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Narrative Kill or Capture: Unreliable Narration in International Law

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Abstract
This article evaluates the benefits of a 'turn to narration' in international legal scholarship. It argues that significant attention should be paid to the narrators who employ international law as a vocabulary to further their professional projects. Theories of unreliable narration help map consensus within international law's interpretive community in a manner that is acutely sensitive to point of view and perspective. The article examines the existence and extent of unreliable narration through a case study: the practice of targeted killing by the Obama administration in the United States. The struggle for control of the narrative, by narrators with different professional roles and cognitive frames, is ultimately a struggle for interpretive power, with the resulting ability to 'kill or capture' divergent narrative visions. Unreliable narration offers a critical heuristic for assessing how narratives are generated, sustained, and called into question in international law, while fostering reflexive inquiry about international law as a professional discipline.

Key words
interpretive community; narrative; targeted killing; transparency; unreliable narrator

> Who shall have control over the story? Who has, who should have, the power not only to tell the stories with which, and within which, we all lived, but also to say in what manner those stories may be told?
>
> *Salman Rushdie*[1]

1. Introduction

That narratives always involve, and are constructed by, narrators is surely a truism. Yet in the context of international legal scholarship and practice, there is a tendency to foreground analysis that accords with a cluster of master narratives, while the

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1 S. Rushdie, *Joseph Anton* (2013), at 360.

professional identity, political agency, and normative orientation of the narrators are downplayed. This article explores the implications of reversing such an emphasis, arguing that, instead of allocating international practices to preordained narratives, closer attention should be paid to the narrators who adopt international law as a professional vocabulary to advance particular projects.

The argument for a 'turn to narration' in international law proceeds as follows. Leading approaches to the study of narrative are canvassed, with a particular focus on the interplay between successional and configurative narrative dimensions (Part 2). The concept of the 'unreliable narrator' in literary criticism is then discussed in the context of international law. This focus on narrative perspective, or cognitive frames, provides a vocabulary for mapping consensus within international law's interpretive community (Part 3). The existence of unreliable narration within international law's interpretive community is considered in relation to the contentious practice of targeted killing by the Obama administration in the United States, where different narrators have made divergent pronouncements on the (il)legality of the practice. The benefits of analysing multi-perspectival narration are examined, revealing the close interaction between professional role and interpretive posture, and the way in which readers co-opt narrators in furtherance of their own projects (Part 4). The article concludes by endorsing the insights of narratological analysis in international legal theory, suggesting that the interplay of international practices, interpretive communities, and unreliable narration generates important insights in evaluating narratives of the international legal order.

2. Narrative theory

2.1. Narrative in literary and historical theory

Roland Barthes memorably described narrative as 'international, transhistorical, transcultural: it is simply there, like life itself'.[2] Perhaps because of its ubiquity, narrative has proved notoriously difficult to define.[3] A suitably general definition of narrative insists that:[4]

> It is more than just a bare annal or chronicle or list of a sequence of events, but a representation of those events which is shaped, organized, and coloured, presenting those events, and the people involved in them, from a certain perspective or perspectives, and thereby giving narrative structure – coherence, meaningfulness, and evaluative and emotional import – to what is related.

The study of narrative is a mainstay of literary theory and criticism and has given rise to a bewildering array of theoretical traditions.[5] Narratology – the structuralist

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2 R. Barthes, 'Introduction to the Structural Analysis of Narrative', in *Image, Music, Text* (1977), at 79.

3 J. Phelan and P. Rabinowitz, 'Narrative as Rhetoric', in D. Herman et al., *Narrative Theory: Core Concepts and Critical Debates* (2012), 3, at 5.

4 P. Goldie, *The Mess Inside: Narrative, Emotion, and the Mind* (2012), at 2.

5 J. H. Miller, 'Narrative', in F. Lentricchia and T. McLaughlin (eds.), *Critical Terms for Literary Study* (1995), at 67. See generally D. Herman, M. Jahn, and M. Ryan (eds.), *Routledge Encyclopaedia of Narrative Theory* (2005); L. Herman and B. Vervaeck (eds.), *Handbook of Narrative Analysis* (2006).

study of narrative plots in fictional texts – was predicated on a distinction between a sequence of actions or events in the world ('story'), and the presentation or narration of such events ('discourse').[6] Notwithstanding the structuralist mandate to reveal the underlying 'logic of narrative',[7] narrative is in the business of creation as well as revelation.[8] The aforementioned distinction between story and discourse demonstrates the way in which storytellers attempt to give 'shape and significance to life'.[9] J. Hillis Miller explained the constitutive function of narrative as follows:[10]

> [F]ictions may be said to have a tremendous importance not as the accurate reflectors of a culture, but as the makers of that culture and as the unostentatious, but therefore all the more effective, policemen of that culture … Narratives are [also] a relatively safe or innocuous place in which the reigning assumptions of a given culture can be criticized.

