# On Scripts and Sensibility:
## Cold War International Law and Revolutionary Caribbean Subjects

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**ABSTRACT**:

Through a literary-theatrical reading of international legality, this article challenges the "settled script" produced by international legal scholars to frame and assess the legality of two historical events - the Grenada Revolution (1979-1983) and the US Invasion of Grenada (1983). It does so by reading the Cold War *as a sensibility* performed by these scholars, one that recognised the operation of rival international legal orders and one that crafted a different script – *Cold War Customary Law (CWCL)* – to decide questions of international legality in a Cold War context. In addition to offering a new way to read the Cold War and international legality, this piece argues *first* that it is important to uncover this parallel and competing script of international legality operating at the time, and not dismiss it as *unrelated* political or ideological discourse, as it clearly influenced the interpretive logic and reasoning practices international lawyers deployed to frame what constituted legality in international law. *Second*, it argues that this Cold War sensibility in international legal scholarship on intervention and revolution *predated* the events in Grenada, and that if a different theatrical *mise en scène* is adopted – one which eschews "the short durée" or "evental history" of the "settled script" - this sensibility can be understood as being both continuous and discontinuous with rival imperial forms of international law operating in the Caribbean across time and place, where its discontinuities open up space to recover Caribbean subjects of international law and a sensibility of shame in the present.

**Keywords**: "Cold War Customary Law", International Law, Revolution, US Invasion, Intervention, Grenada, Cold War, International Legal History, Law and Literature, Sensibility, Script, Theatricality, Dramaturgy, *Mise en Scène*, Islands, Caribbean subject, International Legal Personality, Black Atlantic, Tidalectics, and Oceanic Legal History.

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"*And the shame was on the other side*" [1]

"Once you crack the script, everything else follows."[2]

"There could be nothing more damning for law than the mark of the theatrical…"[3]

## Introduction

What is the difference between a play and an historical event involving international legal practices during the Cold War? Both have authors. Both have actors. Both have plots. Both are staged. Both have scenes. Both have dialogue. Both have audiences. Both are interpreted. And both have scripts - scripts that, in the case of historical events, speak to the nature, content, limits, possibilities and sensibilities of the international legal order at a particular time and place. Through a literary-theatrical reading of international legality, this article challenges the "settled script" produced by international legal scholars to frame and assess the legality of two historical events - the Grenada Revolution (1979-1983) and the US Invasion of Grenada (1983).[4] It does so not only by reading the Cold War as a series of material events with tangible effects on lived experiences but also *as a sensibility* performed by these scholars, one that implicitly recognised the operation of rival international legal orders and one that infused a different script – what this article will call *Cold War Customary Law (CWCL)* – used to decide questions of international legality in a Cold War context. In addition to offering a new way to read the Cold War and international legality, this piece argues first that it is important to expose this tacit parallel script of international legality operating at the time, and not dismiss it as *unrelated* political or ideological discourse, as it clearly influenced the interpretive logic and reasoning practices that international lawyers deployed to frame what constituted legality in international law. In effect, this Article recognises those formally unacknowledged scripts and sensibilities configuring cold war legality. Second, it argues that this Cold War sensibility in international legal scholarship on intervention and revolution *predated* the events in Grenada, and that if a different theatrical *mise en*

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[1] This is an alternate subtitle of this article, taken from David Bowie's LP and single "*Heroes*" 1977 (written by Brian Eno and David Bowie), widely held to be a Cold War anthem devised in a divided Berlin and which (per)forms part of the Cold War sensibility described in this paper.

[2] Ridley Scott, quoted in an article by Lee Sonogan, *How Should I Sell My Movie Script?* Ungroovygords.com [Accessed on 15 December 2017]

[3] Marett Leiboff, *Theatricalizing Law* (2018) Law & Literature 1-17 at 1.

[4] In this paper, I use the terms "invasion" and "intervention" interchangeably as this was the common practice of international legal scholars writing at the time.

*scène* is adopted - one which eschews "the short durée" or "evental history" of the "settled script" - this sensibility can be understood as being both continuous and discontinuous with rival imperial forms of international law operating in Caribbean across time and place. This piece then explores the productive value some discontinuities may offer for hitherto illegible Caribbean subjects of international law and queries the value of a sensibility of shame in the present.

To flesh out these arguments, this article will unfold in three parts: **Part I** outlines the literary-theatrical method deployed to revisit how questions of international legality were decided during the Cold War; **Part II** outlines and unsettles the orthodox or "settled" script of international legality applied to both the Grenada Revolution (1979-1983) and the US Invasion of Grenada in 1983, uncovering a rival shadow script of legality at play i.e. "Cold War Customary Law"; and finally **Part III** explores the continuities and discontinuities of this "Cold War Customary Law" script across time and place, across imperial, literary, Black Atlantic, and oceanic histories so as to recover revolutionary Caribbean subjects as *actors*, *authors* and *performers* of international legality. As will become clear in this Part, this act of recovery in Cold War scripting of legality is not a call for a formalistic recognition of a historically-fixed homogenous Caribbean subject in international law, but is rather a demand for the consideration of a "fragments/whole" epistemology that can render legible the ontological claim of a hybridised, plural, transcultural, shifting, *tidalectic*, interconnected, creolised, revolutionary Caribbean subject to disrupt existing Cold War scripts of international legality framing stories of self-determination, sovereignty and freedom in international law.

## PART I

## International Law, Literature and Theatricality

### 1. Literary and Theatrical Readings of International Law

#### a. *An Unorthodox Method*

Anxieties about 'law and literature' as a scholarly field and endeavour have a long pedigree,[5] and these anxieties are no less present when *international legal scholars* attempt to deploy literary, dramatic, theatrical tools, frameworks, and notions to understand international legal events, law and history.[6] With some exceptions,[7] international legal scholars have on the whole been reluctant to engage with the "literary", "theatrical" and "dramatic" to think through international law in its past, present and future temporalities, with such contributions being at best "few and far between."[8] Speculation as to the reasons underlying the stunted status of "international law and literature" as a subfield of the discipline or even as a new *interdiscipline* - a status which stands in sharp contrast with international law's recent, ongoing and rocky romance with the discipline of history[9] - range from international law's existential fear that it lacks "a truth" possessed by (and to be found in) literature;[10]

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[5] Maria Aristodemou, *The Trouble with the Double: Expressions of Disquiet In and Around Law and Literature* (2007) 11 Law Text Culture 183.

[6] This piece is focused primarily on international *legal* scholars and their scholarship on international legality. For a sample of literary and dramatic scholars engaging with international law see: Joseph R Slaughter, *Human Rights Inc.: The World Novel, Narrative Form, and International Law* (New York, Fordham University Press, 2007) and Julie Stone Peters, *Joan of Arc Internationale,* Proceedings of the Annual Meeting (American Society of International Law) Vol. 91, Implementation, Compliance and Effectiveness (APRIL 9-12, 1997), pp. 120-126.

[7] Gerry Simpson, *The Sentimental Life of International Law* (2015) 3 London Review of International Law 3; Theodor, Meron *The Homeric Wars through Shakespeare* (1997) 91 Proceedings of the Annual Meeting (American Society of International Law) Implementation, Compliance and Effectiveness 126; and see footnotes for this section (a. An Unorthodox Method) generally.

[8] Orna Ben-Naftali and Zvi Triger, *The Human Conditioning: International Law and Science Fiction* (2018) 14 Law, Culture and The Humanities 6 at 11.

[9] This romance is frequently referred to as international law's "turn to history". Matthew Craven, "Theorizing the Turn to History in International Law" in eds Anne Orford and Florian Hoffmann, *The Oxford Handbook of the Theory of International Law* (OUP 2016); Thomas Skouteris, *The Turn to History in International Law,* OUP Online Bibliographies (Last Modified: 27 June 2017) Accessed 5 August 2018: http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0154.xml

[10] Maria Aristodemou, *The Trouble with the Double: Expressions of Disquiet In and Around Law and Literature* (2007) 11 Law Text Culture 183 (Supra note 4): "I suggest that the encounter between Law & Literature... is similarly uncanny and provokes anxiety or disquiet because we are forced to consider that the truth of law may lie in literature and vice versa" (supra note 4 at 185); "Literature, equally excluded and exalted by law, becomes the fantastical object that will remedy's law's lack" (supra note 4 at 191); "…law demands of literature that which it assumes will complete it." (*supra* note 4 at 192)

to its fear that "international law *is* fiction"[11] itself (re: its dubious or selective enforceability); to the fear that reading literature is an elitist enterprise;[12] to the sense that "literature is a far removed discipline of little or no relevance to law",[13] or that too much literature could foster dehumanisation (in contrast to promoting humanistic values that facilitate international law);[14] and finally, to the fear that international law's shameful historical neglect of the "individual" as a valid epistemic subject (a problem not afflicting most forms of literature) prevents it from being literary in nature.[15] Whatever the reason, it is clear that international legal scholars continue to need convincing that any form of disciplinary engagement or conjoining will prove fruitful i.e. offering important insights into the nature of international law, international legal events and history, and international legal practices, rules and norms.

But this is slowly changing. Some scholars have examined the place of international law *in* literature. Works such as Thomas More's *Utopia,* have been mined to explore the development and meaning of the concepts of international law and international justice[16] and also the notion of "just war"[17] – providing scholars with a "literary conceptual history" of international law.[18] Speculative literature (e.g. China Miéville's *The City and the City*) has been used by international legal scholars to revisit the role and meaning of transnationality, territoriality and jurisdiction in contemporary international law.[19] In addition, William Shakespeare has been read as offering customary codes of chivalry to be contrasted with current legal codes for warfare, elucidating how military ethics and international humanitarian law have developed over time.[20] Other scholars, setting out the stakes of international law and literature, have sketched a "literary history of international law," arguing that Shakespeare and Milton can help explain the history of international law.[21] Innovative non-Occidental approaches to the field have problematised characterisations of African international legal scholarship by reading this scholarship through the African novel.[22]

Another kind of contribution to the international law and literature field reads international law *as* literature*,* where the *form* of international law (e.g. legal texts, cases and jurisprudential narratives) determines its normativity, instrumentality and function.[23] Inversely, the literary form has itself been recognised as furthering one's understanding of international law (in regards to its concepts and forms of authorisation, regulation, and legal personality).[24] For example, it has been said that the meaning and operation of the very concept of sovereignty in international law can only be

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[11] Orna Ben-Naftali and Zvi Tiger, *supra* note 7 at 11.

[12] Daniel Kornstein, *International Law and the Humanities: Does Love of Literature Promote International Law* (2006) 12 ILSA J. Int'l & Comp. L. 491 at 496.

[13] Andrea Bianchi, *International Adjudication, Rhetoric, and Storytelling* (2018) 9 Journal of International Dispute Settlement 28 at 32. Bianchi lists two other reasons which prevent international lawyers from engaging with literature: "the contemporary cultural trend towards privileging scientific method, which goes hand in hand with the increasing vilification of the humanities in general, and rhetoric in particular, and a fear that looking outside the law for theoretical inspiration may undermine the autonomy of the discipline." (at 32)

[14] Daniel Kornstein, supra note 11 at 497.

[15] Orna Ben-Naftali and Zvi Triger, supra note 7 at 11. But see Astrid Kjeldgaard-Pedersen, *The International Legal Personality of the Individual* (OUP 2018).

[16] Kelly De Luca, *Utopian Relations: A Literary Perspective on International Law and Justice* (2014) 27 Can. J. L. & Jurisprudence 521.

[17] Fritz Caspari, *Sir Thomas More and Justum Bellum* (1946) 56 *Ethics* 303 at 305-07.

[18] This history can be read not instead of, but *alongside* other historical and philosophical explorations of fundamental concepts of international law: See Jean D'Aspremont and Sahib Singh, *Fundamental Concepts of International Law* (Cheltenham UK: Edward Elgar Publishers, 2019).

[19] Douglas Guilfoyle, *Reading The City and the City as an International Lawyer: Reflections on Territoriality, Jurisdiction and Transnationality* (2016) 4 London Review of International Law 195.

[20] Theodor Meron, *Henry's Wars and Shakespeare's Laws: Perspectives on the Law of War in the Later Middle Ages* (Oxford Clarendon Press, 1993) and Theodor Meron, *Bloody Constraint: War and Chivalry in Shakespeare* (New York: OUP, 2000). See also Ben Atftali and Triger supra note 7 at 10.

[21] Christopher N Warren, *Literature and the Law of Nations, 1580-1680* (Oxford OUP 2015). See Chapter 1.

[22] Christopher Gevers, *Literal 'decolonisation': Re-reading African International Legal Scholarship Through the African Novel* in (eds) von Bernstorff & Dann, The Battle for International Law in the Decolonisation Era (OUP 2019). See also Christopher Gevers, *To Seek with Beauty to Set the World Right: Cold War International Law and the Radical 'Imaginative Geography' of Pan-Africanism* in eds Matthew Craven, Sundhya Pahuja and Gerry Simpson, International Law and the Cold War (Cambridge: CUP 2019) at 492.

[23] Ed Morgan, *The Aesthetics of International Law* (Toronto: University of Toronto Press, 2007).

[24] Joseph R Slaughter, *Pathetic Fallacies: Personification and the Unruly Subjects of International Law* (2019) 7 *London Review of International Law* 3.

ascertained through "if nothing else, a literary process."[25] Sartre's view of literature as a call to action[26] (i.e. a politically engaged literature, or *literature engagée*) has been contrasted with Blanchot's notion of the literary work as "an object of *contemplation*, not of *use*"[27] to explain the competing ways in which the concept of sovereignty has been employed by international legal scholars (*inter alia* Grotius, Schachter, Henkin, Reisman, and Koskenniemi), by international organisations (i.e. the UN) and in international legal cases.[28] In addition to furthering conceptual underpinnings of international law through literary *processes*, the literary form may help to evaluate international legal responses to legal issues in the present and future. For example, science-fiction has provided representations of technologies in ways which can help to reflect on how international law offers competing representations of technologies, including ones directed at authorising both the creation and end of human life (i.e. cloning and drones).[29] Examining and challenging the co-production of these representations of technologies can help international lawyers to better ascertain and design (present and future) international legal responsibilities over life and death.

