayer is a ruse.

162 As Mari Matsuda has suggested in another context, "[t]he technique of imagining oneself black and poor in some hypothetical world is less effective than studying the actual experience of black poverty and listening to those who have done so." Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 HARV. C.R.-C.L. L. REV. 923, 925 (1987).

163 USE OF FORCE, supra note 1, at 351.

164 Indeed, 31,092 joined the Union forces. DIGBY GORDON SEYMOUR, DIVIDED LOYALTIES: FORT SANDERS AND THE CIVIL WAR IN EAST TENNESSEE 7 (2d ed. 1982).

165 Id.

166 Students described, for example, being patronized, treated like emissaries from a backwards region, by college roommates in the North. I had been oblivious to this form of subordination as a "dominant" Northerner. With a shock of recognition I remembered what I had thought of as "good-natured teasing" of a college friend from Tennessee.
Under international law, slavery is now illegal, and it was illegal in 1865. Under classic international law, the North could probably have forced the South to remain in the Union. If the U.N. Charter had existed, would it have changed this? Could the South have insisted on "self-determination?" Could the North have invaded on "humanitarian" grounds? Would the Security Council have intervened? Gradually, painstakingly, the students began grappling with these questions, drawing on their own experience as Appalachians, as Southerners, and as "outsiders," building on the "willfully simple" rhetoric of the Charter, and groping, sometimes uncomfortably, toward their own legal narratives.

IV. CONCLUSION—LOCATING "REVELATION"

Carver's characters still believe that they can create rhetoric which will enable their finer feelings to flourish, rhetoric which will contain—or at least inhibit—their violent impulses, despite their own past failures, and what some see as the long history of human failure in this area. When we "talk about love," we engage in the process of creating rhetoric, deconstructing old narratives and drawing on the fragments for rhetoric that "personally resonates" for us. We engage in the same process, albeit with a different objective, when we talk about law and the use of force.

Carver's story is transformative. Like the characters, the reader is left sitting alone with her own unresolved questions, "in the dark" and hungry, unsatisfied. But the reader is conscious now, listening to her own "human noise" and ready for what Hannah Arendt has described as "an anticipated communication with others with whom [he] knows [he] must finally come to some agreement." Critic Robert Houston has described how Carver's stories locate "revelation" not in the characters, but in the reader:

Carver's characters feel and suffer, they grope, they instinctively understand that something terrible or important is happening to

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167 Indeed, the prohibition against slavery is often cited as an example of jus cogens, a peremptory norm in international law. For a succinct introduction to the role of jus cogens in the law on the use of force, see Mark W. Janis, Jus Cogens, in USE OF FORCE, supra note 1, at 177; Gennady M. Danilenko, International Jus Cogens: Issues of Law-making, in USE OF FORCE, supra note 1, at 178.

168 There were students from the North in the class, who had learned about a very different Civil War in their elementary schools, as well as two students from Germany and one student whose family was Palestinian. They had been in Tennessee long enough to realize that any extended discussion of the Civil War was likely to reveal exposed nerves, but not sufficiently steeped in the history of the place to grasp when or why this might happen. The importance and difficulties of teaching about the Civil War is, of course, deeply interwoven with the need to teach about race, and the problems likely to be encountered in doing so. For a perceptive discussion, see Frances Lee Ansley, Race and the Core Curriculum in Legal Education, 79 CALIF. L. REV. 1512 (1991).

169 See text accompanying note 129130, supra.

them. They sense the menace in ordinary life, they feel the wind from the cliff's edge that they, that we, all dance along. But they never quite bring themselves to lean over and look into the chasm, to put into words just what those terrible or important things are. It is up to us to do that. We must experience those revelations for them. Carver has led us to the cliff's edge, and we must look over it. And therein lies the devastating power of the stories.171

Use of Force, similarly, locates "revelation" not in the doctrine or theory or practice of the law on the use of force, but in the readers, the students.172 This essay has explained how it does so. First, by focusing on state identity, Use of Force shows how state interests shape the narrative and how the principle of state autonomy defuses authority. Second, Use of Force grapples with the negative space, the Charter's rejection of the metanarratives of "justifiable war." The law on the use of force looks nothing like the heavily annotated and subsectioned domestic law students see in their other courses. This is part of its "idiom of refusal,"173 its refusal to elevate an abstract ideal above the real horror of war. Finally, Use of Force provides the rhetorical fragments still remaining from the old metanarrative with which to construct more modest, "little" stories that resonate for those whose experience they reflect. The case studies in Volume II encourage students to explore issues of identity through role-playing exercises, to bridge the negative space in the law through problem-solving techniques, and to make sense of their own experience by shaping it into coherent legal narratives.

