

ARTICLE

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

Vidya Kumar*

(Received 24 April 2020; accepted 08 July 2020)

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 U.S. Invasion of Grenada (1983). It does so by reading the Cold War as a sensibility performed by these scholars, one that recognized 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 Article 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 revolutionary Caribbean subjects of international law and a sensibility of shame in the present.

Keywords: Cold War Customary Law; international law; revolution; U.S. Invasion; intervention; use of force; Grenada; Cold War; international legal history; law and literature; affect; sensibility; script; theatricality; dramaturgy; *mise en scène*; islands; Caribbean subject; international legal personality; Black Atlantic; tidalectics; oceanic history; Third World Approaches to International Law (TWAAIL)

*Associate Professor, Leicester Law School, UK. [Email: vidya.kumar@le.ac.uk].

The author thanks the following: Sundhya Pahuja for inviting me to contribute to the ground-breaking project on Cold War International Law <https://www.cambridge.org/core/books/international-law-and-the-cold-war/0D836DBD1DB6A2621E1549445780F156>; Gerry Simpson for his caring and careful feedback on my draft and Robin D. G. Kelly for his supportive words on a draft; Adil Hasan Khan for his feedback, profound insights, and immense intellectual generosity; Anna Bernard, Francesca Haig, Joseph Slaughter, and Sara Kendall for their detailed comments and feedback on the literary, theatrical and dramatic aspects of this paper; Kate Grady, Eric Loeffield, Rajgopal Balakrishnan, Grietja Baars, Elena Loizidou, Maria Aristodemou, Laleh Khalili, Christine Schwöbel-Patel, Patricia Ramos Barros for providing helpful social media “hive” citations; Charlotte Peeters for her comments and for inviting me to deliver a version of this paper for the ReVisions Roundtable at the University of Glasgow Centre for International Law and Security <https://twitter.com/UofGCILS/status/1131101613966417920>; my former Head of School (“HoS”), Francois Du Bois for his support of my research leave application to undertake this work and the CSSAH for granting my study leave; Leicester Law School support from my current HoS Sally Kyd, and also from Katja Ziegler and the Centre of European Law and Internationalisation (“CELI”); Ayça Çubukçu and Vasuki Nesiiah for their continued solidarity and internationalism, and to Sebastian Perry for his always brilliant editorial assistance and close reading. All errors and omissions are my own. This article is dedicated jointly to two important people who have passed: Dr James Upcher, for his encouragement of my larger monograph project on “International Law and Revolution” when we read law at Oxford together, and my late father Joseph Kumar who was from Trinidad & Tobago.

“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

A. Introduction

What is the difference between a play and a 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 of 1979–1983 and the U.S. Invasion of Grenada (1983).⁴ It does so by reading the Cold War not only as a series of historical events, but also as a sensibility performed by these scholars. This sensibility both recognized the operation of rival international legal orders and authored a different script—what this Article will call 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 Article 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 exposes 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 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. This Article 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: Section B outlines the literary-theatrical method deployed to revisit how questions of international legality were decided during the Cold War; Section C outlines and disrupts the orthodox or “settled” script of international legality applied to both the Grenada Revolution of 1979–1983 and the U.S. Invasion of Grenada in 1983, to uncover a rival shadow script of legality at play, that is Cold War Customary Law; finally, Section D 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 Section D, 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 hybridized,

¹This 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 Article. See DAVID BOWIE, *HEROES* (RCA Records 1977).

²Lee Sonogan, *How Should I Sell My Movie Script?*, UNGROOVYGORDS (May 2, 2018), <https://ungroovygords.com/2018/05/02/how-should-i-sell-my-movie-script/> (quoting Ridley Scott).

³Marett Leiboff, *Theatricalizing Law*, 30 L. & LITERATURE 351, 351 (2018).

⁴In this Article, I use the terms “invasion” and “intervention” interchangeably, as this was the common practice of international legal scholars writing at the time.

plural, transcultural, shifting, *tidalectic*, interconnected, creolized, revolutionary Caribbean subject to disrupt existing Cold War scripts of international legality framing stories of self-determination, sovereignty, and freedom in international law.

B. International Law, Literature, and Theatricality

1. *Literary and Theatrical Readings of International Law: An Unorthodox Method*

Anxieties about “law and literature” as a scholarly field and endeavor have a long pedigree.⁵ 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 history⁹—range from international law’s existential fear that it lacks “a truth” possessed by—and to be found in—literature;¹⁰ to its fear that “international law is fiction”¹¹ itself—regarding its dubious or selective enforceability; to the fear that reading literature is an elitist enterprise¹²; 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 dehumanization—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

⁵Maria Aristodemou, *The Trouble with the Double: Expressions of Disquiet in and Around Law and Literature*, 11 L. TEXT CULTURE 183 (2007).

⁶This Article 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 (2007); Julie Stone Peters, *Joan of Arc Internationale*, in 91 PROCEEDINGS OF THE ASIL ANNUAL MEETING 120, 120–26 (1997).

⁷See Gerry Simpson, *The Sentimental Life of International Law*, 3 LONDON REV. INT’L L. 3 (2015); Theodor Meron, *The Homeric Wars through Shakespeare*, in 91 PROCEEDINGS OF THE ASIL ANNUAL MEETING, supra note 6, at 126; see also corresponding footnotes *infra* subsection B.I.

⁸Orna Ben-Naftali & Zvi Triger, *The Human Conditioning: International Law and Science Fiction*, 14 L., CULTURE & HUMANS. 6, 11 (2018).

⁹For an explanation of how this romance is frequently referred to as international law’s “turn to history,” see Matthew Craven, *Theorizing the Turn to History in International Law*, in THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW 21, (Anne Orford & Florian Hoffmann eds., 2016); Thomas Skouteris, *The Turn to History in International Law*, OXFORD BIBLIOGRAPHIES (June 27, 2017), <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0154.xml> (last visited Aug. 5, 2018).

¹⁰Aristodemou, *supra* note 5, at 185 (“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 . . .”); *id.* at 191 (“Literature, equally excluded and exalted by law, becomes the fantastical object that will remedy’s law’s lack.”); *id.* (“[L]aw demands of literature that which it assumes will complete it.”).

¹¹Ben-Naftali & Triger, *supra* note 8, at 11.

¹²Daniel Kornstein, *International Law and the Humanities: Does Love of Literature Promote International Law*, 12 ILSA J. INT’L & COMPAR. L. 491, 496 (2006).

¹³Andrea Bianchi, *International Adjudication, Rhetoric, and Storytelling*, 9 J. INT’L DISP. SETTLEMENT 28, 32. Bianchi lists two other reasons which prevent international lawyers from engaging with literature: “[T]he 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.” *Id.* at 32.

¹⁴Kornstein, *supra* note 12, at 497.

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, namely 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 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—such as 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 in contrast 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 problematized characterizations 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—for example, legal texts, cases, and jurisprudential narratives—determines its normativity, instrumentality, and function.²³ Inversely, the literary form has itself been recognized as furthering one's understanding of international law regarding its concepts and forms of authorization, 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 ascertained through, “if nothing else, a literary process.”²⁵ Sartre's view of literature as a call to action²⁶—in other words, a politically engaged literature, or *littérature 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

¹⁵Ben-Naftali & Triger, *supra* note 8, at 11. *But see*, ASTRID KJELDGAARD-PEDERSEN, *THE INTERNATIONAL LEGAL PERSONALITY OF THE INDIVIDUAL* (2018).

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

¹⁷Fritz Caspari, *Sir Thomas More and Justum Bellum*, 56 *ETHICS* 303, 305–07 (1946).