Appositely, international legal scholars have begun to think about the theatrical and dramatic as allegorical expositions of the operation of international law and legal practices.[30] One of the most prevalent ways in which international law has been framed is *theatrically*, with most works attempting to vindicate Peter Goodrich's famous claim "Law is a theatre that denies its theatricality,…".[31] Theatre and dramaturgy (the theory and practice of dramatic composition) have been put forward in a diverse array of modes to understand and characterise international legal practices, with the most common (but by no means sole[32]) example of dramatic theatricalising of law being "the trial".[33] Some have argued that "the prominence of the meta-trial of the Eichmann type" has been "all consuming of the field, that is, [it] seem[s] and [is] seen to represent law, and function, as all law insofar as law might in some way speak to the theatre and vice versa."[34] The trial, more specifically, international criminal trials and tribunals (including people's tribunals[35]) have been characterised in various ways, with international defence lawyers noting they are "like a play,…[with] [e]veryone…reading from a script and playing a part",[36] and with other legal scholars arguing they should be read not as morality plays but as theatres of the absurd,[37] as ritual-like normative performances[38] or as forms of political theatre or juridical farce.[39]

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[25] John Hilla, *The Literary Effect of Sovereignty in International Law* (2008) 14 Widener L. Rev. 77 at 142.

[26] Jean Paul Sartre, *Literature and Existentialism* (Bernard Frechtman (trans), Carol Publishing Group 1994, originally published as "What is Literature?" in 1948).

[27] Maurice Blanchot, *The Space of Literature* (Anna Smock trans., Univ Nebraska Press 1982) at 212. (emphasis added)

[28] "The 'literary effect' of sovereignty is simply the successful fulfilment of literature's goal: sovereignty has become an object of contemplation and not of use. It has become its own end." (Hilla *supra* note 24 at 147.)

[29] Orna Ben-Naftali and Zvi Triger, *supra* note 7 at 44. For examples of science fiction dealing metaphorically with international law, see China Melville, *The City and the City* (Macmillan Publishers, 2009) and China Melville, *Embassytown* (Macmillan Publishers, 2011).

**[30]** Harry Derbyshire and Loveday Hodson, *Engaging with human rights: truth and reconciliation and hang* in Sîan Adiseshiah and Jacqueline Bolton (eds.) debbie tucker green: Critical Perspectives (Palgrave Macmillan, 2020); Peter Deutschmann, *Metaphor and Allegory in Historical Drama and International Law* Recht und Literatur im Zwischenraum / Law and Literature In-Between, (eds.) Christian Hiebaum, Susanne Knaller, Doris Pichler at 207 at 208.

[31] Peter Goodrich, *Spectres of Law: Why the History of the Legal Spectacle has not been Written* (2011) 3 UC Irvine Law Review 773 at 808.

[32] Adil Hasan Khan, *Inheriting a Tragic Ethos: Learning from Radhabinod Pal* (2016) 110 AJIL Unbound 25-30; Christian Biet, *Law, Literature, Theatre: The Fiction of Common Judgement* (2011) 5 Law and Humanities. 281-292.

[33] Michael Bachmann, *Theatre and the Drama of Law: A Theatrical History of the Eichmann Trial* (2010) 14 Law Text Culture 94; Shoshana Feldman, *Theatres of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake of the Holocaust* (2001) 27 Critical Inquiry 201.

[34] Leiboff, *supra* note 2 at 2.

[35] For a unique ethnographic activist account of the place of international law in people's tribunals which engages with theatre and performativity see Ayça Çubukçu, *For The Love of Humanity* (University of Pennsylvania Press, 2018)**.** For an examination of how tribunal practices "figuring" victims, see Maria Elander, *Figuring Victims in International Criminal Justice: The Case of the Khmer Rouge Tribunal* (New York: Routledge, 2018).

[36] Mahlet G. Zimeta, *At the Khmer Rouge Tribunal*, LRB Blog, 29 August 2018 [accessed 29 August 2018].

[37] Grietje Baars, *"Capitalism's Victor's Justice? The Hidden Stories Behind the Prosecution of Industrialists Post-WWII"* in Kevin J Heller and Gerry Simpson (eds.) The Hidden Histories of War Crimes Trials (Oxford: OUP 2013) 163.

[38] Kate Leader, *The trial's the thing: Performance and Legitimacy in International Criminal Trials* (2018) 24 Theoretical Criminology 241.

[39] Gabrielle Simm and Andrew Byrnes, *International People's Tribunals in Asia: Political Theatre, Juridical Farce, or Meaningful Intervention?* (2014) 4 Asian J of Intl L 103-124.

Notwithstanding the fetishisation of international criminal trials and tribunals as examples of international law's theatrical nature *par excellence*, scholars have theatricalised international law *in other ways*. Nathaniel Berman has recently examined drama as having created the world that we live in and who we are as *dramatis personae* of the *modern* international legal order.[40] Naoko Shimazu has focused on various moments in international legal and diplomatic history (such as the 1955 Bandung Conference) as a form of theatre where participants attempted to perform acts of new postcolonial statesmen in a new postcolonial world.[41] In a recent edited collection on the Cold War and International Law, Charlotte Peevers has examined the Suez Crisis through reflections of Pirandello's play "Six Characters" and Sara Kendall has read the assassination of Patrice Lumumba through its depiction in Aime Cesaire's play *A Season in the Congo.*[42]

This article situates itself alongside this last body of international law and literature scholarship - theatricalising international law "in other ways" - and adopts a novel and bespoke method to do so. Specifically, it offers an unorthodox literary-theatrical reading of the international legality of two historical events - the Grenada Revolution (1979) and the US Invasion of Grenada (1983). This approach is unorthodox in two ways. *First*, the theatrical component of the approach taken here is not trial-focused, notwithstanding the fact that trials were indeed an important feature of both the events following the Grenada Revolution and its legal legacy.[43] *Second*, this article will steer clear of a trend in international law and literature to "genrify"[44] international legal historical events, made popular in part by the "turn to history" in international law[45] and more specifically by the re-discovery of Hayden White's *Metahistory*.[46] The move to characterise Grenada's revolution in the genre of tragedy has been very persuasively made in *Omens of Adversity*, David Scott's epic and well-known work on the Grenada Revolution. While recognising Scott's work as an invaluable contribution reckoning with the failure(s) of that revolution and the present's inability to imagine new emancipatory futures, "law of the genre" is only ever one way to order a theatrical reading of international legal events - useful as it is as a mode of "resemblance, analogy, identity, and deference, taxonomic classification, organisation and genealogical tree, order of reason, order of reasons, sense of sense, truth of truth, natural light and sense of history."[47] If it is true that "…at the very moment that a genre… is broached,… degenerescence has begun…..",[48] there is then also a need to forge *non-genrified* literary readings of the Grenada Revolution, US Invasion and its aftermath, with Shalini Puri's *The Grenada Revolution in the Caribbean Present* being one important and luminous contribution.[49]

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[40] Nathaniel Berman, *Drama Through Law: The Versailles Treaty and the Casting of the Modern International Stage* in Michel Erpelding, Burkhard Hess and Hélène Ruiz Fabri (eds.), 'Peace Through Law': The Versailles Peace Treaty and Dispute Settlement After WW I (Nomos & Hart) 2019; Maria Aristodemou, *To Be or Not to Be a (Dead) Father* (2017) Journal of International Dispute Settlement 1.

[41] Naoko Shimazu, *Diplomacy As Theatre: Staging the Bandung Conference of 1955* (2014) 48 Modern Asian Studies 225 at 233-234; Valeria Cimmieri, *The Performative Power of Diplomatic Discourse in the Italian Tragedies Inspired by the Wars Against the Turks* in ed. Nathalie Rivère de Carles Early Modern Diplomacy, Theatre and Soft Power: The Making of Peace (Palgrave Macmillan UK 2016) 93.

[42] Charlotte Peevers, *International Law, The Suez Crisis and Cold War Juridical Theatre* in eds Matthew Craven, Sundhya Pahuja and Gerry Simpson, International Law and the Cold War (Cambridge: CUP 2019) *supra* note 21 at 467; Sara Kendall, "*Postcolonial Hauntings and Cold War Continuities: Congolese Sovereignty and the Murder of Patrice Lumumba"* in eds Matthew Craven, Sundhya Pahuja and Gerry Simpson, International Law and the Cold War (Cambridge: CUP 2019) *supra* note 21 at 533.

[43] For a useful overview of the Grenada cases, see: P. St. J Smart, *Revolutions, Constitutions and Commonwealth Grenada* (1986) 35 ICLQ 950; Simon C.R. McIntosh, *Kelsen in the Grenada Court* (Ian Randle Publishers, 2008). For more on Kelsen's doctrine of revolutionary legality as applied to a colonial constitutional context, see Vidya Kumar, *International Law, Kelsen and the Aberrant Revolution: Excavating the Practices of Revolutionary Legality in Rhodesia and Beyond* in (eds.) N. M. Rajkovic, T. Aalberts, and T. Gammeltoft-Hansen, The Power of Legality: Practices of International Law and Their Politics (CUP, 2016).

[44] By "genrify" I mean interpreting or characterising historical international legal events into dramatic *genres*, i.e. tragedies, comedies, satires, farces, etc.

[45] See supra note 8.

[46] Hayden White, *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore: Johns Hopkins University Press, 1973).

[47] J Derrida and A Ronell (trans), '*The Law of Genre'* (1980) 7 Critical Inquiry, On Narrative 55 at 81.

[48] J Derrida and A Ronell (trans), '*The Law of Genre' supra* note 46 at 66.

[49] Shalini Puri, *The Grenada Revolution in the Caribbean Present: Operation Urgent Memory* (Palgrave Macmillian, 2014). Her work will be revisited in Part III.

***b. On Sensibility and Scripts in International Law***

What does a literary-theatrical reading of the international legality of the Grenada Revolution and US Invasion[50] involve? Put simply, it is comprised of two interrelated characteristics: one is literary in nature, characterising the Cold War as a *sensibility*, the other is theatrical in nature, characterising particular determinations of international legality in the form of a *script*. The *literary* dimension of this reading requires two moves: first, it requires an *un*-reading of the "the Cold War" as solely a question of a chronological periodisation of events between 1945 and 1990.[51] Second, it requires a *re*-reading of the Cold War as *a sensibility* in a literary way, as a rendering of feeling *in* (as opposed to *against*) legal thought and reasoning. Here Cold War legal reasoning and thought is the scholarly performance of affect by the legal scholar to the reader. The author/scholar's Cold War sensibility is what shapes their own and their readers' understandings of "legality", and thereby gives these renderings of legality its "literary" quality.[52] If "the idea of the literary" shapes "the dialectic between text and reader," then the idea of literary I deploy here is a sensibility which shapes this dialectic, but which is often "suspended" in that it is tacit, rather than made explicit in the legal text. Although, as is later shown, thinking of sensibility as an epistemic literary concept aptly describes the way particular emotions and feelings imbue and animate legal reasoning determining questions of legality, my use of the term is not meant to extol the practices by which emotions and sentiment are and have been deployed to bolster (questionable) international legal projects and causes,[53] as "the notion of sensibility…. can be at once both egalitarian and elitist in its implications."[54]

My argument rather is that, scholarly assessments of the legality of the Grenada Revolution and US Invasion in international law evince a particular Cold War sensibility which can be defined as follows: an *affective tacit* recognition of the existence, operation and consequences of (at least) two rival international legal orders. Sensibility seems to be a particularly apt way of thinking about *the manner* in which the Cold War permeated international legal scholarship and thinking, as it "denote[s] a sensible person's or character's response to the world, to nature, to others around them, *intellectually and emotionally*".[55] Thinking about the Cold War as a sensibility, may be part of what Andrea Pavoni describes as "sensorial turn in legal thinking," a rejection of Cartesian dualism as the best way understand the law, world and materiality.[56] *In essence, I argue for a rejection of the dualism of international legality and affect*: the Cold War sensibility, and its configuration of legality, demonstrates this dualism is untenable. Specifically, as is argued below, although the Cold War can be described as a contested historically-demarcated period,[57] a description I do not oppose, I argue it *also* must be read as a sensibility; namely an expression of this emotional-intellectual register of the

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[50] For diverse (non-legal) perspectives on how the Cold War was expressed in literature globally, see Andrew Hammond, *Global Cold War Literature: Western, Eastern and Postcolonial Perspectives* (Routledge Studies in Twentieth Century Literature) (Routledge, 2011).

[51] I do not argue that it is "wrong" to read The Cold War in a periodised manner, although the periodisation of the Cold War as occurring between 1945 and 1990 is clearly contested.

[52] For a robust discussion of the idea of the literary, see Nicolas Harrison, *Who Needs an Idea of the Literary?* (2005) 28 *Paragraph* 1 at 13.

[53] Markman Ellis, *The Politics of Sensibility: Race, Gender and Commerce in the Sentimental Novel* (Cambridge: CUP, 1996); Brycchan Carey, *British Abolitionism and the Rhetoric of Sensibility: Writing, Sentiment, and Slavery,* 1760– 1807 (New York: Palgrave, 2005).

[54] *Affect and Abolition in the Anglo-Atlantic, 1770-1830* (ed.) Stephen Ahern (Routledge, 2013) at 15; G. A. Starr, *Egalitarian and Elitist Implications of Sensibility* in L'Egalité (ed.) Leon Ingber (Brussels: Bruylant, 1984) 126.