Locating "revelation" in the students is particularly apt in this context because the Charter law on the use of force locates "revelation" in the states themselves. Unlike domestic law, which relies on detailed statutory or administrative texts or independent courts to tailor law to particular contexts, the Charter functions without intermediary mechanisms that might insulate states from the consequences of their own decisions.174 The Charter's directive is clear: the use of force is prohib-

171 Robert Houston, A Stunning Inarticulateness, THE NATION, July 4, 1981, at 15; cf. GRIFFIN, supra note 41, at 29:
   It is June 25, 1950. Massive forces from the north have crossed the South Korean border. General MacArthur delays sending word to Washington.... As he goes just to the edge, and then just over the edge, of his legal powers, he is something like an acrobat, leaning over an abyss of space.... Imagining myself in the General's place, I just begin to perceive the outlines of his reasoning.

172 See, e.g., Woodhouse, supra note 68, at 1980 ("describ[ing] and defend[ing] a mode of teaching that consciously attempts to bring theory, doctrine and practice together by structuring 'practical' experiences in a classroom setting").

173 See text accompanying note 126 127, supra.

174 I am not suggesting that the ICJ does not or should not play an important role in the development of a jurisprudence on the use of force. Still, the ICJ does not purport to establish binding precedent. STAT. I.CJ art. 57. This permits—and it was intended to permit—significant state autonomy. For an account of the ways in which such intermediary mechanisms can facilitate war, see GRIFFIN, supra note 41, at 153:
   They garbed this violence in the cloak of legality. A mind separated from the depths of itself cannot easily tell right from wrong. To this mind, the outward signs of law and
ited, except in self-defense. The Charter leaves it to the States to give this directive meaning, to apply it in concrete contexts. Use of Force enables students to discover for themselves just how difficult and uncertain this task is.

British psychoanalyst Jacqueline Rose has built on Freud’s work on war, including his famous correspondence with Einstein.\textsuperscript{175} She describes a strong correlation between the inability to tolerate ambiguity and uncertainty and the willingness to go to war.\textsuperscript{176} Instead, in some desperate, doomed quest for finality, certainty, and perfection, those who cannot tolerate ambiguity and uncertainty project this internalized conflict outward on to the enemy, who can then be destroyed with relish.\textsuperscript{177} “Hang on to failure, hang on to derision—a failure and derision that would not invite a reactive triumphalism but pre-empt it—if you want to avoid going to war,” she concludes.\textsuperscript{178} Learning to talk about law when we talk about war, and learning to tolerate the ambiguities and inevitable frustrations in a classroom context, may help us “hang on to failure.”

Use of Force frees students from the constraints of foundationalism, state rhetoric and “right answers.” It gives them a sense of the immediacy and the vitality of international law, and invites them to join in its ongoing development.\textsuperscript{179} If we want a world of law, of “right” rather than “might,” Americans must begin talking about law when we talk about war. Where better to begin this discussion than in law school classrooms? Use of Force, like Carver’s story, both initiates such discussions and transforms those who enter into them.

order signify righteousness. That Himmler has such a mind was not unique in his generation, nor, I suspect, in ours.

\textsuperscript{175} JACQUELINE ROSE, WHY WAR?: PSYCHOANALYSIS, POLITICS, AND THE RETURN TO MELANIE KLEIN 15 (1993); see Why War?, supra note 6.

\textsuperscript{176} See ROSE, supra note 175, at 21-28 (citing KARL VON CLAUSEWITZ, ON WAR (1892), probably the most famous work on war, for its theory of “total,” or absolute, war). Attitudes toward raising children may both reflect and inform a culture’s ability to tolerate ambiguity. Dr. Daniel Schreber, the Dr. Spock of pre-war Germany, exemplified the approach of strict authoritarians. “Crush the will they write. Establish dominance. Permit no disobedience. Suppress everything in the child.” GRIFFIN, supra note 41, at 120 (emphasis in original).

\textsuperscript{177} ROSE, supra note 175, at 18-19.

\textsuperscript{178} Id. at 97.

\textsuperscript{179} I am not suggesting the creation, or emergence, of a new metanarrative. As Martti Koskenniemi has observed, however:

[The use of force] creates difficulties for an agnostic legal rhetoric, denying its reliance on any particular substance. Nonetheless, it challenges international lawyers to formulate and agree upon some very basic ideals of communal life, however tentative. Without this, it is hard to feel justified in looking beyond today’s crisis with any confidence in a shared future.