¹⁸For an explanation of how this history can be read not instead of, but *alongside* other historical and philosophical explorations of fundamental concepts of international law, see *FUNDAMENTAL CONCEPTS OF INTERNATIONAL LAW* (Jean D'Aspremont & Sahib Singh eds., 2019).

¹⁹Douglas Guilfoyle, *Reading the City and the City as an International Lawyer: Reflections on Territoriality, Jurisdiction and Transnationality*, 4 *LONDON REV. INT'L L.* 195 (2016).

²⁰THEODOR MERON, *HENRY'S WARS AND SHAKESPEARE'S LAWS: PERSPECTIVES ON THE LAW OF WAR IN THE LATER MIDDLE AGES* (1993); THEODOR MERON, *BLOODY CONSTRAINT: WAR AND CHIVALRY IN SHAKESPEARE* (2000); *see also*, Ben-Naftali & Triger, *supra* note 8, at 10.

²¹CHRISTOPHER N. WARREN, *LITERATURE AND THE LAW OF NATIONS, 1580–1680* (2015).

²²Christopher Gevers, *Literal 'Decolonization': Re-reading African International Legal Scholarship Through the African Novel*, in *THE BATTLE FOR INTERNATIONAL LAW IN THE DECOLONIZATION ERA* (Jochen von Bernstorff & Philipp Dann eds., 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 *INTERNATIONAL LAW AND THE COLD WAR* (Matthew Craven, Sundhya Pahuja & Gerry Simpson eds., 2019).

²³ED MORGAN, *THE AESTHETICS OF INTERNATIONAL LAW* (2007).

²⁴Joseph R. Slaughter, *Pathetic Fallacies: Personification and the Unruly Subjects of International Law*, 7 *LONDON REV. INT'L L.* 3 (2019).

²⁵John Hilla, *The Literary Effect of Sovereignty in International Law*, 14 *WIDENER L. REV.* 77, 142 (2008).

²⁶Jean Paul Sartre, *LITERATURE AND EXISTENTIALISM* (Bernard Frechtman trans., 1994).

²⁷Maurice Blanchot, *THE SPACE OF LITERATURE* 212 (Anna Smock trans., 1982) (emphasis added).

international legal scholars—by *inter alia* Grotius, Schachter, Henkin, Reisman, and Koskenniemi; by international organizations, such as 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 that can help to reflect on how international law offers competing representations of technologies, including depictions directed at authorizing both the creation and end of human life—such as 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, "[l]aw 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 characterize international legal practices, with the most common—but by no means sole³²—example of dramatic theatricalizing 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, and more specifically, international criminal trials and tribunals—including people's tribunals³⁵—have been characterized in various ways, with international defense lawyers noting they are "like a play . . . [with] [e]veryone . . . reading from a script and playing a part."³⁶ Other legal scholars argue 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

²⁸See, Hilla *supra* note 25, at 147 ("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.")

²⁹Ben-Naftali & Triger, *supra* note 8, at 44. For examples of science fiction dealing metaphorically with international law, see CHINA MELVILLE, *THE CITY AND THE CITY* (2009); CHINA MELVILLE, *EMBASSYTOWN* (2011).

³⁰Harry Derbyshire and Loveday Hodson, *Engaging With Human Rights: Truth and Reconciliation and Hang*, in DEBBIE TUCKER GREEN: *CRITICAL PERSPECTIVES* (Sian Adiseshiah & Jacqueline Bolton eds., 2020); Peter Deutschmann, *Metaphor and Allegory in Historical Drama and International Law*, in *LAW AND LITERATURE IN-BETWEEN* 207, 207–08 (Christian Hiebaum, Susanne Knaller & Doris Pichler eds., 2015).

³¹Peter Goodrich, *Specters of Law: Why the History of the Legal Spectacle Has Not Been Written*, 1 U.C. IRVINE L. REV. 773, 808 (2011).

³²Adil Hasan Khan, *Inheriting a Tragic Ethos: Learning from Radhabinod Pal*, 110 AJIL UNBOUND 25, 25–30 (2016); Christian Biet, *Law, Literature, Theatre: The Fiction of Common Judgement*, 5 L. & HUMS. 281, 281–92 (2011).

³³Michael Bachmann, *Theatre and the Drama of Law: A Theatrical History of the Eichmann Trial*, 14 LAW TEXT CULTURE 94 (2010); Shoshana Feldman, *Theatres of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake of the Holocaust*, 27 CRITICAL INQUIRY 201 (2001).

³⁴Leiboff, *supra* note 3, at 2.

³⁵For 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* (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* (Routledge 2018).

³⁶M. G. Zimeta, *At the Khmer Rouge Tribunal*, LONDON REVIEW OF BOOKS, (Aug. 29, 2018), <https://www.lrb.co.uk/blog/2018/august/at-the-khmer-rouge-tribunal>.

³⁷Grietje Baars, *Capitalism's Victor's Justice? The Hidden Stories Behind the Prosecution of Industrialists Post-WWII*, in *THE HIDDEN HISTORIES OF WAR CRIMES TRIALS* 163 (Kevin J. Heller & Gerry Simpson eds., 2013).

³⁸Kate Leader, *The Trial's The Thing: Performance and Legitimacy in International Criminal Trials* 24 THEORETICAL CRIMINOLOGY 241 (2018).

³⁹Gabrielle Simm & Andrew Byrnes, *International Peoples' Tribunals in Asia: Political Theatre, Juridical Farce, or Meaningful Intervention?*, 4 ASIAN J. INT'L L. 103, 103–24 (2013).

Notwithstanding the fetishization of international criminal trials and tribunals as examples of international law's theatrical nature *par excellence*, scholars have theatricalized international law in other ways. Nathaniel Berman has recently examined drama as having created the world 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 examined the Suez Crisis through reflections of Pirandello's play "Six Characters," and Sara Kendall 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—theatricalizing 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 U.S. 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 "genrefy"⁴⁴ international legal historical events, made popular in part by the "turn to history" in international law⁴⁵ and more specifically by the re-discovery of Hayden White's *Metahistory*.⁴⁶ The move to characterize 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 recognizing 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, organization 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 then there is also a need to forge non-genrefied literary readings of the Grenada Revolution, and the

⁴⁰See Nathaniel Berman, *Drama Through Law: The Versailles Treaty and the Casting of the Modern International Stage*, in PEACE THROUGH LAW: THE VERSAILLES PEACE TREATY AND DISPUTE SETTLEMENT AFTER WORLD WAR I (Michel Erpelding, Burkhard Hess & Hélène Ruiz Fabri eds., 2019); see also, Maria Aristodemou, *To Be or Not to Be a (Dead) Father*, 9 J. INT'L DISP. SETTLEMENT 103 (2017).

⁴¹Naoko Shimazu, *Diplomacy As Theatre: Staging the Bandung Conference of 1955*, 48 MOD. ASIAN STUD. 225, 233–34 (2014); Valeria Cimmieri, *The Performative Power of Diplomatic Discourse in the Italian Tragedies Inspired by the Wars Against the Turks*, in EARLY MODERN DIPLOMACY, THEATRE AND SOFT POWER: THE MAKING OF PEACE 93 (Nathalie Rivère de Carles ed. 2016).

⁴²Charlotte Peevers, *International Law, The Suez Crisis and Cold War Juridical Theatre*, in INTERNATIONAL LAW AND THE COLD WAR, *supra* note 22 at 467; Sara Kendall, *Postcolonial Hauntings and Cold War Continuities: Congolese Sovereignty and the Murder of Patrice Lumumba*, in INTERNATIONAL LAW AND THE COLD WAR, *supra* note 22 at 533.