[55] Janet Todd, "*Sensibility*" The Literary Encyclopedia 1 Nov 2005: https://www.litencyc.com/php/stopics.php?rec=true&UID=1003 [accessed 11 July 2018] (emphasis added)

[56] Andrea Pavoni, *Introduction* in *SEE*, (eds) Andrea Pavoni, Danilo Mandic, Caterina Nirta Andreas Philippopoulos-Mihalopoulos (London: University of Westminster Press) 2018 at 3. See also Andreas Philippopoulos-Mihalopoulos, 'Atmospheres of Law: Senses, Affects, Lawscapes', (2013) 7 *Emotion, Space and Society* (2013) 35-44.

[57] *Cambridge History of the Cold War*, eds Melvyn P. Leffler and Odd Arne Westad, Volumes 1-3, CUP 2010.

rivalry characterising world order, one that informally depicted and influenced what counted as "real" or "operational" legality in international law at a particular time and place.[58]

This Cold War sensibility exhibited in international legal writing on the Grenada Revolution and US Invasion often involved the holding of what may be seen as two contradictory beliefs simultaneously. On the one hand, scholars expressed a belief in the existence of - and/or need for - an objective international law, one comprised of clear and identifiable legal rules and norms governing intervention and political self-determination. On the other hand, scholars also expressed a concomitant *affective awareness* that there were *rival* international legal orders operating, each proffering and reifying different kinds and measures of international legality.[59] This sensibility therefore *qualified* the narrative of the existence of a single objective, effective, uniform, universal, international law, by intimating that *de facto, parallel, competing* international legalities must be taken into account in legal reasoning and judgement. As will be shown below, international legal scholars clearly displayed this sensibility when appraising the legality of these two events, although it will later be argued that aspects of this sensibility can be seen to predate these two events.

The second feature of this article's method involves a *theatrical* reading of international legality. That is to say, it views scholarly judgements on the legality of these events in international law *as scripts*, where legal scholars act as dramaturges. Baker and Edelstein offer a helpful way to understand the notion of a script in revolutionary contexts:

> To take the notion of script in its fairly straightforward literary or dramatic sense, we might say that a script *creates a situation* and sets out the manner of its unfolding. It requires *the setting of a scene* and the characterisation of those acting within, in the relationship to one another and to the situation more broadly construed. Its initial definition of the situation implies a narrative (or possible narratives) to be enacted in subsequent scenes, which in turn introduce actions and events that offer characters choices among possible courses of action. *A script, in other words, constitutes a frame within which a situation is defined and a narrative projected; the narrative, in turn, offers a series of consequent situations, subject positions, and possible moves to be enacted by the agents within that frame*.[60]

In contrast to viewing "international legality" as a simply a status whose existence is defined and measured, at a fixed temporal moment, against its conformity with extant positive law, this Article views scholarly determinations of international legality theatrically, as scripts written and performed in order to define a situation which in turn served both *to persuade audiences* as to what actions are legally valid as well as *to justify the authorising of actions*, such as revolutions and invasions/interventions.[61] Importantly, the practice of scripting authorising narratives is imbued with a Cold War sensibility: hence the literary sensibility *informs* the theatrical scripts of international legality crafted by international legal scholars, and thus sensibility and scripting cannot be separated. Scripts offer intricate and complex frameworks to understand political and legal action and also offer outlines upon which actors can perform, improvise and transform inherited scripts.[62] Scripting, in essence, is *a legal practice*. As will be shown below, the legality of events such as the Grenada's 1979 or the US Invasion of Grenada in 1983 has been scripted by international legal scholars in the 1980s and 1990s in a uniform and "settled" way, but on closer inspection, these scholars simultaneously crafted a subversive "shadow" script of international legality (i.e. a "Cold War Customary Law") that read and situated these events within a Cold War sensibility of legality.

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[58] For a recent polemical take on how feelings and "the affective" has shaped world politics and international relations, see: William Davies, *Nervous States: How Feeling Took Over the World* (Jonathan Cape, 2018).

[59] International legal scholars manifest this "awareness" during 1979-83 when the Grenada Revolution and US Invasion took place.

[60] Keith Michael Baker and Dan Edelstein, *Scripting Revolution: A Historical Approach to the Comparative Study of Revolutions* (Stanford University Press, 2015) at 2-3 (emphasis added).

[61] Baker and Edelstein supra note 59 at 3.

[62] Baker and Edelstein supra note 59 at 2.

**PART II**

**Unsettling the Script of International Legality**

The literary-theatrical method described above focuses on how the production of international legal scholarship is always also a performative practice, which when examined closely can reveal the affective sensibilities imbuing scriptings of legality and illegality. Here I build on Julie Stone Peters work and in this sense my contribution, like hers, "is meant to be an alternative way of studying law ... [as] both complement and corrective to doctrinal, institutional or intellectual history of law."[63]
As Peters suggests, it is important for international legal practitioners to understand:

> …how *performance* and *theatricality* (both as effect and idea) *matters to law* – to legal institutions, practices and doctrines, to specific outcomes, to the broader meaning of law, to our understanding of *how law achieves its effects, how it persuades people of the legitimacy of its use of force*, and *how it exerts (or fails to exert) power over us*. [64]

Theatricality, and here I mean the dramaturgical crafting of scripts to persuade an audience of the legitimacy of the use of force, is evinced by debates among international legal scholars in the 1980s and early 1990s about the legality of the Grenada Revolution and the US Invasion. It is in these debates that the Cold War *as a sensibility* appears, the expression of which challenges the authority and finality of the "settled script" of the legality of these events.

The purpose of Part II is not to revisit the legality of these events in international legal history to ask "what would international legal scholars say about them *today*?"[65] This is not because this is not an important query. Indeed, as shown below, some of the arguments marshalled in favour of the US Invasion included that it was "illegal but legitimate" mirroring more recent justifications of the 2017 US strikes on Syria.[66] Certainly, an interesting genealogy tracing the pedigree of the "illegal but legitimate" justification of the use of force in international law can be made – as applied to Kosovo,[67] Panama,[68] or simply as an offshoot of the 1990s democratic governance theses of Thomas Franck, Gregory Fox and Brad Roth.[69] But another equally important and hitherto unaddressed question that this Part will focus upon, is: *Did the Cold War matter to the debates characterising the international legality of these events in Grenada, and if so, how did it matter?* Accordingly, to answer this question, Part II is broken down into three sections. First, it offers a very brief account of the facts of Grenada's Revolution (1979-1983) and the US Invasion (1983). It then identifies the dominant "settled script" international legal scholars adopted to interpret and evaluate the legality of these events. Last and most significantly, it demonstrates that international legal scholars – whether they characterised

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[63] Julie Stone Peters, "*Law as Performance: Historical Objects, Lexicons, and Other Methodological Problems*" in New Directions in Law and Literature, eds Elizabeth S Anker and Bernadette Meyler Oxford Scholarship Online June 2017, 1 at 4-5.
[64] Julie Stone Peters, "*Law as Performance" supra* note 62 [*emphasis added*].
[65] The question "would these events be decided differently today" is not addressed here but one answer may be found here: Nabil Hajjami*, The Intervention of the United States and other Eastern Caribbean States in Grenada – 1983* in eds Tom Ruys, Olivier Corten and Alexandrra Hoffer, *The Use of Force in International Law* (Oxford: OUP, 2018) at 385.
[66] Harold Hongju Koh, *Not Illegal: But Now the Hard Part Begins* (7 April 2017) [https://www.justsecurity.org/39695/illegal-hard-part-begins/] [accessed on September 2017]; Jens David Olin, *I agree with Harold Koh* (8 April 2017) [http://opiniojuris.org/2017/04/08/i-agree-with-harold-koh/] [accessed on September 2017]; Monica Hakimi, *The Attack on Syria and the Contemporary Jus ad Bellum* 15 April 2018 EJIL Talk [https://www.ejiltalk.org/the-attack-on-syria-and-the-contemporary-jus-ad-bellum] [accessed September 2017]; Marko Milanovic, *The Syria Strikes: Still Clearly Illegal* 15 April 2018 EJIL Talk, [https://www.ejiltalk.org/illegal-but-legitimate/] [accessed September 2017]; Jure Vidmar, *Excusing Illegal Use of Force: From Illegal but Legitimate to Legal Because it is Legitimate* (14 April 2017) [https://www.ejiltalk.org/excusing-illegal-use-of-force-from-illegal-but-legitimate-to-legal-because-it-is-legitimate/] [Accessed April 2017], and Anne-Marie Slaughter tweets about the US attack on April 14, 2018 [https://twitter.com/SlaughterAM/status/985139861538689024] [accessed April 2018]. French Foreign Minister Jean-Yves Drian claimed the strikes were "legitimate" though was silent on its legality; see Jack Goldsmith and Oona Hathaway, Bad Arguments for the Syria Strikes (14 April 2018) [https://www.justsecurity.org/54925/bad-legal-arguments-syria-strikes/][accessed on May 2018].
[67] Milanovic, ibid; Independent International Commission on Kosovo, *The Kosovo Report* (OUP, 2000).
[68] Antony D'Amato *The Invasion of Panama Was a Lawful Response to Tyranny* (1990) 84 AJIL 516–24. For a link between the Panama and Grenada invasions, arguing both should be viewed as lawful under international law, see Antony Amato, *Intervention in Grenada: Right or Wrong?* (1983) New York Times, October 30.
[69] Thomas M. Franck, *The Emerging Right to Democratic Governance* (1992) 86 AJIL 46; Gregory H. Fox, *The Right to Political Participation in International Law* (1992) 17 YALE J. INT'L L. 539; Brad Roth, *The illegality of "pro-democratic" invasion pacts*, in eds. G. Fox & B. Roth, Democratic Governance and International Law (Cambridge: Cambridge University Press, 2000) at 328.

these events as legal or illegal in international law in their settled script – *also expressed (albeit informally) a distinct sensibility that rival international legalities operated in a way that influenced the very meaning of legality in international law.* In so doing, they both recognised and drew the contours of *this* second contemporaneous script - *that is, a Cold War Customary Law (CWCL) script* - which operated contiguously and subversively alongside the "settled script'" characterising the legality of these events in international law.

**1. The Grenada Revolution and US Invasion: A Brief Sketch**

> "What really happened?" is not my primary question and it is certainly not a sufficient question.[70]

The events of the Grenada Revolution (1979-1983) and those of the US Invasion of Grenada in 1983 are well known and will not be discussed here in any detail.[71] The basic facts are as follows: Grenada, a small Caribbean colony of the United Kingdom declared its independence on 7 February 1974. Sir Eric Gairy, who led the country to independence, was widely believed to have become corrupt,[72] and on 13 March 1979, a left Marxist-Leninist revolutionary group called the *New JEWEL Movement* (*NJM*) led an armed revolution and overthrew the government when Gairy was abroad. Importantly, the Revolution, which was led by the charismatic Maurice Bishop, had broad popular support and was welcomed by the majority of the population,[73] with Bishop governing as Prime Minister from 1979 until 16 October 1983, when a faction within the NJM (led by Deputy Prime Minister Bernard Coard) seized power, placing Bishop under house arrest. Mass demonstrations and protests at Bishop's arrest ensued, leading to his escape, then capture and murder on October 19 along with many government ministers loyal to him. The army, led by Chief Hudson Austin then stepped in and formed a military council to rule the country, and a curfew was imposed. On 25 October 1983 the United States, in *Operation Urgent Fury*, invaded Grenada.[74]

**2. The "*Settled Script*" of the Grenada Revolution and US Invasion**

Interestingly, the script addressing the legality in international law of the Grenada Revolution and the US Invasion was crafted in a remarkably uniform manner by scholars writing at the time of, and shortly after, these events, and this is true whether they supported or opposed the Grenada Revolution or the US Invasion. The standardised composition of this script is reflected in how the legality of these two events was understood and treated. This "*settled script*" was framed around *two foci*, each of which implied a belief in clear, universally understood and applicable rules of international law. Specifically, scholarly treatment of the legality of these events in international law focused predominantly on the following two issues: the legality of the United States' three justifications for its invasion of Grenada at the time;[75] and the legality of the Grenada Revolution and

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[70] Shalini Puri, *The Grenada Revolution* supra note 48 at 24.

[71] For further information on the Grenada Revolution and the US Invasion see: Robert J Beck, *Grenada*, Max Plank Encyclopaedia of Public International Law (MPEPIL), Oxford University Press, 2015, entry last updated July 2008; Brian Meeks, *Caribbean Revolutions and Revolutionary Theory: An Assessment of Cuba, Nicaragua, and Grenada* (London Macmillan Caribbean 1993); Shalini Puri, *The Grenada Revolution* supra note 48, esp. her "Continent" chapter at 98.

[72] See Extracts from the fifth report of the Foreign Affairs Committee, Session 1981-1982 (HC (1981-82) 47) in Annex B of the House of Commons Second Report of the Foreign Affairs Committee on Grenada, Session 1983-84, printed on 15 March 1984, HMSO (London) Parliamentary Paper 226, at xlv.

[73] This was recognised in the High Court of Grenada by Chief Judge Nedd, *Mitchell* v *D.P.P.* [1985] L.R.C. (Const.) 127 at 143: "[T]he revolution was a popular one and welcomed by the majority of Grenadans." Nedd C.J., who remained in Grenada throughout and after the revolution, was in a position to form an opinion as to the popular support of the People's Revolutionary Government (*PRG*). See also Smart *ICLQ* supra note 42 at 956.

[74] For an account of *Operation Urgent Fury, see* Robert J Beck, supra note 70.