In the 1980s and 1990s, the narratological analytic method spread its disciplinary wings to encompass other media besides fictional text.[11] Narrative is now scrutinized in many disciplines across the social sciences and humanities including sociolinguistics, discourse analysis, communication studies, ethnography, sociology, and organization studies.[12] Cognitive narratology has assumed particular prominence, drawing on interdisciplinary insights about language and communication that were unavailable to structural narratologists.[13] Cognitive psychologists and artificial intelligence scholars had discovered the 'storied nature of perception, sense-making, memory and identity formation',[14] an insight that literary theorists began to capitalize on. There is now interest in building integrative theories that accommodate both

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6 J. Culler, *The Pursuit of Signs: Semiotics, Literature, Deconstruction* (2001), at 189. Narratology traditionally drew on two main sources: first, Claude Lévi-Strauss' application of linguistic principles to the study of myths, concluding that apparently disparate mythical narratives could be reduced to a limited number of component *mythemes*; and secondly, the formalist analysis of Russian folk tales, which revealed that a small number of narrative 'functions' and roles constituted the underlying grammar of storytelling. See D. Macey, *The Penguin Dictionary of Critical Theory* (2000), at 264; C. Lévi-Strauss, 'The Structural Study of Myth', (1955) 68 *Journal of American Folklore* 428; V. Propp, *Morphology of the Folktale* (1968); C. Bremond, *Logique du récit* (1973); A. Greimas, *Sémantique structurale: Recherche de method* (1966).

7 C. Bremond, 'The Logic of Narrative Possibilities', (1980) 11(3) NLH 387.

8 M. Aristodemou, *Law & Literature: Journeys From Her to Eternity* (2000), at 3: 'Narratives thus invent rather than reflect our lives, ourselves and our worlds … [N]arratives are not neutral: they investigate, but also suggest, create and legislate meanings'.

9 P. Brooks, 'Narrative Transactions – Does the Law Need a Narratology?', (2006) 18(1) *Yale J.L.& Human.* 1, at 24.

10 Miller, *supra* note 5, at 69. For a discussion of the interaction between narrative and ideology, see L. Herman and B. Vervaeck, 'Ideology' in D. Herman (ed.), *Cambridge Companion to Narrative* (2007), at 217; T. Eagleton, *The Ideology of the Aesthetic* (1990); A. Gramsci, *Selections from the Prison Notebooks* (1971).

11 See, e.g., M. Ryan (ed.), *Narrative Across Media: The Languages of Storytelling* (2004); M. Hyvärinen, M. Hatavara, and L. Hydén (eds.), *The Travelling Concepts of Narrative* (2013).

12 Herman, Jahn, and Ryan, *supra* note 5, at ix.

13 Cognitive narratology is discussed under the rubric of 'postclassical narratology': D. Herman (ed.), *Narratologies: New Perspectives on Narrative Analysis* (1999). See generally D. Herman (ed.), *Narrative Theory and the Cognitive Sciences* (2003); M. Ryan, *Possible Worlds, Artificial Intelligence and Narrative Theory* (1991); M. Turner, *Reading Minds: The Study of English in the Age of Cognitive Science* (1991); M. Fludernik, *Towards a 'Natural' Narratology* (1996); L. Bernaerts, D. De Geest, L. Herman, and B. Vervaeck (eds.), *Stories and Minds: Cognitive Approaches to Literary Narrative* (2013).

14 Jahn, 'Cognitive Narratology', in Herman, Jahn, and Ryan, *supra* note 5, at 67; M. Ryan, 'Toward a Definition of Narrative' in Herman, *supra* note 10, at 27: '[S]tories can exist in the mind as pure patterns of information, inspired by life experience or created by the imagination, independently of their representation through the signs of a specific medium'.

literary narratives and the analysis of everyday storytelling.[15] The interdisciplinary ambition of narrative theory has displaced fictionality by conflating it with a general concept of narrativity.[16]

As part of this narrative turn, historians began proactively to offer reasons for adopting a narrative mode of representation rather than seeking to explain events by causal generalization.[17] For David Carr, narrative form is 'not a dress which covers something else but the structure inherent in human experience and action'.[18] Paul Ricoeur influentially advanced a general theory of narrative discourse, pertaining to both fictional and historical narrative forms.[19] For Ricoeur, narrative has an 'irreducible temporality', which negates the attempts of structuralists to dechronologize fictional narrative as well as those who seek to deny the narrative character of history.[20] He regarded both history and fiction as referring to the essential historicity of human existence:[21]

> We are members of the field of historicity as storytellers, as novelists, as historians. We belong to history before telling stories or writing history. The game of telling is included in the reality told. That is undoubtedly why … the word "history" preserves in many languages the rich ambiguity of designating both the course of recounted events and the narrative that we construct.