⁴³For a useful overview of the Grenada cases, see P. St. J. Smart, *Revolutions, Constitutions and the Commonwealth: Grenada*, 35 INT'L & COMPAR. L.Q. 950 (1986); SIMON C.R. MCINTOSH, *KELSEN IN THE GRENADA COURT* (Ian Randle ed., 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 THE POWER OF LEGALITY: PRACTICES OF INTERNATIONAL LAW AND THEIR POLITICS 157 (N. M. Rajkovic, T. Aalberts & T. Gammeltoft-Hansen eds., 2016).

⁴⁴By "genrefy" I mean interpreting, classifying, or characterizing historical international legal events as dramatic genres, namely tragedies, comedies, satires, and farces among others.

⁴⁵See Skouteris, *supra* note 9.

⁴⁶HAYDEN WHITE, *METAHISTORY: THE HISTORICAL IMAGINATION IN NINETEENTH-CENTURY EUROPE* (1973).

⁴⁷Jacques Derrida, *The Law of Genre*, 7 CRITICAL INQUIRY 55, 81 (Avital Ronell trans., 1980).

⁴⁸*Id.* at 66.

U.S. Invasion of Grenada, with Shalini Puri's *The Grenada Revolution in the Caribbean Present* being one important and luminous contribution.⁴⁹

II. On Sensibility and Scripts in International Law

What does a literary-theatrical reading of the international legality of the Grenada Revolution and U.S. Invasion of Grenada⁵⁰ involve? Put simply, it is comprised of two interrelated characteristics: one is literary in nature, characterizing the Cold War as a *sensibility*, while the other is theatrical in nature, characterizing 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 Cold War” as solely a question of a chronological periodization 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 U.S. Invasion of Grenada in international law evince a particular Cold War sensibility which can be defined as follows: a tacit affective 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 to 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,*

⁴⁹SHALINI PURI, *THE GRENADA REVOLUTION IN THE CARIBBEAN PRESENT: OPERATION URGENT MEMORY* (2014). Her work will be revisited in Section D.

⁵⁰For 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* (2011).

⁵¹I do not argue that it is “wrong” to read The Cold War in a periodized manner, although, the periodization of the Cold War as occurring between 1945 and 1990 is clearly contested.

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

⁵³See MARKMAN ELLIS, *THE POLITICS OF SENSIBILITY: RACE, GENDER AND COMMERCE IN THE SENTIMENTAL NOVEL* (1996); BRYCCHAN CAREY, *BRITISH ABOLITIONISM AND THE RHETORIC OF SENSIBILITY: WRITING, SENTIMENT, AND SLAVERY 1760-1807* (2005).

⁵⁴AFFECT AND ABOLITION IN THE ANGLO-ATLANTIC, 1770-1830, at 15 (Stephen Ahern ed., 2013); G. A. Starr, *Egalitarian and Elitist Implications of Sensibility*, in *L'EGALITE* 126 (Leon Ingber ed., 1984).

⁵⁵Janet Todd, *Sensibility*, *THE LITERARY ENCYCLOPEDIA* (Nov. 1, 2005), <https://www.litencyc.com/php/stopics.php?rec=true&UID=1003> (accessed Jul. 11 2018) (emphasis added).

⁵⁶Andrea Pavoni, *Introduction*, in *SEE (LAW AND THE SENSES)* 1, 3 (Andrea Pavoni, Danilo Mandic, Caterina Nirta & Andreas Philippopoulos-Mihalopoulos eds., 2018). See also, Andreas Philippopoulos-Mihalopoulos, *Atmospheres of Law: Senses, Affects, Lawscapes*, 7 *EMOTION, SPACE AND SOC'Y* 35, 35–44 (2013).

and its configuration of legality, demonstrates that 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 rivalry characterizing 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 U.S. Invasion of Grenada 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 a 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 judgment. 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 judgments 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 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 authorizing of actions, such as revolutions, invasions or interventions.⁶¹ Importantly, the practice of scripting authorizing 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

⁵⁷1–3 THE CAMBRIDGE HISTORY OF THE COLD WAR (Melvyn P. Leffler & Odd Arne Westad eds., 2010).

⁵⁸For 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 ed., 2018).

⁵⁹International legal scholars manifested this “awareness” during 1979–83 when the Grenada Revolution and U.S. Invasion of Grenada took place.

⁶⁰KEITH MICHAEL BAKER & DAN EDELSTEIN, SCRIPTING REVOLUTION: A HISTORICAL APPROACH TO THE COMPARATIVE STUDY OF REVOLUTIONS 2–3 (2015) (emphasis added).

⁶¹*Id.* at 3.

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 Grenada's Revolution or the U.S. 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—that is to say, a "Cold War Customary Law"—that read and situated these events within a Cold War sensibility of legality.

C. 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 scripting 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 U.S. Invasion of Grenada. 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 Section C is not to revisit the legality of these events in international legal history to ask: "[W]hat 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 marshaled in favor of the U.S. Invasion of Grenada included that it was "illegal but legitimate," mirroring more recent justifications of the 2017 U.S. strikes on Syria.⁶⁶ Certainly, an interesting genealogy that traces the pedigree of the "illegal but legitimate" justification of the use of force in

⁶²*Id.* at 2.

⁶³Julie Stone Peters, *Law as Performance: Historical Objects, Lexicons, and Other Methodological Problems*, in *NEW DIRECTIONS IN LAW AND LITERATURE* 1, 4–5 (Elizabeth S. Anker & Bernadette Meyler eds., 2017).

⁶⁴*Id.* (emphasis added).

⁶⁵An answer to the question: "[W]ould these events be decided differently today," is not addressed here. *But see* Nabil Hajjami, *The Intervention of the United States and other Eastern Caribbean States in Grenada – 1983*, in *THE USE OF FORCE IN INTERNATIONAL LAW* 385 (Tom Ruys, Olivier Corten & Alexandrra Hoffer eds., 2018).

⁶⁶*See* Harold Hongju Koh, *Not Illegal: But Now the Hard Part Begins*, JUST SECURITY (Apr. 7, 2017), <https://www.justsecurity.org/39695/illegal-hard-part-begins>; Jens David Olin, *I Agree with Harold Koh*, OPINIO JURIS (Apr. 8, 2017), <http://opiniojuris.org/2017/04/08/i-agree-with-harold-koh>; Monica Hakimi, *The Attack on Syria and the Contemporary Jus ad Bellum*, EJIL: TALK! (Apr. 15, 2018), <https://www.ejiltalk.org/the-attack-on-syria-and-the-contemporary-jus-ad-bellum>; Marko Milanovic, *The Syria Strikes: Still Clearly Illegal*, EJIL: TALK! (Apr. 10, 2017), <https://www.ejiltalk.org/illegal-but-legitimate>; Jure Vidmar, *Excusing Illegal Use of Force: From Illegal but Legitimate to Legal Because it is Legitimate*, EJIL: TALK! (Apr. 14, 2017), <https://www.ejiltalk.org/excusing-illegal-use-of-force-from-illegal-but-legitimate-to-legal-because-it-is-legitimate>; Anne-Marie Slaughter (@SlaughterAM), TWITTER (Apr. 14, 2018, 8:57 AM), <https://twitter.com/SlaughterAM/status/985139861538689024>; *see also*, Jack Goldsmith & Oona Hathaway, *Bad Legal Arguments for the Syria Strikes*, JUST SECURITY (Apr. 14, 2018), <https://www.justsecurity.org/54925/bad-legal-arguments-syria-strikes> (stating that French Foreign Minister Jean-Yves Drian claimed the strikes were "legitimate" though was silent on its legality).

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 Section will focus upon is: did the Cold War *matter* to the debates characterizing the international legality of these events in Grenada, and if so, *how did it matter*? To better answer this question, Section C is broken down into three subsections. First, it offers a very brief account of the facts of the Grenada Revolution (1979–1983) and the U.S. Invasion of 1983. Second, Section C identifies the dominant “settled script” international legal scholars adopted to interpret and evaluate the legality of these events. Third and most significantly, this Section demonstrates that international legal scholars—whether they characterized 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 recognized and drew the contours of this second contemporaneous script—that is, a Cold War Customary Law script—which operated contiguously and subversively alongside the settled script to characterize the legality of these events in international law.