[75] The invasion was initially justified on the following two grounds: (1) to protect the United States citizens on the Island whose lives were endangered; and (2) as a response to the request by the *Organisation of Eastern Caribbean States* (*OECS*) "*to restore law and order; to help restore functioning institutions of government; to facilitate the departure of those who wished to leave; and last, to pit an end to the acute threat to peace and security in the region." Statement of Mrs. J. Kirkpatrick, former US Ambassador to the UN, to the Security Council*, Tuesday 25 October 1983, UN/Doc S/PV 2487. A third belated justification for the US invasion was offered in a Statement from Office of the Legal Advisor, Secretary of State that the Governor General Sir Paul Scoon had requested the United States and the OECS intervene militarily. Marian Nash Leich, *Contemporary Practice of The United States Relating to International Law* (1984) 78 Am. J. Int'l L. 200 (Leich cites three official reasons of US Government for the invasion at 203-4). It is important to note that, in these three official justifications, the United States did not offer as a legal justification that it was intervening *to restore democracy* or to replace the ostensibly non-democratic government with a

its revolutionary government.[76] Because the scholarship assessing the legality of these events was constructed primarily and often exclusively *as a response to these two questions*, this response can be said to have formed a "settled script". Importantly, in this settled script, international legal scholars held the view that clear rules, principles and norms of international law offered unequivocal answers on the legality of each of these events. What were those answers?

The overwhelming consensus among international legal scholars (with few exceptions) was that the US Invasion or intervention was illegal under international law.[77] The main reason most scholars held the Invasion to be illegal was that the three justifications the US gave for invading Grenada did not stand up to legal scrutiny.[78] Scholars focused the large part of their analysis on the legality of *each* of these three justifications, weighing them against existing international legal rules, norms, conventions, principles, etc. A large majority of scholars found that *none* of the grounds justified intervention under international law,[79] and scholars found that there was no basis in international law to challenge the legality of the government of a sovereign state on the basis of its *revolutionary* origin, character or political programme.[80] The small minority of scholars that claimed the US Invasion *was* legal under international law, also stuck to the format of the "settled script", framing their arguments around how at least one or more of the US's three justifications conformed with, or was not prohibited by, international law.[81] A few scholars, addressing the second focus of the settled script, suggested that Grenada's revolution and revolutionary government were illegal under international law citing ostensibly clear rules that human rights, humanitarian intervention, and democracy constituted grounds to intervene and depose presumptively 'illegal' revolutions and revolutionary governments.[82]

The existence of this "settled script" reveals several things. *First*, it shows us that scholars had clear views on the legality of both the Grenada Revolution and the US Invasion, and that a single and universal international law (formed of clear and uncontested rules and principles) was invoked to settle the question of legality decisively. *Second*, it shows that although scholars disagreed on the interpretation of this universally accepted and identifiable body of law to address the legality of these

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*democratic* one, as some authors have retrospectively argued: see Brad Roth and Gregory Fox, *Democratic Governance and International Law* (CUP 2020) at 106 (their discussion of the 'Reagan doctrine' as applied in Panama and Grenada.

[76] This was addressed in a number of different ways: as the legality of regime change, as the right of another state to intervene to undermine or change a non-democratic/communist/revolutionary government; as intervention to prevent or end a revolution. See *note* 79 *infra*.

[77] See note 77 *infra*. See also Nabil Hajjami, *The Intervention of the United States and other Eastern Caribbean States in Grenada – 1983* in eds. Tom Ruys, Olivier Corten and Alexandra Hoffer, *The Use of Force in International Law* (Oxford: OUP, 2018) *supra* note 64 at 386-394.

[78] A representative sample includes: Scott Davidson, *Grenada, A Study in Politics and the Limits of International Law* (Aldershot, Avebury 1987) (arguing none of the US justifications were legal); Robert J Beck, *The Grenada Invasion: Politics, Law, and Foreign Policy Decision-making* (Boulder Co: Westview Publishing, 1993) at 215 (arguing all rationales *except for* the protecting US nationals rationale of the US were illegal, but that even this rationale was illegal as it was not the sole rationale justifying the intervention: "an American action *solely* to evacuate nationals would have been legally permissible"); William C Gilmore, *The Grenada Interventions: Analysis and Documentation* (London: Mansell Publishing Ltd, 1984) (arguing all three justifications the US offered were rejected, at 55; 63-63; and 64 & 73); Richard P Dieguez, *The Grenada Invasion: "Illegal" in Form, Sound as Policy* (1984) 16 NYU J Intl L & Pol 1167 at 1168-1197; John Quigley, *The United States Invasion of Grenada: Stranger than Fiction* (1986) 18 U. Miami Inter-Am. L. Rev. 271 at 275-351 ("With respect to all three asserted justifications, the Department seriously misrepresented facts to bolster its claim of legality" at 274. Quigley goes further to argue that the evidence for each of these reasons was fabricated by the US to get rid of a left-wing government); FA Boyle and others, 'International Lawlessness in Grenada' (1984) 78 AJIL 172–75; II Dore, *The US Invasion of Grenada: Resurrection of the "Johnson Doctrine?"* (1984) 20 Stan J Int l L 173; Christopher Joyner, *Reflections on the Lawfulness of Invasion* (1984) 78 AJIL 131; Ved P Nanda, *The US Armed Intervention in Grenada* (1984) 14 Cal W Int'l L.J. 395 at 404-421; Maurice Waters, *The Invasion of Grenada, 1983 and the Collapse of Legal Norms* (1986) 23 J Peace Res 229; Edward Gordon, Richard B. Bilder, Arthur W. Rovine, and Don Wallace, *International Law and The United States Action in Grenada: A Report by a Sub-Committee On Grenada of the American Bar Association's Section of International Law and Practice* (1984) 18 The International Lawyer 331 at 380; and L Doswald-Beck, "The Legality of the United States Intervention in Grenada" (1984) 31 Netherlands International Law Review 355.

[79] Ibid.

[80] Examples include: Walters, *supra* note 77 at 235; Gilmore *supra* note 77 at 21; Doswald-Beck, *supra* note 77 at 365; Quigley, *supra* note 77 at 351; Joyner *supra* note 77 at 134: Nanda, *supra* note 77 at 408; Gordon, Bilder, Rovine, and Wallace, *supra* note 77 at 369 (The Report of American Bar Association Committee recognises the legality of the Bishop government in footnote 28 at 348 through its restatement with approval of the Declaration of the Grenada Revolution dated March 28 1979. It also argues that the General Austin government was not instigated or supported by Cuba at 369).

[81] John Norton Moore, *Grenada and the International Double Standard* (1984) 78 AJIL 145-168 (esp. at 161); Antony Amato, *Intervention in Grenada: Right or Wrong?* (1983) New York Times, October 30.

[82] Moore, ibid at 161; Amato, ibid at 161. These scholars also rejected the idea of political self-determination of Grenada, citing human rights reasons and/or democracy as grounds to invade and depose revolutionary governments.

two events, international law's existence and ultimate authority was not in question. By organising their arguments and reasoning around these two foci, legal scholars penned a *standardised* description of how to assess the international legality of these events. In so doing, *they authored a settled script on the nature and meaning of international legality.*

However, as I argue below, this is at best an incomplete story of how scholars read and understood international legality at the time. What is missing from this "settled script" used to assess and decide questions of legality in international law, is the story of how these same scholars *also* expressed a Cold War sensibility that *authored* a different tacit parallel script of international legality (i.e. a Cold War Customary Law) that not only pointed to the existence and operation of contemporaneous rival international legalities, but *subverted* the settled script as *the* sole authoritative script on the legality of these events.

**3. Sensibility and Alternative International Legalities: "*Cold War Customary Law*"**

> How does it happen that in the theatre, at least in the theatre as we know it in Europe, or better in the Occident, everything specifically theatrical i.e., everything that cannot be expressed in speech, in words, or, if you prefer, everything that is not contained in the dialogue…. is left in the background?[83]

In highlighting the existence of this settled script based on these particular foci, I am not arguing that it was the "wrong" script at law or otherwise. Nor am I contending that the focus on the official justifications offered by the US for its invasion of Grenada should not have been measured by international legal scholars against their conformity with extant international legal rules and law, or that the revolutionary origin, nature, politics and office of the Grenadian authorities should not have been examined as a question of international law. Rather, I argue that this settled script was not the *only* script of international legality available to, or applied by, international legal scholars. A *backgrounded* script, contemporaneous to the settled script, can be seen to influence the interpretation and analysis of the legality of the events in Grenada. This auxiliary script existed under the radar: in part because it was never characterised or identified as being a discrete script 'defining the situation' of international legality. Thus, to understand the nature and interpretation of international legality at the time, one needs to examine how the Cold War as a sensibility crafted *a new juridical script* configuring international legality i.e. a *Cold War Customary Law (CWCL),* which was at times "in the background" and at other times surfacing alongside or displacing the settled script.

Crucially, the Cold War sensibility expressed by international legal scholars *assumed* the existence of rival international legal orders and this belief saturated their writing on the Grenada Revolution and the US Invasion.[84] Scholars consistently described the "background" or "context" of these two events in the assumed geographic, political, strategic, military, territorial, social, economic, ideological and spatial division of the globe, which Scott Newton aptly describes as "the Cold War Division Space".[85] Unsurprisingly, scholars could not avoid mentioning this specific context - i.e. the existence of rival international legal orders - in their reasoning, arguments and evaluation of the legality of these two events. They attempted, and failed spectacularly, to contain this context to their introductions, their factual and historical backgrounds, and their conclusions.[86] The relevance of this specific context to the reasoning, interpretation and logic used to ascertain the international legality of these events was never argued for *but taken as given* in a stark reversal of the law-politics divide assumed by 20th century positivist approaches to international law.[87]

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[83] Antonin Artaud, *The Theatre and Its Double* (Trans Mary Caroline Richards) (New York: Grove Press, 1958) at 37.

[84] See section i below (Cold War Customary Law: A Parallel Script of International Legality).

[85] Scott Newton, *Parallel Worlds: Cold War Division Space*, in eds Craven, Pahuja, Simpson, International Law and the Cold War *supra* note 21 at 117.

[86] See Richard Dieguez *supra* note 77 at 1168, Doswald-Beck *supra* note 77 at 356-359, Moore *supra* note 77 at 145-153 (arguing that factual "misperceptions" influenced judgements of the US invasion as illegal at 161-164), Dore *supra* note 77 at 174-180; Christopher Joyner *supra* note 77, Quigley *supra* note 77 (intertwining the factual context with legal argument throughout).

[87] Positivism was the dominant approach towards international law in 18th and 19th$^{th}$ centuries, spilling over into the 20th century. For a discussion of the contested histories of international legal positivism, see Jean d'Aspremont, *International Legal*

It is by reading the Cold War *as a sensibility*, expressed and performed by scholars as the background epistemology of international legality, that this new juridical script is revealed. The Cold War sensibility did not just convey a belief in the existence of rival international legal orders. It also evinced a concomitant belief that in addition to the settled script, a discrete, informal, concurrent, competing, and uncodified version of international legal norms and rules existed and *applied*. This unofficial second script of international legality created *an additional measure of* international law during the Cold War. Importantly, by recognising the existence and operation of this second script, I categorically refute the idea that "the knowledge and practice of the Cold War was somehow separate from the contemporaneous discourse of international law".[88]

As a distinct juridical form of international legality scripted by legal scholars*, Cold War Customary Law (CWCL)* was never codified or officially advanced, nor were the informal Cold War international legal rules, norms and principles that were recognised or accepted by legal scholars homogenous or universally agreed upon. The word "customary" is used here to describe this script as it captures its elusive form, content, date of origin, exact degree of acceptance among international legal scholars, but also the sense that a considerable number of international legal scholars believed that state practice ought also to conform to unwritten, informal, uncodified rules, principles and doctrines held to be operative during the Cold War. Furthermore, what is notable is the diversity of representations below of *what counted* as "international legality" in this *CWCL* script. That said, a study of the different ways in which the Cold War Customary Law script may have been crafted in respect of *other* historical Cold War revolutions and interventions, potentially revealing different registers of Cold War Customary Law, is well beyond the scope of this article.

**i. *Cold War Customary Law*: A Parallel Script of International Legality**

Irrespective of where they stood on the question of the legality of Grenada Revolution and the US Invasion in their production of a settled script, it is clear that international legal scholars tacitly recognised and applied in their reasoning a *second* competing script of international legality, that of Cold War Customary Law. In this sense, international legal scholars performed the role of dramaturges, scripting accounts of legality and illegality.[89] This section will offer some examples of the different ways this alternative international legality was crafted and applied. These examples also demonstrate that notwithstanding the fact that the CWCL script took different shapes and forms – that is to say, scholars sketched its modes and features differently - what the various accounts of the *CWCL* script had in common was a form of legal reasoning and interpretative practices of international legality that created, described and identified alternative, uncodified, informal, international legal rules, norms and principles based upon a Cold War sensibility.

Richard P Dieguez, in his article "The Grenada Intervention: 'Illegal' in Form, Sound as Policy", evinced a Cold War sensibility that identified the root *legal* problem as "the schism between the free world and totalitarianism".[90] After evaluating the US Invasion according to the two foci of the settled script in the first half of his article,[91] he concluded that, under international law, "[t]he Grenada intervention cannot be justified."[92] His analysis of international legality should have ended there, but it continued. Dieguez argued that the "international legal community" should adopt different legal criteria to determine whether the intervention was justified, based on legal "evidence" that "confirmed suspicions that there existed a strong communist presence in Grenada".[93] Specifically, he argued that the question of *the legality* of the US's intervention needed to take into account "whether there was evidence that Grenada would become another Cuba."[94] Concluding that such evidence existed, he retrospectively argued that three justifications the US gave for invading Grenada were "a sound policy

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*Positivism*, in eds M Sellers and S Kirste, Encyclopaedia of the Philosophy of Law and Social Philosophy (Dordrecht: Springer, 2017) 1-7.

[88] See the conclusion to the editors' (Craven, Pahuja, and Simpson) introduction of their book *International Law and the Cold War, supra* note 21 at 1.

[89] I thank Adil Hassan Khan for this elegant reformulation of my argument.

[90] Dieguez, *supra* note 77 at 1204.

[91] Dieguez *supra* note 77 at 1168-1197.

[92] Dieguez *supra* note 77 at 1197.

[93] Dieguez *supra* note 77 at 1201.

[94] Dieguez *supra* note 77 at 1199.

for multinational intervention" *in international law* and were justified in light of "the character and aftermath" of the Invasion.[95] For Dieguez, "[i]nternational legal incidents should be scrutinised under the lens of political realism rather than legal idealism – an approach that should be adopted by the international legal community as it examines the Grenada situation and anticipates future conflicts."[96] By reframing the question of international legality according to the unwritten rule prohibiting Grenada from becoming "another Cuba", Dieguez manifests an affective Cold War sensibility based on the fear of the spread of communism internationally, and scripts different substantive rules and evidence for the international legal community to evaluate the legality of the Revolution and US Invasion.

In addition to being scripted as an international legal policy of political realism that the international community should "adopt", Cold War Customary Law has been scripted as an implied international legality that governs and authorises superpower influence and interventions according to their respective, informally recognised geographic hemispheres. Following the settled script initially, Louise Doswald-Beck both rejects all three of the US's justifications to invade Grenada,[97] concluding the intervention was illegal in international law, and recognising the legality of the Grenada Revolution and the revolutionary origin of its government in international law.[98] Although she notes that international law "is based on the sovereign equality of states and the principle of non-intervention in internal affairs", she then concedes that *a separate legal question* was being asked by international legal scholars about the Grenada Revolution and US Invasion: "whether states may intervene to protect their interests if they perceive a hostile state as gaining a strategic advantage in a sensitive area."[99] International legality, then, is not just a question of determining whether state/government actions are in conformity with international law as seen in the settled script. Rather, international legality concerns a host of assumed Cold War principles, rules and norms governing "strategic advantage," "hostile states" and "sensitive areas". Doswald-Beck, noting that "global security concerns" exist in the Cold War international law context, observes:

> "Might it be stated…*that there is an implied acceptance of hemispheric influence by each superpower which each side must accept*? It would appear that attempts to extend political influence are considered fair game and certainly not legally prohibited, although it is true that military interventions by either superpower are principally (although not entirely) directed at their own "front yards". Although factually true, this obvious political rationale for intervention appears nowhere in international law. It might thus be argued that international law does not reflect reality…" [100]

In this passage, Doswald-Beck responds to the implied acceptance by other international legal scholars of informal legal rules governing State behaviour (i.e. intervention) according to tacitly recognised superpower hemispheric jurisdictions, rules forming part of a *de facto* Cold War Customary Law script. She then argues international lawyers must reject these rules which have come to constitute a parallel form of international law not only because they are, for her, not a part of international law *proper*, but because to accept them would lead to nuclear annihilation:

> To admit the right of military intervention on a hemispheric basis, or even on a basis of other national security interests, could open up the Pandora's Box of a costly neo-colonial rush unwished for by the superpowers. This might well then extend to military struggle for world domination leading almost certainly to the eventual annihilation of superpowers and world alike.[101]

This fear of nuclear annihilation is not only a clear affective expression of the author's Cold War sensibility, it forms part of her legal reasoning about which interventions should be considered lawful in international law. She rejects what she sees as the acceptance by other international legal scholars

[95] Dieguez *supra* note 77 at 1200 and 1201.
[96] Dieguez *supra* note 77 at 1168 (emphasis added).
[97] Doswald- Beck, *supra* note 77 at 359-373.
[98] Doswald-Beck *supra* note 77 at 371.
[99] Doswald-Beck *supra* note 77 at 375.
[100] Doswald-Beck *supra* note 77 at 376 (emphasis added).
[101] Doswald-Beck *supra* note 77 at 376.

of a Cold War Customary Law that supports state intervention to prevent undesirable revolutions and revolutionary governments.[102] Her work is useful in that it expressly *identifies* and *opposes* the growing acceptance of a Cold War Customary Law script among international lawyers consisting of implied rules on state intervention based on superpower hemispheric influence to decide questions of international legality.

A third example of the Cold War Customary Law script appears in both John Norton Moore and Isaak I Dore's analyses of the Grenada Revolution and the US Invasion.[103] Both legal scholars observe the tacit acceptance of competing ideological doctrines justifying intervention in support of and against revolutions and Soviet aggression. Moore, disapprovingly noting "Grenada's Leninisation",[104] argues against the creation of an "international double standard" that fails to condemn Soviet aggression and argues for international legal rules that respond to "the politicisation of the rule of law".[105] For him, international law must stop its "selective ignoring of aggressive or terrorist actions by totalitarian regimes acting purportedly for 'revolutionary' and or 'anti-imperialism' goals."[106] In particular, he argues for an international legality which rejects the belief that the superpower actions "are inherently similar, or that their actions, however different, must be equally condemned."[107] In his reasoning on the legality of the US Invasion, Moore sketches a Cold War Customary Law that implores its audience to also recognise that:

> the Soviet Union… has assiduously cultivated a network of client states such as Afghanistan, Angola, Cuba, Libya, Mozambique, Nicaragua, North Korea, South Yemen, Vietnam, and until recently, Grenada, as well as its captive "socialist" bloc, which are ready to argue that down is up, or if need be, up is down.[108]

Importantly, this argument against the equivalence of superpower behaviour and practice is not *merely* political or ideological discourse, which is distinct from the legal discourse on international legality. Rather, the boundary between legal and political reasoning is undone, with Moore turning the notion of a "client state" into an international legal concept that international lawyers should address (i.e. the international legal community should proscribe "a network of [Soviet] client states").[109] That there *are* such client states and such a network is evidence for him of "a trend toward an international double-standard [that] is eroding the foundations of the international legal order…" producing "[u]niformed charges of illegality."[110] If international legal scholars took into account in their criteria of international legality the repeated hostile actions of the Soviet Union, they would be able "to distinguish between actions which serve world order from those which undermine it."[111] Moore's Cold War Customary Law script evinces its Cold War sensibility in its fear of Soviet expansionism here. The sensibility then informs his prescription for international legal scholars to apply *unwritten informal* criteria to distinguish between these two kinds of actions (serving versus undermining the world order) in defining the international legality of revolutions and interventions.

Isaak I Dore analyses the international legality of the Revolution and Invasion by examining "the legal and policy decisions underlying US actions in Grenada",[112] which for him are inseparable. He argues that the US invaded Grenada not for the three reasons it gave for doing so, but because of its *fear* of "a Soviet-Cuban role in Grenada and its implications for the Caribbean,"[113] highlighting again the affective nature of the sensibilities authoring and assessing the intervention. For Dore, the US acted in accordance with its "global responsibilities," which were to combat "a Soviet Cuban threat" and to "prevent Soviet penetration in both the Middle East and the Caribbean".[114] He suggests that the

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[102] Doswald-Beck *supra* note 77 at 376.
[103] John Norton Moore 'Grenada and the International Double Standard' (1984) 78 AJIL 145 and Isaak I Dore 'The US Invasion of Grenada: Resurrection of the "Johnson Doctrine?"' (1984) 20 Stan J Intl L 173.
[104] Moore *ibid* at 146.
[105] Moore *ibid* at 167.
[106] Moore *ibid* at 167.
[107] Moore *ibid* at 168.
[108] Moore *ibid*.
[109] Moore *ibid*.
[110] Moore *ibid*.
[111] Moore *ibid*.
[112] Dore *supra* note 102 at 173.
[113] Dore *supra* note 102 at 174.
[114] Dore *supra* note 102 at 176.

legality of the US Invasion needs to be read both "as the pursuit of a policy of preserving hemispheric solidarity"[115] and a means to prevent the spread of revolutions that could create a "Caribbean domino" - i.e. intervention in Guatemala, the Dominican Republic, El Salvador and Nicaragua.[116] Woven through the legal justifications for its interventions, is US policy, which Dore considers to be a "preliminary issue of international law" and "serves as background to the debate" about the policies the world community of nations ought to promote through international law.[117] It is Dore's crafting of an intertwined and inseparable legal and policy analysis of the US intervention that produces a Cold War Customary Law script: one that takes into account in its reasoning on legality the competing ideological claims in international law of the Brezhnev and Reagan doctrines, and one that, as a result of this, tacitly and legally *authorises* American intervention in certain circumstances falling outside of those authorised by a universal international law acknowledged in the settled script.

These examples of how international legal scholars scripted a Cold War Customary Law in their evaluation of the legality of the Grenada Revolution and US intervention are by no means exhaustive and although this article cannot discuss all such examples, it is important to note that the operation of this script was recognised even by *scholars writing at or after the putative end of the Cold War in 1989*. Robert J Beck writing in 1993, suggests the Cold War "context" explains that US intervention was *inter alia*: "a warning shot at Nicaragua's Sandinista regime"[118]; "an attempt to expel communist influence in Grenada", given that it was "a Soviet-Cuban colony";[119] and was response to the real fear of the creation of "another Cuba" in the Caribbean region.[120] This context meant "a changed international systemic environment, a revised strategic agenda, different attitudes towards legal justification, and hence a different role for international law".[121] That different "attitudes" affected how legality was scripted underscores the fact that a Cold War sensibility imbued legal scholarship. George Barrie, writing in 1999, 16 years after the US Invasion and 20 years after the Revolution, notes that the distinction between the acceptability of legal justifications of unilateral versus collective interventions has changed with the putative end of Cold War, as during the Cold War, "single-state intervention" was "socially acceptable".[122] Writing in the same year, Christopher C Joyner and Anthony Clark Arend addressed the legal status of "anticipatory self-defence" doctrines and humanitarian intervention.[123] In discussing what the state of international customary law was in 1999, they divided the characterisation of state practice on intervention into two periods: "Cold War" and "Post-Cold War" periods,[124] and place the events in Grenada firmly in the former period, which supports idea of the existence and operation of a *Cold War Customary Law* script.

To Beck, Barrie, Joyner and Arend, we may wish to add one further under-examined work which was published at the very beginning of the putative end of the Cold War. In 1989, a textbook on *Caribbean Perspectives on International Law and Organisations* was published.[125] The editors, BC Ramcharan and LB Francis, saw fit to divide the textbook into four themes, three of which could be comfortably characterised as archetypal Cold War themes: world order perspectives; superpower rivalry hemispheric relations; and geopolitical imperatives.[126] In so doing, the textbook can be read as an attempt to codify the Cold War Customary Law script – 'defining the situation' according to themes through which international law and legality should be read and understood.

Taken together, these examples of scholars writing in the 1980s and 1990s demonstrate that international legal scholars acknowledged, understood and framed international legality *not only* as a

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[115] Dore supra note 102 at 189.
[116] Dore *supra* note 102 at 189.
[117] Dore *supra* note 102 at 189.
[118] Robert J Beck 'International Law and the Decision to Invade Grenada: A Ten-Year Retrospective' (1993) 33 Va J Int l L 765 at 814.
[119] Robert Beck *ibid* at 815.
[120] Robert Beck *ibid*.
[121] Robert Beck *ibid* at 817.
[122] George N Barrie, *Forcible Intervention and International Law: Legal Theory and Realities* (1999) 116 South African Law Journal 791 at 795.
[123] Christopher C Joyner and Anthony Clark Arend, *Anticipatory Humanitarian Intervention: An Emerging Legal Norm?* (1999-2000) 10 U.S.A.F. Acad. J. Legal Stud. 27.
[124] Christopher Joyner and Anthony Clark Arend, *ibid* at 36-37.
[125] BC Ramcharan and LB Francis eds, *Caribbean Perspectives on International Law and Organisations* (Dordrecht: Boston & Londo: Martinus Nijhoff Publishers 1989).
[126] BC Ramcharan and LB Francis ibid.

matter of the application of clear, universal rules, norms, conventions etc. of international law (i.e. the "settled script"), but also as involving tacit, unwritten, informal legal rules, principles, and norms set out in the Cold War Customary law script that influenced the logic and reasoning used to determine the legality of these events (revolution and intervention) under international law. The *CWCL s*cript of international legality can be summarised as including, *inter alia*: a political-realist international legal policy (Dieguez); informal but commonly recognised legal rules governing state behaviour and permissible intervention based upon superpower hemispheric influence (Doswald-Beck); the informal acceptance and legal recognition of competing ideological doctrines *(*e.g. Breshnev, Johnson, Reagan*)* justifying intervention for and against revolutions and revolutionary authorities (Moore and Dore); a context and set of attitudes that configured international legality differently (Beck); and a set of rules which made "single-state intervention" under the Brezhnev and Johnson doctrines "socially acceptable" (Barrie). As shown above, in each case, scholars alluded to the existence of a Cold War international legality comprised of contiguous Cold War international legal norms, rules and principles governing state behaviour and international order. Two questions remain to be answered: whether this script crafted in response to the Grenada Revolution and the US Invasion was in any way *new*; and what, if anything, happens to the *CWCL* script and sensibility on international legality when its *mise en scène* is disrupted. These questions will now be addressed in Part III.

## PART III

## Scripting International Legality in the Longue Durée of Caribbean History

> We need to place the Cold War in the larger context of chronological time and geographical space, within the web that ties the neverending threads of history together.[127]

### 1. Newness, History and Scripts of International Legality

Is this script of international legality, based on a sensibility of rival international legal orders, in any sense *new* in historical scripts of international law? What is the significance of recognising operative alternative "scripts" of international legality for the discipline and histories of international law, and what is the role of the theatrical in answering this question? I argue that to answer these questions one must turn back to the theatrical. Specifically, different theatrical *mises en scènes* - which eschew "the short durée" or "evental history" of the "settled" or *CWCL* scripts of the Invasion and Revolution - need to be adopted. This final part of the Article explores the ways in which the Cold War sensibility and script can be read as being *both* continuous and discontinuous with historical practices of international legal scholars configuring international legality in the Caribbean.