I. The Grenada Revolution and U.S. 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 from 1979–1983 and those of the U.S. 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 February 7, 1974. Sir Eric Gairy, who led the country to independence, was widely believed to have become corrupt,⁷² and on March 13, 1979, a 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 October 16, 1983, when a faction within the NJM—led by Deputy Prime Minister Bernard Coard—seized power, placing Bishop

⁶⁷See Milanovic, *supra* note 66; THE INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO, THE KOSOVO REPORT (2000).

⁶⁸Antony D’Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AM. J. INT’L L. 516, 524 (1990) [hereinafter D’Amato, *The Invasion of Panama*]. For a link between the Panama and Grenada invasions, arguing both should be viewed as lawful under international law, see Antony D’Amato, *Intervention in Grenada: Right or Wrong?*, N.Y. TIMES, Oct. 30, 1983 (S4), at 18 [hereinafter D’Amato, *Intervention in Grenada*].

⁶⁹Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46 (1992); Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT’L L. 539 (1992); Brad Roth, *The Illegality of “Pro-Democratic” Invasion Pacts*, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW 328 (G. Fox & B. Roth eds., 2000).

⁷⁰PURI, *supra* note 49, at 24.

⁷¹For further information on the Grenada Revolution and the U.S. Invasion, see Robert J. Beck, *Grenada*, in MAX PLANK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2015); BRIAN MEEKS, CARIBBEAN REVOLUTIONS AND REVOLUTIONARY THEORY: AN ASSESSMENT OF CUBA, NICARAGUA, AND GRENADA (1993); PURI, *supra* note 49, at 98.

⁷²See FOREIGN AFFAIRS COMMITTEE ON GRENADA, HOUSE OF COMMONS SECOND REPORT OF THE FOREIGN AFFAIRS COMMITTEE ON GRENADA, 1983–4, HC 226, at xlv (UK) (illustrating extracts from the fifth report of the Foreign Affairs Committee, Session 1981–2).

⁷³For a demonstration of how this was recognized in the High Court of Grenada by Chief Judge Nedd, see *Mitchell v. Director of Public Prosecutions*, 1985 L.R.C. Const. 127, 143 (Gren.) (“[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, *supra* note 43, at 956.

under house arrest. Mass demonstrations and protests at Bishop's arrest ensued, leading to his escape and eventual 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 October 25, 1983, the United States, in *Operation Urgent Fury*, invaded Grenada.⁷⁴

II. The “Settled Script” of the Grenada Revolution and U.S. Invasion

Interestingly, the script addressing the legality in international law of the Grenada Revolution and the U.S. Invasion of Grenada was crafted in a remarkably uniform manner by scholars writing at the time of these events, and shortly after. This is true whether they supported or opposed the Grenada Revolution or the U.S. Invasion. The standardized 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 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 U.S. 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 U.S. gave for invading Grenada did not stand up to legal scrutiny.⁷⁸ Scholars focused the large part of their

⁷⁴For an account of *Operation Urgent Fury*, see Beck, *supra* note 71.

⁷⁵The 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 Organization 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 put an end to the acute threat to peace and security in the region.” Jeane Kirkpatrick (Former U.S. Ambassador to the U.N.), *Statement to the Security Council*, U.N./Doc. S/PV 2487 (Oct. 25, 1983). 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*, 78 AM. J. INT'L L. 200, 203–04 (1984) (citing three official reasons of US Government for the invasion). 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 *democratic* one, as some authors have retrospectively argued. See BRAD ROTH & GREGORY FOX, *DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW* 106 (2020) (illustrating their discussion of the “Reagan doctrine” as applied in Panama and Grenada).

⁷⁶This 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 and as intervention to prevent, or end, a revolution. See sources cited *infra* note 78.

⁷⁷See sources cited *infra* note 78.; see also, Hajjami *supra* note 65, at 386–94.

⁷⁸See generally, SCOTT DAVIDSON, *GRENADA: A STUDY IN POLITICS AND THE LIMITS OF INTERNATIONAL LAW* (Aldershot ed., 1987) (arguing none of the US justifications were legal); ROBERT J. BECK, *THE GRENADA INVASION: POLITICS, LAW, AND FOREIGN POLICY DECISIONMAKING* 215 (1993) (arguing all rationales *except for* the protecting U.S. nationals rationale of the U.S. were illegal, but that even this rationale was illegal as it was not the sole rationale justifying the intervention: “[A]n American action *solely* to evacuate nationals would have been legally permissible”); WILLIAM C. GILMORE, *THE GRENADA INTERVENTIONS: ANALYSIS AND DOCUMENTATION* 55–73 (1984) (arguing all three justifications the US offered were rejected); Richard P. Dieguez, *The Grenada Invasion: “Illegal” in Form, Sound as Policy*, 16 N.Y.U. J. INT'L L. & POL. 1167, 1168–197 (1984); John Quigley, *The United States Invasion of Grenada: Stranger than Fiction*, 18 U. MIAMI INTER-AM. L. REV. 271, 275–351 (1986) (noting, “[w]ith respect to all three asserted justifications, the Department seriously misrepresented facts to bolster

analysis on the legality of each of these three justifications, weighing them against existing international legal rules, norms, conventions, principles, et cetera. 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 program.⁸⁰ The small minority of scholars that claimed the U.S. 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 U.S.'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 U.S. Invasion of Grenada, 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 two events, international law's existence and ultimate authority was not in question. By organizing their arguments and reasoning around these two foci, legal scholars penned a standardized 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—which is 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—Cold War Customary Law—that not only pointed to the existence and operation of contemporaneous rival international legalities, but also subverted the settled script as the sole authoritative script on the legality of these events.

its claim of legality," and arguing that the evidence for each of these reasons was fabricated by the U.S. to get rid of a left-wing government); Francis A. Boyle, Abram Chayes, Isaak Dore, Richard Falk, Martin Feinrider, C. Clyde Ferguson Jr., J. David Fine, Keith Nunes & Burns Weston, *International Lawlessness in Grenada*, 78 AM. J. INT'L L. 172, 172–75 (1984); Issak I. Dore, *The US Invasion of Grenada: Resurrection of the "Johnson Doctrine"*, 20 STAN J. INT'L L. 173 (1984); Christopher Joyner, *Reflections on the Lawfulness of Invasion*, 78 AM. J. INT'L L. 131 (1984); Ved P. Nanda, *The United States Armed Intervention in Grenada — Impact on World Order*, 14 CAL. W. INT'L L.J. 395, 404–21 (1984); Maurice Waters, *The Invasion of Grenada, 1983 and the Collapse of Legal Norms*, 23 J. PEACE RES. 229 (1986); Edward Gordon, Richard B. Bilder, Arthur W. Rovine, & Don Wallace, *International Law and The United States Action in Grenada: A Report*, 18 INT'L LAW. 331, 380 (1984); L. Doswald-Beck, *The Legality of the United States Intervention in Grenada*, 31 NETH. INT'L L. REV. 355 (1984).

⁷⁹See sources cited *supra* note 78 and accompanying text.

⁸⁰See, Waters, *supra* note 78, at 235; Gilmore, *supra* note 78, at 21, Doswald-Beck, *supra* note 78, at 365; Quigley, *supra* note 78, at 351; Joyner, *supra* note 78, at 134; Nanda, *supra* note 78, at 408; Gordon et al., *supra* note 78, at 369 (noting that the Report of American Bar Association Committee recognized the legality of the Bishop government through its restatement with approval of the Declaration of the Grenada Revolution dated March 28, 1979 and arguing that the General Austin government was not instigated or supported by Cuba, see Gordon et al, *supra* note 78, at 348 and 369).