### 2. Mise en Scène

The term *mise en scène* is a theatrical one, referring in its broad sense to the setting or surroundings of an event, and in a theatrical production, referring to the scenery, props, backdrop, etc. of a play. It is employed here to gesture toward *alternative* settings (temporal, oceanic, revolutionary, etc…), actors (states, slaves, empires, colonies), props (e.g. international legal sources, Papal Bulls, state doctrines) within which the international legality of the Grenada Revolution and US Invasion can be situated. The settled script places the question of legality of these two events within a highly narrow epistemological and temporal frame of international law, dating from 13 March 1979, when Maurice Bishop and the New JEWEL Movement replaced the Gairy government, up until 23 October 1983 when the US proffered reasons to justify its invasion of Grenada. The Cold War Customary Law script excavated above identifies and recognises contiguous, tacit, informal international legal norms, rules, principles and practices which were held to be operative at this same time and in the subsequent decade. The section asks whether this Cold War script and sensibility evinces continuities and discontinuities with the practices of international legal scholars scripting international legality where different *mises en scènes* operate, and the significance of this for how Caribbean subjects figure in international law.

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[127] Odd Arne Westad, The Cold War and the International History of the Twentieth Century, in eds Melvyn P. Leffler and Odd Arne Westad, *The Cambridge History of the Cold War* (CUP 2010) 1 at 2.

**i. Continuities**

One can read the Cold War Customary Law script and sensibility as continuous with previous scripts of international legality crafted by international legal scholars. ***First***, when a broader temporal, special, and revolutionary *mise en scène* is adopted, one even just a few decades prior to the Grenada events, a similar possibly earlier version of this script and sensibility appears which also interpreted the meaning of revolution and intervention against the existence of rival international legal orders.[128] One of the strongest examples of this is found in an article on revolution and intervention authored by Thomas Franck and Nigel Rodley, a piece heavily infused by a Cold War sensibility.[129] Beginning their piece with the claim "we are all in the thrall of ideologies of our century",[130] they demonstrate that the attempt to turn extra-legal political and ideological doctrines into customary rules of international law is not new.[131] In their discussion of the legality of revolutionary movements and intervention in the context and "setting" of a different revolution – the Vietnam Revolution - they recognise that international law is not what it once was and needs reinterpreting. In one of the few attempts to systematise the place of revolution in international law (prior to and during the Cold War), they argue that "three categories of revolution"[132] which were once recognised and permitted by international law "have fallen into disuse"[133] and "no longer respond to the needs of good order or to the emerging practice of international community."[134] Rather these categories "have become irrelevant in practise and also in policy" such that "there is no reason for their survival in law" as the "Westphalian" model of international has been displaced by new post-Vietnam "norms" governing the roles of rival superpowers.[135] In particular, "the advent of nuclear weapons"[136] has meant that the role of international law in responding to revolutions or interventions *is now delimited by the possibility of a nuclear apocalypse*.[137] Consequently, legality and illegality mean something different in the international legal order with the advent of Cold War superpower rivalry: "This ultimate threat of nuclear catastrophe *circumscribes the ambit of activity which can usefully be described as 'illegal'* in civil war [i.e. revolutionary] situations."[138] For Franck and Rodney, the role of international law is, and must be, configured *in conformity with* a Cold War Customary Law rule framed affectively as a "desire*"* (for survival) and concomitant *fear* (of annihilation):

> "The role of law in the international community is not to alter the behaviour of states…. Rather the function of international law is to stake out the minimal areas of mutually perceived overlap in the interest of states…. Principal among the mutually-perceived overlaps of self interest is the desire for survival in the nuclear era.[139]

Accordingly, the "first duty or legal obligation of states" in this Cold War Customary Law is that rules governing intervention or revolution are now based on *a legal principle* of "geographical reciprocity": "This reciprocal principle now evolving limits US involvement in Eastern Europe, and Soviet involvement in Central America and the Caribbean."[140] This 'principle' evinces a clear attempt to script the rules and principles of international law as if they emerge from, and are in conformity with, a governing Cold War sensibility. By identifying five *de facto principles of international law* which govern state behaviour regarding revolution and intervention to fit the geographical reciprocity

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[128] See Myers McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order* (New Haven, CT; Yale University Press, 1961); Wolfgang Friedmann, *Intervention, Civil War, and the Role of International Law* (1965) ASIL Proceedings at 67-75; Richard B Lillich, *Humanitarian Intervention and the United Nations* (Charlottesville, VA: University Press of Virginia, 1973).

[129] Thomas M Franck and Nigel S Rodley, *Legitimacy and Legal Rights of Revolutionary Movements with Special Reference to the Peoples' Revolutionary Government of South Viet Nam* (1970) 45 N.Y.U. L. Rev. 6790.

[130] Franck and Rodley ibid at 6681-682.

[131] James Upcher, *Savage Wars of Peace - International Law and the Dilemmas of Humanitarian Intervention* (2004) 9 Deakin L. Rev. 261 (2004) at 276, (arguing humanitarian intervention is an extra-legal doctrine masquerading as a customary rule).

[132] Franck and Rodley *supra* note 127 at 679-680:

[133] Franck and Rodley *supra* note 127 at 683.

[134] Franck and Rodley *supra* note 127 at 680.

[135] Franck and Rodley *supra* note 127at 686: "The Viet Nam war is likely to be the beginning of a new norm governing and limiting, a matter of perceived mutual interest, the participation of major powers in surrogate civil wars."

[136] Franck and Rodley *supra* note 127 at 681.

[137] Franck and Rodley at 685: "Law can hope to do no more than prohibit those categories of external participation in civil conduct [i.e. revolution] which are mutually recognised by each [superpower] party, in general if not in every circumstance, as the kind of practice which is likely to give rise to a nuclear war of total destruction."

[138] Franck and Rodley *supra* note 127 at 685 (emphasis added).

[139] Franck and Rodley *supra* note 127 at 684.

[140] Franck and Rodley *supra* note 127 at 685.

principle of the superpowers – rules which state the rival superpowers must stay within their geographic hemispheres when they respond to either revolutions or interventions - the authors explicitly script international legality *through* a sensibility which recognises rival international legal orders.[141] Although the *mise en scène* has changed, the sensibility scripting legality remains.

*Second*, the Cold War sensibility, premised on a recognition of international legal rivalry, is also found in various "pre-" Cold War *mises en scènes* of international law in the Caribbean. For example, the configuration of international legality of the US Invasion and Grenada Revolution in the Caribbean can be read alongside *historical* US rivalry in the region with European empires, and American attempts to script international legality in the region. These attempts characterise the Monroe Doctrine of 1823 as an authoritative form of international legality, created in opposition to the influence of Portuguese and Spanish empires in the Caribbean and Latin America.[142] The doctrine distinguished between "spheres of influence" belonging to the "New World" and the "Old World", whereby the US claimed *in international law* to have control of the western hemisphere.[143] This doctrine was aimed at the Holy Alliance, namely its attempts to stamp out revolution in Europe and elsewhere and to re-conquer (via intervention) revolutionary republics in Latin America.[144] Here the US took advantage of the independence revolutions of South America[145] through its "non-colonization principle"[146] and non-intervention principle that had advanced the following rules of state behaviour: "that the US would not interfere in the affairs of Europe (except when 'our rights are invaded or seriously menaced') and that Europe should not interfere in the affairs of the Western Hemisphere".[147] In essence, this script of international legality, advanced by both the US state and by some American legal scholars,[148] reveals continuities with the Cold War Customary Law script: it was based on the *de facto* principle, rule or norm of *"hemispheric international legality,"* resembling strongly Doswald-Beck's description of "superpower hemispheric spheres".

*Third*, if one adopts a 15th century *mise en scène*, yet another setting characterised by different actors (i.e. European empires) and different props (i.e. international legal documents) appears. But this setting too frames international legality as product of a script based upon the operation of rival international legal orders. As historian and former Prime Minister of Trinidad and Tobago Eric Williams has noted: "Caribbean history, conceived in international rivalry, was reared and nurtured in an environment of power politics."[149] Andrew Welsh describes a history of international law in the Caribbean at this time centring on a number of Papal Bulls. These Bulls prioritised the claims of two great Catholic powers (Spain and Portugal) – over other Christian nations – and created an imaginary line drawn from north to south, demarcating two spheres of influence, Portuguese from the east, Spanish from the west.[150] In addition to forging a 'story of discovery' and although contested by the English, French and Dutch, these Bulls granted these imperial powers rights to explore and conquer heathen lands, to enslave their inhabitants, to appropriate their lands and goods, and to engage in missionary activities.[151] The fifth Papal Bull, *Dudum siquidem* is relevant in that it situated Grenada within an inter-European rivalry script of international legality well before it was "discovered".[152]

As Stewart Motha appositely notes, "[t]he wateriness of law is longstanding".[153] This observation hints neatly at the *final* way in which the Cold War sensibility and script can be read as continuous

[141] Franck and Rodley *supra* note 127 at 687-688.
[142] Samuel Herrick, *The Monroe Doctrine as a Principle of International Law* (1902) 4 Brief 360.
[143] Herrick, *ibid*; David D Carto, *The Monroe Doctrine in the 1980s: International Law, Unilateral Policy, or Atavistic Anachronism* (1981) 13 Case W Res J Int'l Law 203 at 207.
[144] Carto ibid at 206.
[145] Liliana Obregon, Paper delivered to ESIL 2018, Manchester United Kingdom Sept 14, 2018 (on file with author).
[146] Carto *supra* note 142 at 203.
[147] Carto *supra* note 142 at 205.
[148] Supra note 142 and 143.
[149] Eric Williams, *From Columbus to Castro: The History of the Caribbean 1492-1969* (Vintage Books, 1984) at 71.
[150] Andrew Welch, *The History of International Law in the Caribbean and the Domestic Effects of International Law in the Commonwealth Caribbean* (2014) 1 SOAS L. J. 124 at 125-126.
[151] David Berry, *The Caribbean* in (eds.) Bardo Fassbender and Anne Peters (eds) *The Oxford Handbook of the History of International Law* (OUP 2012) at xx.
[152] Berry ibid: "The fifth Papal Bull, *Dudum siquidem*, extended the previous grants to include 'all islands and mainlands whatever, found or to be found … in sailing towards the west and south', and cancelled all other grants previously made, even if followed by actual possession."
[153] Stewart Motha, *Archiving Sovereignty: Law History Violence* (Ann Arbor: University of Michigan Press, 2018) at 38.

with scripts of imperial rivalry in tidalectic, oceanic history and Black Atlantic history. The Grenada events fit easily into the political economy of oceanic history where oceans served as "avenues for the flow of goods, resources, ideas" and "arena[s] for struggle and combat".[154] More pointedly, Oceanic histories have framed Grenada and the Caribbean more generally as a *mise en scène* for the development of "*maritime* international legality" or more aptly, as *maritime* international "legalities," as what constituted legality was strongly contested among rival imperial European sea-faring powers.[155] Imperial laws themselves also migrated through ocean corridors, the common law being forced onto newly "discovered" and acquired British colonies.[156] It can be argued that rival imperial modes of "blue legality"[157] prevent siloed accounts of the development of Grenada's domestic law[158] and the "international legality of reception," namely legality formed through imperial rivalry characterised by violence, occupation and conquest.[159]

Overlapping those scripts of imperial rivalry born in oceanic history is a similar script set in the *mise en scène* of Black Atlantic history between the 16-19th centuries. Here again, rival European empires forged competing international legalities of displacement, subjugation and slavery, legalities that could be adjudicated by the dispute settlement mechanisms of international commercial arbitration.[160] Any account of the prevailing international legal order governing the Atlantic at this time is inseparable from the two eras of the European slave trading system.[161] Consequentially, "there was a black Atlantic history before there was any other Atlantic history, and it placed bondage and forced displacement of subaltern populations at the heart of Atlantic history".[162] The Cold War Customary Law script thus shares with this variant of Black Atlantic history a story about imperial rivalries that created and sustained ideas of legality and lawfulness premised upon the dehumanisation and commodification of black bodies.[163]

**ii. Discontinuities, "Fragments/Whole" and the Caribbean International Legal Subject**

> Law is certainly an anaesthetising *project* aimed at manipulating, governing, and channelling the senses into precise categories, boundaries and definitions, protecting from and numbing the sensorial, the bodily, the libidinal. [164]

Notwithstanding the various ways in which the Cold War script and sensibility has been shown to evince continuities with different, older, *mises en scène* of international legality in the Caribbean, the scripting of international legality as a product of prior rival international legal orders (i.e. superpowers, imperial powers, European powers, etc.), formal or informal, may not capture *all* of the ways in which the legality of the Grenadian Revolution and US Invasion "makes sense" in international legal storytelling practices.[165] By framing international legality in a quasi-genealogical account of its

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[154] John Curtis Perry, *Oceanic Revolution and Pacific Asia* (2011) 35 Fletcher F World Aff 123 at 123. For related ground-breaking work on the relationship between oceans, resources, imperial power, and international law, see both Renisa Mawani, *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (Duke University Press 2018) and Surahbhi Ranganathan, *Ocean Floor Grab: International Law and the making of an Extractive Imaginary* (2019) 30 European Journal of International Law 573.

[155] Perry, ibid at 124.

[156] Antony N Allott, *The Limits of Law* (Butterworths, 1980) at 109-110.

[157] For further reading on how the ocean and its inhabitants affect understandings of law, see *Blue Legalities: The Life and Laws of the Sea,* (eds.) Irus Braverman, Elizabeth R. Johnson, (Duke University press, 2020).

[158] Rose-Marie Bell Antoine, *Commonwealth Caribbean Law and Legal Systems* (2nd edn, Routlegde Cavendish Oxford, 2008).

[159] A Fitzmaurice, *Discovery Conquest, and Occupation of Territory*, in Bardo Fassbender and Anne Peters (eds) The Oxford Handbook of The History of International Law (OUP 2012).

[160] Anne-Charlotte Martineu, *A Forgotten Chapter in the History of International Commercial Arbitration: The Slave Trade's Dispute Settlement System* (2018) 2 Leiden Journal of International Law 219-241.

[161] Herbert S Klein and Jacob Klein, *The Atlantic Slave Trade* (Cambridge University Press, 1999) 103.

[162] David Armitage, *The Atlantic Ocean*, in eds David Armitage, Alison Bashford, and Sujit Sivasundaram, *Oceanic Histories* (CUP 2018) 85 at 92.