⁸¹See John Norton Moore, *Grenada and the International Double Standard*, 78 AM. J. INT'L L. 145, 145–68 (1984); D'Amato, *Intervention in Grenada*, *supra* note 68.

⁸²Moore, *supra* note 81, at 161; D'Amato, *Intervention in Grenada*, *supra* note 68, 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.

III. 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 U.S. 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 background 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 characterized or identified as 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—that is, a Cold War Customary Law—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 U.S. Invasion of Grenada.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—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 This specific context’s relevance to the reasoning, interpretation, and logic used to ascertain the international legality of these events was never disputed, but taken as given in a stark reversal of the law-politics divide assumed by twentieth-century positivist approaches to international law.⁸⁷

By reading the Cold War as a sensibility, expressed and performed by scholars as the background epistemology of international legality, 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 recognizing the existence and operation

⁸³ANTONIN ARTAUD, *THE THEATRE AND ITS DOUBLE* 37 (Mary Caroline Richards trans., 1958).

⁸⁴See *infra* subsection C(IV).

⁸⁵Scott Newton, *Parallel Worlds: Cold War Division Space*, in *INTERNATIONAL LAW AND THE COLD WAR*, *supra* note 22, at 117.

⁸⁶See, Dieguez, *supra* note 78, at 1168; Doswald-Beck, *supra* note 78, at 356–59; Moore, *supra* note 81, at 145–53 (Moore further arguing also that factual “misperceptions” influenced judgements of the U.S. invasion as illegal, *supra* note 81 at 161); Dore, *supra* note 78, at 174–80; Joyner, *supra* note 78; Quigley, *supra* note 78 (intertwining the factual context with legal argument throughout).

⁸⁷Positivism was the dominant approach towards international law in eighteenth and nineteenth centuries, spilling over into the twentieth century. For a discussion of the contested histories of international legal positivism, see Jean d’Aspremont, *International Legal Positivism*, in *ENCYCLOPEDIA OF THE PHILOSOPHY OF LAW AND SOCIAL PHILOSOPHY* 1–7 (Mortimer Sellers & Stephan Kirste eds., 2017).

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 was never codified nor officially advanced, nor were the informal Cold War international legal rules, norms, and principles recognized or accepted by legal scholars homogenous or universally agreed upon. The word “customary” is used here to describe this script as it captures not only its elusive form, content, date of origin, and the 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, and 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.

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

Irrespective of where they stood on the question of the legality of the Grenada Revolution and the U.S. Invasion in their production of a settled script, it is clear that international legal scholars tacitly recognized 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.

In his article *The Grenada Intervention: ‘Illegal’ in Form, Sound as Policy*, Richard P. Dieguez evinced a Cold War sensibility that identified the root legal problem as “the schism between the free world and totalitarianism.”⁹⁰ After evaluating the U.S. Invasion of Grenada 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 U.S.’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 the three justifications the U.S. gave for invading Grenada were “a sound policy 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

⁸⁸See the conclusion to Craven, Pahuja, and Simpson, *introduction*, in *INTERNATIONAL LAW AND THE COLD WAR*, *supra* note 22, at 1.

⁸⁹I would like to thank Adil Hassan Khan for this elegant reformulation of my argument.

⁹⁰Dieguez, *supra* note 78, at 1204.

⁹¹*Id.* at 1168–97.

⁹²*Id.* at 1197.

⁹³*Id.* at 1201.

⁹⁴*Id.* at 1199.

⁹⁵*Id.* at 1200–01.

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, thereby scripting different substantive rules and evidence for the international legal community to evaluate the legality of the Grenada Revolution and U.S. Invasion of Grenada.

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 authorizes superpower influence and interventions according to their respective, informally recognized geographic hemispheres. Initially following the settled script, Louise Doswald-Beck rejects all three of the U.S.’s justifications to invade Grenada,⁹⁷ concluding the intervention was illegal in international law and recognizing 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 international legal scholars were asking a separate legal question about the Grenada Revolution and U.S. Invasion of Grenada: “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 or 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 behavior, namely state intervention, according to tacitly recognized 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

⁹⁶*Id.* at 1168 (emphasis added).

⁹⁷Doswald-Beck, *supra* note 78, at 359–73.

⁹⁸*Id.* at 371.

⁹⁹*Id.* at 375.

¹⁰⁰*Id.* at 376 (emphasis added).

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, but it also 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 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, which consists 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 U.S. Invasion of Grenada.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 that 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 U.S. Invasion of Grenada, Moore sketches a Cold War Customary Law that implores its audience to also recognize that:

[T]he 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 behavior 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—that is, 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]ninformed 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

¹⁰¹*Id.* at 376.

¹⁰²*Id.*

¹⁰³Dore, *supra* note 78; Moore, *supra* note 81.

¹⁰⁴Moore, *supra* note 81, at 146.

¹⁰⁵*Id.* at 167.

¹⁰⁶*Id.*

¹⁰⁷*Id.* at 168.

¹⁰⁸*Id.*

¹⁰⁹*Id.*

¹¹⁰*Id.*

¹¹¹*Id.*

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 analyzes the international legality of the Revolution and the U.S. Invasion of Grenada by examining “the legal and policy decisions underlying U.S. actions in Grenada,”¹¹² which for him are inseparable. He argues that the U.S. 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 U.S. 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 legality of the U.S. Invasion of Grenada 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”—intervention in Guatemala, the Dominican Republic, El Salvador, and Nicaragua.¹¹⁶ U.S. policy is woven through the legal justifications for its interventions, 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 U.S. 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 *authorizes* American intervention in certain circumstances falling outside of those authorized 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 U.S. 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 recognized 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 U.S. 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 a 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, sixteen years after the U.S. Invasion of Grenada and twenty years after the Grenada Revolution, notes that the distinction between the acceptability of legal justifications of unilateral and collective interventions has changed with the putative end of the Cold War—as during the Cold War, “single-state intervention” was

¹¹²Dore, *supra* note 78, at 173.

¹¹³*Id.* at 174.

¹¹⁴*Id.* at 176.

¹¹⁵*Id.* at 189.

¹¹⁶*Id.*

¹¹⁷*Id.*

¹¹⁸Robert J. Beck, *International Law and the Decision to Invade Grenada: A Ten-Year Retrospective*, 33 VA. J. INT’L L. 765, 814 (1993).

¹¹⁹*Id.* at 815.

¹²⁰*Id.*

¹²¹*Id.* at 817.

“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 characterization of state practice on intervention into two periods, “Cold War” and “Post-Cold War” periods,¹²⁴ and placed the events in Grenada firmly in the former period— supporting the 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 that was published at the very beginning of the putative end of the Cold War. In 1989, the textbook *Caribbean Perspectives on International Law and Organisations* was published.¹²⁵ The editors, B.C. Ramcharan and L.B. Francis, saw fit to divide the textbook into four themes, three of which could be comfortably characterized as archetypal Cold War themes of 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 by “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 as a matter of the application of clear, universal rules, norms, conventions, et cetera of international law—that is, 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 Cold War Customary Law script of international legality can be summarized as including, *inter alia*: a political-realist international legal policy from Dieguez; informal but commonly recognized legal rules governing state behavior and permissible intervention based upon superpower hemispheric influence from Doswald-Beck; the informal acceptance and legal recognition of competing ideological doctrines (i.e. Breshnev, Johnson, Reagan) justifying intervention for and against revolutions and revolutionary authorities from Moore and Dore; a context and set of attitudes that configured international legality differently from Beck; and a set of rules which made “single-state intervention” under the Brezhnev and Johnson doctrines “socially acceptable” according to 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 behavior and international order. Two questions remain to be answered: whether this script crafted in response to the Grenada Revolution and the U.S. Invasion of Grenada was in any way new, and what, if anything, happens to the Cold War Customary Law script and sensibility on international legality when its *mise en scène* is disrupted. These questions will now be addressed in Section D.

D. 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 never-ending threads of history together.”¹²⁷

¹²²George N. Barrie, *Forcible Intervention and International Law: Legal Theory and Realities*, 116 S. AFRICAN L.J. 791, 795 (1999).

¹²³Christopher C. Joyner & Anthony Clark Arend, *Anticipatory Humanitarian Intervention: An Emerging Legal Norm?*, 10 U.S.A.F. ACAD. J. LEGAL STUD. 27 (1999–2000).

¹²⁴*Id.* at 36–37.

¹²⁵CARIBBEAN PERSPECTIVES ON INTERNATIONAL LAW AND ORGANIZATIONS (Bertie Ramcharan & L.B. Francis eds., 1989).

¹²⁶*Id.*

¹²⁷Odd Arne Westad, *The Cold War and the International History of the Twentieth Century*, in 1 THE CAMBRIDGE HISTORY OF THE COLD WAR, *supra* note 57, at 2.

I. 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 recognizing extant alternative scripts of international legality for the discipline and histories of international law? I argue that to answer these questions, one must turn back to the theatrical. Specifically, different theatrical *mises en scène* need to be adopted, particularly those which eschew “the short durée” or “evental history” of the “settled” or Cold War Customary Law scripts of the Revolution and U.S. Invasion of Grenada. This final part of the Article explores the ways in which the Cold War sensibility and script can be read as both continuous and discontinuous with historical practices of international legal scholars configuring international legality in the Caribbean.

II. *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, et cetera, of a play. It is employed here to gesture toward *alternative settings* (including temporal, oceanic, revolutionary) comprised of actors (such as states, slaves, empires, colonies) and props (such as international legal sources, Papal Bulls, state doctrines), and within which, the international legality of the Grenada Revolution and U.S. Invasion of Grenada 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 March 13, 1979, when Maurice Bishop and the New JEWEL Movement replaced the Gairy government, up until October 23, 1983 when the U.S. proffered reasons to justify its Invasion of Grenada. The Cold War Customary Law script excavated above identifies and recognizes contiguous, tacit, and informal international legal norms, rules, principles, and practices which were held to be operative at this same time and in the subsequent decade. This 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 scène* operate, and the significance of this for how Caribbean subjects figure in international law.

III. 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 with 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

¹²⁸See MYERS McDOUGAL & FLORENTINO P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER: THE LEGAL REGULATION OF INTERNATIONAL COERCION* (1961); Wolfgang Friedmann, *Intervention, Civil War, and the Rôle of International Law*, in 59 PROCEEDINGS OF THE ASIL ANNUAL MEETING 67 (1965); RICHARD B. LILICH, *HUMANITARIAN INTERVENTION AND THE UNITED NATIONS* (1973).

¹²⁹Thomas M. Franck & Nigel S. Rodley, *Legitimacy and Legal Rights of Revolutionary Movements with Special Reference to the Peoples' Revolutionary Government of South Viet Nam*, 45 N.Y.U. L. REV. 679 (1970).

¹³⁰*Id.* at 681–82.

¹³¹James Upcher, ‘*Savage Wars of Peace*’? *International Law and the Dilemmas of Humanitarian Intervention*, 9 DEAKIN L. REV. 261, 276 (2004) (arguing humanitarian intervention is an extra-legal doctrine masquerading as a customary rule).

of revolutionary movements and intervention in the context and setting of a different revolution—the Vietnam Revolution—they recognize that international law is not what it once was and needs reinterpreting if not redefining. In one of the few attempts to systematize 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 recognized 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 practice and also in policy” such that “there is no reason for their survival in law” as the “Westphalian” model of international law has been displaced by new post-Vietnam “norms” governing the roles of rival superpowers.¹³⁵ In particular, in responding to revolutions or interventions, “the advent of nuclear weapons”¹³⁶ has meant that the role of international law 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 behavior regarding revolution and intervention to fit the geographical reciprocity 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 recognizes 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 scène* of international law in the Caribbean. For example, the configuration of international legality of the Grenada Revolution and U.S. Invasion of Grenada in the Caribbean can be read alongside historical U.S. rivalry in the region with European empires,

¹³²Franck & Rodley, *supra* note 129, at 679–80.

¹³³*Id.* at 683.

¹³⁴*Id.* at 680.

¹³⁵*Id.* at 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*Id.* at 681.

¹³⁷Franck & Rodley, *supra* note 129, 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*Id.* at 685 (emphasis added).

¹³⁹*Id.* at 684.

¹⁴⁰*Id.* at 685.

¹⁴¹*Id.* at 687–88.

and American attempts to script international legality in the region. These attempts characterize 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 U.S. claimed in international law to have control of the western hemisphere.¹⁴³ This doctrine was aimed at the Holy Alliance, with respect to its attempts to stamp out revolution in Europe and elsewhere and to re-conquer, via intervention, revolutionary republics in Latin America.¹⁴⁴ Here the U.S. took advantage of the independence revolutions of South America¹⁴⁵ through its “non-colonization principle”¹⁴⁶ and non-intervention principle that had advanced the following rules of state behavior: “that the U.S. 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 U.S. 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 fifteenth-century *mise en scène*, yet another setting characterized by different actors (i.e. European empires) and different props (i.e. international legal documents) appears. But this setting too frames international legality as a 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 centering on a number of Papal Bulls. These Bulls prioritized 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 and 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

¹⁴²Samuel Herrick, *The Monroe Doctrine as a Principle of International Law*, 4 BRIEF 360 (1902).

¹⁴³*Id.*; David D. Carto, *The Monroe Doctrine in the 1980’s: International Law, Unilateral Policy, or Atavistic Anachronism*, 13 CASE W. RES. J. INT’L L. 203, 207 (1981).

¹⁴⁴See Carto, *supra* note 143, at 206.

¹⁴⁵Liliana Obregon, Address to European Society of International Law (ESIL) at the University of Manchester (Sept. 15, 2018) (on file with author).

¹⁴⁶Carto, *supra* note 143, at 203.

¹⁴⁷*Id.* at 205.

¹⁴⁸See Herrick, *supra* note 142; Carto, *supra* note 143.

¹⁴⁹ERIC WILLIAMS, FROM COLUMBUS TO CASTRO: THE HISTORY OF THE CARIBBEAN 1492–1969, 71 (1984).

¹⁵⁰Andrew Welsh, *The History of International Law in the Caribbean and the Domestic Effects of International Law in the Commonwealth Caribbean* 1 SOAS L.J. 124, 125–26 (2014).

¹⁵¹David Berry, *The Caribbean*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW xx (Bardo Fassbender & Anne Peters eds., 2012).

¹⁵²*Id.* (“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.”).

¹⁵³STEWART MOTH, ARCHIVING SOVEREIGNTY: LAW, HISTORY, VIOLENCE 38 (2018). On the “fluidity” of international legal jurisdictions, see NURFADZILAH YAHAYA, FLUID JURISDICTIONS: COLONIAL LAW AND ARABS IN SOUTHEAST ASIA (2020).

continuous with scripts of imperial rivalry in tidalectic, oceanic, 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 law¹⁵⁸ and the “international legality of reception,” displaying instead a legality formed through imperial rivalry characterized 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 sixteenth and nineteenth 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 Consequently, “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 dehumanization and commodification of black bodies.¹⁶³

IV. Discontinuities, “Fragments/Whole” and the Caribbean International Legal Subject

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

¹⁵⁴John Curtis Perry, *Oceanic Revolution and Pacific Asia*, 35 FLETCHER F. WORLD AFFS. 123 (2011). For related groundbreaking work on the relationship between oceans, resources, imperial power, and international law, see RENISA MAWANI, *ACROSS OCEANS OF LAW: THE KOMAGATA MARU AND JURISDICTION IN THE TIME OF EMPIRE* (-2018); Surabhii Ranganathan, *Ocean Floor Grab: International Law and the making of an Extractive Imaginary*, 30 EUR. J. INT’L L. 573 (2019).