[163] For an account of how imperial rivalry produces particular legal forms of racialisation see Robert Knox, *Race, Racialisation and rivalry in the international legal order* in eds Alexander Anievas, Nivi Manchanda, and Robbie Shilliam *Race and Racism in International Relations: Confronting the Global Colour Line (Interventions)* (Routlegde 2014). See also James Thuo Gathii, *Geographical Hegelianism in Territorial Disputes Involving Non-European Land Relations* (2002) 15 Leiden Journal of International Law 581.

[164] Andrea Pavoni, *Introduction* in eds. Andrea Pavoni, Danilo Mandic, Caterina Nirta and Andreas Philippopoulos-Mihalopoulos, SEE at 4.

[165] Andrea Bianchi, *International Adjudication, Rhetoric and Storytelling* (2018) 9 Journal of International Dispute Settlement 28 at 33.

continuities within different *mises en scène* of international law, this Article admittedly has offered a particular "distribution of the sensible"[166] that corrals the legal meaning and significance of the Cold War script and sensibility "into precise categories" of (similar) *prior* rival international legal orders.

And yet, while continuities exist between the Cold War script and sensibility and earlier scripts of rival imperial international legality, these are but partial and fragmented accounts of international legality, discontinuous with other scriptings of the Grenada Revolution and US Invasion's significance in international law. Put simply, what is missing from the settled script, the Cold War script, and earlier scripts of international legality is "the Caribbean subject"[167] - as an autonomous, self-determining, often revolutionary actor, performer and playwright in the production of international legality across space and time. There are numerous reasons why this actor, performer and playwright does not show up in scholarly accounts of international legality throughout international legal history – including the Cold War Customary Law script. One reason for its absence may have to do with what one may call "the wateriness of revolution" and the failures of liberal conceptions of freedom and redress in Black Atlantic histories involving the legality of slave trade and slavery.[168] But I wish to explore another explanation as to why the Caribbean subject is absent in these "continuity" scripts of international legality. That explanation can be found by turning to literature and literary writers, Caribbean and Occidental.

Disciplinary blindspots are not uncommon, and international law like other disciplines, possesses them. The absence of the Caribbean subject in scripts of international legality is not new, and its absence has plagued other academic disciplines such as anthropology and politics, notably in the 1950s-1970s. The late Kamau (formally Edward) Braithwaite's "*Caribbean Man in Space and Time*" published in *Savacou* (the Journal of the Caribbean Artist's Movement) in 1973 is instructive here. Braithwaite lamented that Caribbean culture and experience were repeatedly explained solely by factors *exterior* to the Caribbean subject, in the social sciences and humanities alike.[169] He argued for attention to be given to the *interior* Caribbean subject - which he recognised as a diverse, multipli-colonised, creolised, and irreducibly hybridised subject. In light of this, he famously characterised the methodological problem facing the study of the Caribbean subject in academic disciplines as "how to study the fragments/whole".[170]

Transposing Braithwaite's methodological query to the discipline of international law,[171] it is then not surprising to note that international legal scholarship and scripts on the Grenada Revolution and Invasion *also* fail to take into account this Caribbean subject in its own right, as an author and actor of international legality. One reading of Braithwaite's entreaty, if understood as a methodological challenge, suggests that to understand international legality in the Caribbean, one requires an understanding of "the fragments/whole", that is to say, a theorising of the Caribbean subject *in ways beyond an external or exterior sensibility* (i.e. beyond an international legal (his)story of great power rivalry). This means eschewing accounts of international legality which *efface* the role and *international legal personality* of key Caribbean actors (states, regions, nations, revolutionaries,[172]

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[166] Jacques Rancière, *The Politics of Aesthetics* (London: Continuum 2004) at 12.

[167] I deploy the phrase "the Caribbean subject" mindful of the fact that there is no single homogenous Caribbean subject in international law or otherwise. My use of the term here is a *personification* of a hybridised, plural, transcultural, shifting, creolised, revolutionary subject, referring to shared and divergent histories of Caribbean peoples, countries, and nations.

[168] Vasuki Nesiah, *Freedom at Sea* (2019) London Review of International Law 149. See also Julius S. Scott, *The Common Wind: Afro American Currents in the Age of the Haitian Revolution* (London: Verso, 2018).

[169] The question of whether Caribbean subjects had (revolutionary) agency has been debated by historians (re: whether the French Revolution was a key causal reason for the revolution in the French colony of Saint Domingue (i.e. the Haiti Revolution): See David Geggus, *The Caribbean in the Age of Revolution* in eds David Armitage and Sanjay Subrahmanyam, The Age of Revolutions in Global Context c. 1760-1840 at 83. Geggus notes that "Historians have increasingly recognised that [Caribbean] colonial revolution as an autonomous force that helped to radicalise the French Revolution, rather than merely being a reflection of it." [at 91].

[170] Edward Kamau Braithwaite, *Caribbean Man in Space and Time* (1975) Volume Nos 11-12 *Savacou* September pp.1-11 at 1.

[171] Braithwaite is only one of many Caribbean intellectual thinkers whose ideas could be used to reframe international legal methods: For a stellar discussion of the traditions of Caribbean thought and its futurity, see Aaron Kamugisha, *Beyond Coloniality: Citizenship and Freedom in the Caribbean Intellectual Tradition* (Bloomington, Indiana: Indiana University Press, 2019) at 8.

[172] For a discussion of how revolutionaries "fit" into the discipline of international law see: Vidya Kumar, "Revolutionaries" in eds Jean D'Aspremont and Sahib Singh, *Concepts for International Law: Contributions to Disciplinary Thought* (Edward Elgar Publishing, 2019) 773.

slaves, rebels, deserters, "the Masterless Caribbean"[173]). David Scott's meditation "*On the Question of Caribbean Studies*" echoes this call, arguing that "to think of Caribbean studies is already to be *inside*, to be in conversation with… the *archive* of thinking about what the Caribbean supposedly *is*, supposedly *was*."[174] To think of the Caribbean subject *in international law*, one would need to provincialise the discipline of international law and its legal practices that frame the Caribbean subject *as a place, location* or *perennial background* of a preconfigured international Occidental map where events "play out" *on* Caribbean subjects. One would need to think in ways which no longer render Caribbean subjects as always those who are "acted upon", devoid of agency, unable to engage in practices which *author* forms and epistemologies of international legality, save as proxies of other states or empires. At the same time, on a sensorial level, there also needs to be a recognition that the question that Caribbean studies raises for this Article ought to invite a degree of trepidation, or in other words, "the *sense* it evokes of an *uncertainty* of 'the answer'…of the Caribbean as an object of our imaginations." [175] Any account of international legality which takes seriously "the Caribbean" - as a multiple, collective, diverse, creolised, shifting, tidalectic[176] international legal subject – must then do so with both a degree of doubt about the possibility of arriving at "the" answer, as well as an awareness of the role that prefigured Caribbean imaginaries may play in this endeavour.

Apropos these *sensorial* and *imaginative* imperatives, one reason the Caribbean subject may have been backgrounded in scripts of international legality, in addition to being a disciplinary blindspot, may have to do with its place in the early the Occidental Anglophone literary imagination. In contemporary Western literature, 'the Caribbean's image as a tropical getaway in metropolitan popular imaginations tends to eclipse its troubled pasts [and] traumatic memories…".[177] This is to a degree unsurprising, as Caribbean islands have historically occupied a unique place in Western literature in many ways, but primarily as the possibility of New World utopias of restoration, redemption and salvation for the Occidental subject, often as an antidote to the ills of European civilisation. Perhaps the best-known example of this in Anglophone literary representations of the Caribbean, is Shakespeare's *The Tempest*,[178] probably written between 1610-11, where the sorcerer Prospero seeks to restore his daughter Miranda to her rightful place as heir to the throne, after it has been usurped by Prospero's brother Antonio. The two slaves of Prospero, Caliban and Ariel, are incidental to the emplotment of Miranda's restoration, and represent respectively the self-determining revolutionary (i.e. bad) and obedient servile (i.e. good) temperament of slaves. Caribbean islands are frequently deployed as utopias for Europeans, "found" or made possible only in the New World. *New Atlantis,*[179] published in 1626, is an unfinished utopian novel by Sir Francis Bacon, who was a barrister as well as a novelist, and who envisions the New World island as an idealised future of human discovery and knowledge. Henry Neville's *The Isle of Pines*[180] published in 1668, a precursor to Defoe's *Robinson Crusoe*, depicts a white British man (Pine) shipwrecked on an Island with four female survivors, including a black slave girl. The island is fertile, with abundant food easily harvested, with Pine enjoying a leisurely existence, having open sexual relations with all four women. There is both an "absence of colonial competition from other European powers and of

[173] Scott, *supra* note 167 Chapter 1.
[174] David Scott, *On the Question of Caribbean Studies* (2013) 17 Small Axe at 1 (emphasis added).
[175] David Scott, *ibid*.
[176] **"**Tidalectics" use here has a number of meanings. The term was first used by Edward Kamau Brathwaite to describe the relationship between Caribbean history and rhythm: "Dialectics with my difference. In other words, instead of the notion of one-two-three, Hegelian, I am now more interested in the movement of the water backwards and forwards as a kind of cyclic, I suppose, motion, rather than linear" (see: N Mackey, *An interview with Kamau Brathwaite* (1995) in (ed.) S Brown S, The Art of Kamau Brathwaite. (Wales: Seren, 13) at 14). Tidalectics can also refer to the movement of tides on and off shores, and more broadly to depictions of "the dynamics during which colonial transmissions (personnel, information, and materials)" and laws "were moved to and from the ports" of Europe to the Caribbean (see Chinedu Nwadike, *Tidalectics: Excavating History in Kamau Brathwaite's The Arrivants* (2020) 7 IAFOR Journal of Arts & Humanities at 57-58). Tidalectics offers a rejection of "the origin myth of the Caribbean, setting islands in motion" to view Caribbean history "as a confluence of repetitions, breaks, and reversals, rather than a clear line tidily punctuated by discreet events," including cyclical movements to and from imperial shores ports to Caribbean islands (see Florian Gargallio, *Kamau Brathwaite's Rhythms of Migration* (2018) 53 155 at 156. See also ed. Stefanie Hesser, *Tidalectics: Imagining an Oceanic Worldview through Art and Science* (MIT Press, 2018).
[177] Li-Chin Hsiao, *'This Shipwreck of Fragments': Historical Memory, Imaginary Identities, and Postcolonial Geography in Caribbean Culture and Literature* (Cambridge Scholars Publishing 2009) at 2.
[178] William Shakespeare, *The Tempest* (Cambridge :Harvard University Press, 1958).
[179] Francis Bacon, *New Atlantis* in ed Susan Bruce, *The Worlds' Classics: Thomas More Utopia, Francis Bacon New Atlantis, Henry Neville The Isle of Pines* (Oxford: OUP, 1999) at 149.
[180] Henry Neville, *The Isle of Pines* in ed Susan Bruce, *The Worlds' Classics: Thomas More Utopia, Francis Bacon New Atlantis, Henry Neville The Isle of Pines* (Oxford: OUP, 1999) at 187.

resistance from native population", a "fantasy of absolute colonial freedom to control the island settled".[181] Pine becomes the patriarch of the island with a now large population divided into separate tribes. As the story progresses, the tribe of the slave girl's children become revolutionaries – they reject the islands laws, rules and bible readings which are imposed to keep social order, and instead start a civil war. The novel ends with Dutch explorers arriving to quell the uprising. Finally, *Robinson Crusoe*,[182] a novel published in 1719 by Daniel Defoe, sparked an entire literary genre, called *Robinsonade,* about islands and attempts by a European shipwrecked character to reconstruct a new sovereignty.[183] In this genre, the Occidental male protagonist is suddenly isolated from the comforts of "civilisation", marooned on a secluded and seemingly uninhabited island resembling the Caribbean. He must improvise the means of his survival from the limited resources at hand.

If sought in early Occidental literature above,[184] the Caribbean subject - and its relationship to revolution or intervention – either is absent entirely or plays a 'bit part' in European imaginings of the "discovery" of the Caribbean islands. If there is a representation of the Caribbean subject as a character or role, it can be best described as "the Rosencrantz and Guildenstern" of Shakespeare's *Hamlet*, not that of Stoppard.[185] Moreover, these Occidental literary imaginings produce *travesties* of both revolution and intervention. The travesty of revolution in these texts characterises revolution (and revolutionaries[186]) as something to be put down (*The Tempest*, *The Isle of Pines*) or unnecessary if colonisation is done right (*New Atlantis*), rather than something to be desired. Likewise, these works perform a travesty of intervention. "Intervention" in the New World is characterised (legally or otherwise) as unproblematic; a form of "discovery" necessary to remake the Occidental world anew. In these literary accounts, "the island" is invariably *unoccupied* and the Caribbean subject conspicuously absent, or if present, falling outside of category of the (civilised) human. Their imagined *production* and literary scriptings of *terra nullius* coincide temporally with the virtual extinction of the indigenous Arawks and Caribs of Grenada (and the Lesser Antilles) following its colonisation by the French and British empires in the 17th and 18th centuries, transforming the Caribbean subject *as one partially lost forever*. In light of this, it is not surprising that attempts to both reclaim and reassert the Caribbean subject may be described as one of the main preoccupations, if not the very *raison d'être,* of contemporary Caribbean literature, fiction and poetry.[187]

The fact the Caribbean subject is missing from, or backgrounded in, the Occidental literary imagination, is reflected in international legal scholarship. In the Cold War Customary Law script of international legality, the Caribbean subject does not play any *independent* or *autonomous* role in authoring international legality of the Grenada Revolution or US Invasion. This is despite the fact that an "international legality" that recognises Grenada as a Caribbean actor or subject *authoring* understandings of international legality was readily available. *How can this Caribbean subject be found? How can international legality be scripted within an epistemology* of "the fragments/whole"?