¹⁵⁵Perry, *supra* note 154, at 124. For a feminist literary account of high sea history and international law, see Loveday C. Hodson, *Mermaids and Utopias: The High Seas as Feminist Space?*, in GENDER AND THE LAW OF THE SEA 122 (I. Papanicolopulu ed., 2019).

¹⁵⁶ANTHONY N. ALLOTT, *THE LIMITS OF LAW* 109–10 (1980).

¹⁵⁷For further reading on how the ocean and its inhabitants affect understandings of law, see BLUE LEGALITIES: THE LIFE AND LAWS OF THE SEA (Irus Braverman & Elizabeth R. Johnson eds., 2020).

¹⁵⁸ROSE-MARIE BELL ANTOINE, *COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS* (Routledge-Cavendish 2d ed. 2008).

¹⁵⁹A. Fitzmaurice, *Discovery Conquest, and Occupation of Territory*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW, *supra* note 151.

¹⁶⁰Anne-Charlotte Martineu, *A Forgotten Chapter in the History of International Commercial Arbitration: The Slave Trade’s Dispute Settlement System*, 31 LEIDEN J. INT’L L. 219 (2018).

¹⁶¹HERBERT S. KLEIN & JACOB KLEIN, *THE ATLANTIC SLAVE TRADE* 103 (1999).

¹⁶²David Armitage, *The Atlantic Ocean*, in OCEANIC HISTORIES 85, 92 (David Armitage, Alison Bashford & Sujit Sivasundaram eds., 2018).

¹⁶³For an account of how imperial rivalry produces particular legal forms of racialization, see Robert Knox, *Race, Racialisation and Rivalry in the International Legal Order*, in RACE AND RACISM IN INTERNATIONAL RELATIONS: CONFRONTING THE GLOBAL COLOUR LINE (INTERVENTIONS) (Alexander Anievas, Nivi Manchanda, & Robbie Shilliam eds., 2014). See also James Thuo Gathii, *Geographical Hegelianism in Territorial Disputes Involving Non-European Land Relations: An Analysis of the Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, 15 LEIDEN J. INT’L L. 581 (2002).

¹⁶⁴Pavoni, *supra* note 56.

Notwithstanding the various ways in which the Cold War script and sensibility have 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—superpowers, imperial powers, European powers, and others—formal or informal, may not capture *all* of the ways in which the legality of the Grenadian Revolution and U.S. Invasion of Grenada “makes sense” in international legal storytelling practices.¹⁶⁵ By framing international legality in a quasi-genealogical account of its continuities within different *mises en scène* of international law, this Article admittedly has offered a particular “distribution of the sensible,”¹⁶⁶ one that corrals the legal meaning and significance of the Cold War script and sensibility “into precise categories” of similar, prior, and 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 the U.S. Invasion of Grenada’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, and frequently 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, particularly Caribbean and Occidental writers.

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 1973 in Savacou, the Journal of the Caribbean Artist’s Movement, 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 recognized as a diverse, multi-colonized, creolized, and irreducibly hybridized subject. In light of this, he famously characterized the methodological problem facing the study of the Caribbean subject in academic disciplines as “how to study the fragments/whole.”¹⁷⁰

¹⁶⁵Bianchi, *supra* note 13, at 33.

¹⁶⁶JACQUES RANCIÈRE, *THE POLITICS OF AESTHETICS* 12 (2004).

¹⁶⁷I 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 hybridized, plural, transcultural, shifting, creolized, revolutionary subject, referring to shared and divergent histories of Caribbean peoples, countries, and nations.

¹⁶⁸Vasuki Nesiiah, *Freedom at Sea*, LONDON REV. INT’L L. 149 (2019); *see also* JULIUS S. SCOTT, *THE COMMON WIND: AFRO AMERICAN CURRENTS IN THE AGE OF THE HAITIAN REVOLUTION* (2018).

¹⁶⁹The question of whether Caribbean subjects had revolutionary agency has been debated by historians—for instance, 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 *THE AGE OF REVOLUTIONS IN GLOBAL CONTEXT C. 1760–1840*, at 91 (David Armitage & Sanjay Subrahmanyam eds., 2017) (noting that 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”).

¹⁷⁰Edward Kamau Braithwaite, *Caribbean Man in Space and Time*, 11–12 SAVACOU (1975).

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 theorizing of the Caribbean subject in ways beyond an external or exterior sensibility, namely 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—including, Caribbean states, regions, nations, revolutionaries,¹⁷² slaves, rebels, deserters, and "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 provincialize 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 raise 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 the Caribbean seriously—as a multiple, collective, diverse, creolized, shifting, and *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 prefigured Caribbean imaginaries may play in this endeavor.

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

¹⁷¹Braithwaite 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* 8 (2019).

¹⁷²For a discussion of how revolutionaries "fit" into the discipline of international law, see Vidya Kumar, *Revolutionaries*, in *CONCEPTS FOR INTERNATIONAL LAW: CONTRIBUTIONS TO DISCIPLINARY THOUGHT* 773 (Jean D'Aspremont & Sahib Singh eds., 2019).

¹⁷³SCOTT, *supra* note 168, at ch. 1.

¹⁷⁴David Scott, *On the Question of Caribbean Studies*, 17 *SMALL AXE* 1 (2013) (emphasis added).

¹⁷⁵*Id.*

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. See Nathaniel Mackey, *An interview with Kamau Brathwaite*, in *THE ART OF KAMAU BRATHWAITE* 14 (Stewart Brown ed., 1995) ("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."). 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*, 7 *IAFOR* 55, 57–58 (2020). 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 Gargallo, *Kamau Brathwaite's Rhythms of Migration*, 53 *J. COMMONWEALTH LITERATURE* 155, 156 (2018). See also *TIDALECTICS: IMAGINING AN OCEANIC WORLDVIEW THROUGH ART AND SCIENCE* (Stefanie Hesse ed., 2018).

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 civilization. Perhaps the best-known example of this in Anglophone literary representations of the Caribbean is Shakespeare’s *The Tempest*,¹⁷⁸ probably written between 1610 and 1611, 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, a barrister and a novelist, who envisioned the New World island as an idealized future of human discovery and knowledge. Henry Neville’s *The Isle of Pines*,¹⁸⁰ published in 1668 and 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, and 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 resistance from [the] 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, rejecting the island’s laws, rules, and bible readings 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 shipwrecked European character to reconstruct a new sovereignty.¹⁸³ In this genre, the Occidental male protagonist is suddenly isolated from the comforts of civilization, 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

¹⁷⁷LI-CHIN HSIAO, “THIS SHIPWRECK OF FRAGMENTS”: HISTORICAL MEMORY, IMAGINARY IDENTITIES, AND POSTCOLONIAL GEOGRAPHY IN CARIBBEAN CULTURE AND LITERATURE 2 (2009).

¹⁷⁸WILLIAM SHAKESPEARE, *THE TEMPEST*.

¹⁷⁹Francis Bacon, *New Atlantis*, in *THREE EARLY MODERN UTOPIAS: UTOPIA, NEW ATLANTIS AND THE ISLE OF PINES* 149 (Susan Bruce ed., 1999).

¹⁸⁰Henry Neville, *The Isle of Pines*, in *THREE EARLY MODERN UTOPIAS: UTOPIA, NEW ATLANTIS AND THE ISLE OF PINES*, supra note 179, at 187.

¹⁸¹Susan Bruce, *Introduction*, in *THREE EARLY MODERN UTOPIAS: UTOPIA, NEW ATLANTIS AND THE ISLE OF PINES*, supra note 179, at xxxix.

¹⁸²DANIEL DEFOE, *ROBINSON CRUSOE* (Nelson & Sons 1876) (1719).

¹⁸³Britta Ulrike Hartmann, *Island Fictions: Castaways and Imperialism* (Oct. 2014) (unpublished Ph.D. dissertation, Tasmania University) (on file with author).

¹⁸⁴For 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 *THE ROUTLEDGE COMPANION TO ANGLOPHONE CARIBBEAN LITERATURE* 149 (Michael A. Bucknor, & Alison Donnell eds., 2011); ALISON DONNELL, *TWENTIETH-CENTURY CARIBBEAN LITERATURE: CRITICAL MOMENTS IN ANGLOPHONE LITERARY HISTORY* (2006).

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 characterizes revolution (and revolutionaries,¹⁸⁶) as something to be put down—as in *The Tempest* and *The Isle of Pines*—or unnecessary if colonization is done right—as in *New Atlantis*—rather than something to be desired. Likewise, these works perform a travesty of intervention. “Intervention” in the New World is characterized, 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 so-called civilized 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 colonization by the French and British empires in the seventeenth and eighteenth centuries, thus transforming the Caribbean subject *as one partially lost forever*. In light of this, it is not surprising that attempts to reclaim, recover, and reassert the Caribbean subject may be described as one of the main pre-occupations, 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 U.S. Invasion of Grenada. This is despite the fact that an “international legality” that recognizes Grenada as a Caribbean actor, or subject, *authoring* scripts 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 in a way that recognizes 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 that altered understandings of what constituted permissible state behavior in the region for both superpowers. In so doing, they show how an autonomous, self-determining Caribbean actor *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 the international interventionary responses to them, were what scripted understandings of the rules of the international legal order.¹⁹⁰ Strong evidence of this

¹⁸⁵Contrast these characters in WILLIAM SHAKESPEARE, *HAMLET*, with their central place in TOM STOPPARD, *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* (2004).

¹⁸⁶For a contemporary approach examining the role memory plays in turning revolutionaries (Lenin) into travesties, see TOM STOPPARD, *TRAVESTIES* (1974).

¹⁸⁷Edward Baugh, *Review: Derek Walcott and the Centering of the Caribbean Subject*, 34 *RES. AFRICAN LITERATURES* 151, 151–59 (2003).

¹⁸⁸Richard Saull, *Locating the Global South in the Theorisation of the Cold War: Capitalist Development, Social Revolution and Geopolitical Conflict*, 26 *THIRD WORLD Q.* 253, 253–60 (2005).

¹⁸⁹*Id.* at 261; Fred Halliday, *Cold War in the Caribbean*, 1 *NEW LEFT REV.* 141, 153 (1983).

¹⁹⁰See Halliday, *supra* note 189, at 152–62.

is seen in the International Court of Justice's ("ICJ") 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*), a case which, significantly, was decided shortly after the U.S. 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 U.S.S.R. and the U.S.¹⁹²

Second, the Grenadian Revolution and U.S. 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 U.S. 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 U.S. Invasion of Grenada 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 also that the Caribbean subject is an intertwined and plural one, such that legality of the events involving it cannot be disentangled from a combination of inter-related 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 the 1979 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 C.L.R. James's protest of Bishop's 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 the U.S. Invasion of Grenada as a Cold War Customary Law script foregrounding the U.S.S.R. and U.S. rivalry is to miss the fact that these events were legal

¹⁹¹Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgement, 1984 I.C.J. Rep. 392, (June 27, 1986).

¹⁹²See Saull, *supra* note 188, at 266.

¹⁹³PURI, *supra* note 49, at 173.

¹⁹⁴*Id.* at 174.

¹⁹⁵Merle Collins, *Tout Moun ka Pléwé (Everybody Bawling)*, 11 SMALL AXE 1, 2 (2007).

¹⁹⁶RACHEL A. MAY, ALEJANDRO SCHNEIDER & ROBERTO GONZÁLEZ ARANA, CARIBBEAN REVOLUTIONS: COLD WAR ARMED MOVEMENTS (2018).

¹⁹⁷Kit Candlin, *What Became of the Fedon Rebellion?*, in THE LAST CARIBBEAN FRONTIER, 1795–1815, at 1 (2012).

¹⁹⁸See PURI, *supra* note 49, at ch. Archipegalo.

events by, for, and about the Caribbean subject first and foremost; a subject that, in its creation and response to these two events, authored both a “Caribbean archipelago legality” and a “Caribbean revolutionary legality” that has been illegible in many renderings of Cold War international law—including the settled script and the informal, uncoded Cold War Customary Law script.¹⁹⁹

Last, the Cold War scriptings of the international legality of the Grenadian Revolution and the U.S. Invasion of Grenada 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* 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” matter²⁰⁰ (highlighting the artificial jurisdictional distinction in international law between domestic law and international law and appealing to the preemptory international legal norm of non-intervention), but one also *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—as framed in Cold War international legality scripts—but more fundamentally, Bishop and Grenada attempted to script the Caribbean not as a place or *mise en scène*, upon which international rival legal orders acted, but as a *subject* of international law. This was then an *ontological* scripting of legality, rejecting the framing of the Cold War legality in solely geographic and hemispheric terms. In this declaration, Bishop wasn’t simply saying Grenada wasn’t *in* a backyard: *he was saying Grenada wasn’t a 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 a clear example of “the ways in which a distinctive Caribbean experience unsettles the assumptions of Western canonical disciplines as well as the periodization of fields”²⁰²

Caribbean philosopher Charles Mills offers a word for what Bishop was attempting: *smadditizin*. *Smadditizin*’ has 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 reading of self-determination within international imaginaries of place, space, and politics, which is missing from the Cold War and other scripts of international legality of Grenada’s Revolution and the U.S. Invasion.

¹⁹⁹Interestingly, this Caribbean revolutionary authorship and agency is being given belated recognition in the field of history. See Geggus, *supra* note 169, at 91 (“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.”).

²⁰⁰BRUCE MARCUS & MICHAEL TABER, MAURICE BISHOP SPEAKS: THE GRENADA REVOLUTION AND ITS OVERTHROW 1979–1983, at 79 (Pathfinder 1983) (“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*Id.* 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 a 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.*”).

²⁰²KAMUGISHA, *supra* note 171, at 8.

²⁰³Charles Mills, *Smadditizin*, 43 CARIBBEAN Q. 54 (1997).

E. 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)

March 13, 2019 was the fortieth anniversary of the Grenada Revolution (and July 2019, incidentally, was the sixtieth anniversary of the Cuban Revolution). If a Cold War sensibility imbued the scripts of international legality relating to this revolution and the subsequent U.S. Invasion of Grenada, as has been argued in this Article, *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 U.S. 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 continuities and discontinuities 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 recognized 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 U.S. Invasion of Grenada contain continuities and discontinuities — where productive, rupturing discontinuities may have the potential to configure, if not recover, a plural, creolized, collective, tidalectic, shifting Caribbean subject in international law as neither proxy nor 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. Third World Approaches to International Law, Cold War history, decolonization, 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 an international, legal, historical, revolutionary, literary, and theatrical question.

²⁰⁴Silvio Torres-Saillant, *Introduction: New Ways of Imagining the Caribbean*, 40 *REV. LITERATURE & ARTS AMS.* 3, 3 (2007).

²⁰⁵Scott, *supra* note 174.