*First,* international legal scholars need to discontinue the production of scripts where "the key *dramatis personae* involved in the Cold War drama in the Global South… [are] largely [portrayed] … as proxy agents fulfilling the objectives of supposed 'masters' in Moscow and Washington, respectively."[188] This involves taking seriously the role Caribbean countries such as Cuba (not "Soviet-Cuba") had in scripting Cold War legality. Scholars who *have* done this, re-script international legality

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[181] Susan Bruce, "Introduction" in ed Susan Bruce, *The Worlds' Classics: Thomas More Utopia, Francis Bacon New Atlantis,ottHenry Neville The Isle of Pines* (Oxford: OUP, 1999) at xxxix.

[182] Daniel Defoe, *Robinson Crusoe* (London: Nelson and Sons, 1876) (first published in 1719).

[183] Britta Ulrike Hartmann, *Island Fictions: Castaways and Imperialism,* Tasmania University PhD dissertation (2014).

[184] For later accounts of Anglophone literary representations of the Caribbean see: Evelyn O'Callaghan, *Early Colonial Narratives of the West Indies: Lady Nugent, Eliza Fenwick, Matthew Lewis and Frieda Cassin* in eds Bucknor, M. A., & Donnell, A., The Routledge Companion to Anglophone Caribbean Literature (2011) at 149; and Alison Donnell, *Twentieth-Century Caribbean Literature: Critical Moments in Anglophone Literary History* (London: Routledge, 2006).

[185] Contrast these characters in Shakespeare's *Hamlet* (1599-1602), with their central place in Tom Stoppard's play *Rosencrantz and Guildenstern are Dead* (1996). For a contemporary novel offering an "interior" account of Caribbean subjects in the shadow of empire, see Andrea Levy, *Small Island* (London, Headline Publishing Company, 2004).

[186] For a contemporary approach examining the role memory plays in turning revolutionaries (Lenin) into travesties, see Tom Stoppard, *Travesties* (London: Faber and Faber, 1974).

[187] Edward Baugh, *Review: Derek Walcott and the Centering of the Caribbean Subject* (2003) 34 Research in African Literatures 151-159.

[188] Richard Saull, *Locating the Global South in the Theorisation of the Cold War: Capitalist Development, Social Revolution and Geopolitical Conflict* (2005) 26 *Third World Quarterly* 253, 253-260.

in a way that recognises a Caribbean subject who acts and authors its own international legal practices. Richard Saull and Fred Halliday, for example, have argued that with the 1959 Cuban Revolution and the 1962 Missile Crisis, the Caribbean island of Cuba *authored* a "second Cold War"[189] which altered understandings of what constituted permissible state behaviour in the region for both superpowers. In so doing, they show how an autonomous self-determining Caribbean actor co-authored *an alternative* Cold War Customary Law script. Halliday claims that in particular places, at various times, a number of Caribbean actors or subjects (such as Grenada, the Dominican Republic, Nicaragua, Surinam, Jamaica, Guyana, Montserrat, Barbados, Trinidad, and Haiti) *were central to world order and conflict*, suggesting that revolutionary movements and international interventionary responses to them were what scripted understandings of the rules of the international legal order.[190] Strong evidence of this is seen in the ICJ's decision on (*inter alia*) the peremptory norms (*jus cogens*) and principles on the use of force and non-intervention in *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*) which, significantly, was decided shortly after the US Invasion of Grenada, and which underscored the territorial and political sovereignty of postcolonial and newly independent states.[191] Moreover, the foreign policies of revolutionary Caribbean states such as Cuba and Grenada played a role in *undermining* the political and legal international order pursued *by the USSR*, as well as the USA.[192]

*Second*, the Grenadian Revolution and US intervention could be read as scripts of "Caribbean archipelago legality" and "Caribbean revolutionary legality", authored by diverse Caribbean actors and subjects. This scripting is evident in Shalini Puri's chapter entitled *Archipelago* where she argues "[i]n both its making and unmaking, the Grenadian Revolution was a profoundly Caribbean event",[193] one which "both intensified and consciously articulated these archipelago and circum-Caribbean linkages."[194] She meticulously demonstrates that the Grenada Revolution and US intervention revealed how the Caribbean was an organic "fragmented/whole", with its own "international" at play. Drawing on Caribbean writers, poets and literary sources, she suggests that the framing of the Grenada Revolution and Invasion within a rival Cold War international legality does not capture how the Caribbean subject *itself* read the legality of these events within a particular international legal history. One example of the historical interconnectedness between Caribbean peoples and nations is captured by Grenadian poet and novelist Merle Collins' writing on the Grenada Revolution:

> Haiti rehearse it for us and still we never know it. It's like with all we word *international*, we think is a country that exist of itself. Is One Caribbean, take it or leave it. When Trinidad blow it nose, Grenada wiping the snot. When Jamaica put on the tune, Grenada start to dance. We live it, but still we don't know it.[195]

From this, not only is it clear that revolution *is central* to the self-understanding of the Caribbean subject as "international",[196] but that the Caribbean subject is an intertwined one, such that legality of the events involving it cannot be disentangled from a combination of interrelated multiple *Caribbean* actors, events, and histories: from Henri Christophe's birth as a slave in Grenada who would go on to lead the Haitian Revolution in 1802; to Fedon's rebellion in 1795 in Grenada being inspired by the slave rebellion in Haiti in 1791 (and his flight to Cuba);[197] to Uriah Buzz Butler's birth in Grenada and activism in Trinidad; to Gairy's trade union experience in Aruba; to Maurice Bishop's birth in Aruba; to the training in Guyana of the *Twelve Apostles* that seized power from Gairy; to Grenada Revolution's anthem being composed by the Workers Party of Jamaica adapted from a World Festival of Youths and Students in Cuba; to the Grenadian internationalist brigade support of the Sandinista Revolution in Nicaragua in 1981; to Trinidadian CLR James's protest of Bishop's

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[189] Saull *ibid* at 261. Fred Halliday, *Cold War in the Caribbean* (1983) 1 New Left Review 141 at 153.
[190] Halliday ibid at 152-62.
[191] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Jurisdiction and Admissibility, 1984 ICJ REP. 392, June 27, 1986.
[192] Saull *supra* note 187 at 266.
[193] Shalini Puri *supra* note 49 at 173.
[194] Shalini Puri *supra* note 49 at 174.
[195] Merle Collins, *Tout Moun ka Pléwé (Everybody Bawling)* (2007) 11 Small Axe 1 at 2.
[196] Rachel A. May, Alejandro Schneider and Roberto González Arana, *Caribbean Revolutions: Cold War Armed Movements* (CUP 2018).
[197] Kit Candlin, *What Became of the Fedon Rebellion?* in *The Last Caribbean Frontier, 1795–1815* (Cambridge Imperial and Post-Colonial Studies Series: London, Palgrave Macmillan, 2012).

detention; to Barbadian novelist George Lamming's eulogy of Bishop in 1983.[198] From this, it is clear that to read the legality of the Grenadian Revolution and US Invasion as a Cold War Customary Law script foregrounding the USSR-US rivalry is to miss the fact that these events were legal events by, for, and about the Caribbean subject first and foremost, a subject that *authored* (in its creation and response to these two events) both a "Caribbean archipelago legality" and a "Caribbean revolutionary legality" that has been illegible in many versions of Cold War international law (i.e. the settled script or the informal, uncodified *CWCL* script).[199]

*Last*, the Cold War scriptings of the international legality of the Grenadian Revolution and US Invasion could be read as a failed script of Caribbean international legal ontology. For international legal scholars writing on the legality of these events, neither event registered the ways in which Grenada was a beacon for the Caribbean and Caribbean peoples *collectively* and as a revolutionary subject, or as an international legal subject *with its own sovereign geography*. One month after taking power, not only did Maurice Bishop frame Grenada's sovereignty as an "*internal*" matter[200] (highlighting the artificial jurisdictional distinction in international law between domestic law and international law and appealing to the peremptory international legal norm of non-intervention) but also one *simpatico* with Braithwaite and Scott's definition of the Caribbean subject as *interior.* More significantly, and in a critical move, Bishop argued: "*We are not in anyone's backyard*."[201] With this defiant statement, Grenada was not only scripting a legality which rejected the geopolitical division of the world into American and Soviet hemispheres (e.g. as framed in Cold War international legality scripts), but more fundamentally Bishop and Grenada attempted to script *the Caribbean* <u>not</u> as a place (or *mise en scène)* upon which international rival legal orders acted, but as a <u>subject</u> of international law. This was an *ontological* scripting of legality, rejecting the framing of the Cold War legality in solely geopolitical, hemispheric terms. In this declaration*, Bishop wasn't simply saying Grenada wasn't <u>in</u> a backyard: he was saying Grenada wasn't <u>a</u> backyard.* In doing so, the legality he was scripting was of an ontological nature, the effect of which would reframe the *epistemology* of international legality operating within and through a Cold War sensibility. This offers an example of "the ways in which a distinctive Caribbean experience unsettles the assumptions of Western canonical disciplines as well as the periodisation of fields…".[202]

Caribbean philosopher Charles Mills offers a word for what Bishop was attempting: *smadditizin'*. Smadditizin' as been described in the English language as the active process of becoming somebody, in a class sense. Mills suggests that this Caribbean term refers in part to that, but also to something else: "a deeper reality, a reality that, at the risk of sounding pretentious – is properly called ontological".[203] It is *this reality of the Caribbean subject* as a being rather than a place, possessing its own geographical *self*-determination within international imaginaries of place, space and politics, which is missing from the Cold War and other scripts of international legality of the Grenada's Revolution and US Invasion.

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[198] See Puri's Chapter on *Archipegalo* for each of these *supra* note 49.

[199] Interestingly, this Caribbean revolutionary authorship and agency is being given belated recognition in the field of history: "Historians have increasingly recognised that [Caribbean] colonial revolution as an autonomous force that helped to radicalise the French Revolution, rather than merely being a reflection of it." Geggus, *supra* note 169 at 91.

[200] *Maurice Bishop Speaks***:** *the Grenada Revolution and Its Overthrow 1979-1983* (New York: Pathfinder: 1983) at 79: **"**We are No One's Lackey: It is well established internationally that all independent countries have a full, free and unhampered right to conduct their own internal affairs. We do not therefore, recognise any right of the United States of America to instruct us on who we may develop relations with and who we may not."

[201] *Maurice Bishop Speaks ibid* at 82: "We are a small country, we are a poor country with a population largely African descent, we are part of an exploited Third World, and we definitely have a stake in seeing the creation of an New International Economic Order which would assist in ensuring economic justice for the oppressed and exploited peoples of the world, ensuring that the resources of the sea are used for the benefit of all people of the world… Grenada is a sovereign and independent country… *We are not in anyone's backyard*."

[202] Aaron Kamugisha, *Beyond Coloniality: Citizenship and Freedom in the Caribbean Intellectual Tradition supra* note 171 at 8.

[203] Charles Mills, *Smadditizin'* (1997) 2 Caribbean Quarterly 43 at 43.

**CONCLUSION**:

> Look is twenty years and the nation still hurting
> People playing a waiting game, they just not talking
> Is hard if men suffering on the hill for things they didn't do
> People not relenting because they have their memories too
> Dust don't disappear when you sweep it behind bed
> People stay quiet but all the questions in their head
> Is true time could heal and bad times could change people mind
> But we have to figure how to talk, leave the hurt behind
>
> —*Merle Collins, "Shame Bush"* (2003)

13 March 2019 was the 40th anniversary of the Grenada Revolution (and July 2019 incidentally was the 60th anniversary of the Cuban Revolution). If, as has been argued in this Article, a Cold War sensibility imbued the scripts of international legality relating to this revolution and the subsequent US Invasion of Grenada, *what if anything is the "sensibility" imbuing scripts of international legality today?* Does a sense of shame, expressed in the poignant poem above on the Grenada Revolution's failure, or expressed about the triumph of US imperialism following the ostensible end of the Cold War, provide an answer? Is there now shame attached to the continued absence of a revolutionary Caribbean subject, as an autonomous, self-determining or revolutionary figure, in international legal scholarship generally, and in Cold War scripts of international legality in particular? Is there shame attached to the "ontological annihilation of the colonial transaction" of the Caribbean person in early Occidental literary imaginaries?[204] Can a sensibility of shame assist in drawing attention to the dis/continuities of the scripting of international legality, or is it something to be projected retrospectively onto "the other side" by the putative winners or losers of (Cold War) history?

These "sensibility" questions are left open here. What this Article hopes to have demonstrated is twofold. First, it has identified and delineated a Cold War Customary Law script of international legality, one imbued with a Cold War sensibility that recognised the operation of rival international legal orders. This sensibility blended legal reasoning with affect and took into account, in an unofficial register, the existence of rival international legal orders *in the determination of the legality of revolution and intervention under international law*. Second, it has shown that scripts on the legality of the Grenada Revolution and the US Invasion's contain continuities and discontinuities, where productive, rupturing discontinuities may have the potential to configure, if not recover, a plural, creolised, collective, tidalectic, shifting Caribbean subject in international law as neither a proxy nor a pawn of the Cold War superpowers, but as an archipelago and revolutionary *author* of legality, one scripting its own geo-political and legal ontology of freedom. TWAIL (Third World Approaches to International Law), Cold War history, decolonisation and self-determination, each have a Caribbean dimension and story to them that has yet to be fully told. David Scott astutely suggests that even if one brackets one's research preoccupations, there remains the matter of how to think and rethink the domain of Caribbean studies "as a conceptual, ideological, political and moral question".[205] Although this indeed remains, this Article has offered one way to think and rethink the domain of Caribbean studies as (also) an international, legal, historical, revolutionary, literary and theatrical question.

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[204] Silvio Torres-Salliant, *Introduction: New Ways of Imagining the Caribbean* (2007) 40 Review: Literature and Arts of the Americas 3 at 3.
[205] Scott, *supra* note 174.