Ricoeur argued that any narrative combines two dimensions: a chronological or episodic dimension, and the attempt to construct 'meaningful totalities out of scattered events'.[22] In other words, Ricoeur maintained that the art of narrating requires the ability to 'extract a configuration from a succession'.[23] On this view, any narrative can be conceived in terms of the competition between its successional and configurational dimensions, between 'sequence and figure'.[24] Because the configurational dimension involves the 'encompassing [of events] in successive totalities', a narrative may have the character of a judgement.[25] Ricoeur's typology of narrative as

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15 D. Herman, 'Towards a Transmedial Narratology' in Ryan, *supra* note 11, at 47. See M. Sternberg, 'Universals of Narrative and Their Cognitivist Fortunes', (2003) 24(2) *Poetics Today* 297, at 306: 'Tentacles would appear the right word for such expansionist, all-devouring interdisciplinarity, stretchable to everything possibly associated with cognitive representations, yet accountable to nothing beyond its own psychological methodology'.

16 For differing perspectives on the relationship between narrativity and fictionality, see J. R. Searle, 'The Logical Status of Fictional Discourse', in *Expression and Meaning: Studies in the Theory of Speech Acts* (1979), at 65; D. Cohn, *The Distinction of Fiction* (1999); R. Walsh, *The Rhetoric of Fictionality: Narrative Theory and the Idea of Fiction* (2007).

17 R. Smith, *Being Human: Historical Knowledge and the Creation of Human Nature* (2007), at 174; H. White, 'The Question of Narrative in Contemporary Historical Theory', (1984) 23(1) *Hist. Theory* 1; H. White, *The Content of The Form: Narrative Discourse and Historical Representation* (1990).

18 D. Carr, *Time, Narrative and History* (1991), at 65.

19 P. Ricoeur, 'The Narrative Function', in *Hermeneutics & the Human Sciences* (1981), at 274.

20 Ibid., at 284. See P. Ricoeur, *Time and Narrative* (1990).

21 Ibid., at 294. See also A. MacIntyre, *After Virtue: A Study in Moral Theory* (1981), at 248: 'we enter upon a stage which we did not design and we find ourselves part of an action that was not of our own making'; C. Taylor, *Sources of the Self: The Making of the Modern Identity* (1992), at 208: narrative history is 'the basic and essential genre for the characterization of human actions'.

22 Ibid., at 278.

23 Ibid., at 278.

24 Ibid., at 279.

25 Ibid., at 279.

an interplay between successional and configurational elements is an illuminating heuristic framework, which is discussed in the context of international law below.

2.2. Narrative in legal theory

Compared to its treatment in literary and historical theory, narrative has not been one of the more visible methodological tools in legal theory.[26] This is puzzling, given that storytelling is a pervasive feature of legal practice. Indeed, the argumentative moves lawyers regard as rule-based reasoning are frequently a mode of narrative reasoning.[27] For example, the 'theory of the case' in the adversarial trial is an explicitly narrative mode of representation.[28] There are exceptions which highlight narrative in legal scholarship, including the 'law and literature' movement,[29] Ronald Dworkin's conception of the judicial opinion as a chapter in a 'chain novel',[30] and Robert Cover's contention that law and narrative are 'inseparably related'.[31] Cover situated law squarely within the realm of storytelling, refusing to draw disciplinary lines between different narrative forms.

Despite such insights, for the most part, one 'searches in vain for any recognition within legal doctrine that narrative is one of law's categories for making sense of its affairs'.[32] This quest and its frustration may be due either to disciplinary naiveté or a more active repression.[33] Critical theorists have suggested that the desire for order and system in the law is sustained by the production of successional 'grand narratives'.[34] Although they often self-present as neutral methodological tools, legal theories themselves are best regarded as exercises in narrative, to appreciate 'how they work on us and through us'.[35] Accordingly, like its incarnation in literary theory, narratological analysis in law has the distinct potential to emphasize the

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[26] Exceptions include 'Legal Storytelling', (1989) 89 *Mich. L. Rev.* 2073; P. Brooks and P. Gewirtz (eds.), *Law's Stories: Narrative and Rhetoric in the Law* (1998); L. Wolff, 'Let's Talk About Lex: Narrative Analysis as Both Research Method and Teaching Technique in Law', (2014) 35 *Adel. L. Rev.* 3.

[27] L. H. Edwards, 'The Convergence of Analogical and Dialectical Imaginations in Legal Discourse', (1996) 20 *Leg. Stud. Forum* 7.

[28] See, e.g., R. Burns, *A Theory of the Trial* (1998); H. Porter Abbott, *Cambridge Introduction to Narrative* (2008), at 179: 'a trial can be described as a huge, unpolished narrative compendium featuring the contest of two sets of authors, each trying to make their central narrative of events prevail by spinning narrative segments for their rhetorical impact'.

[29] See S. Levinson, 'Law as Literature', (1982) 60 *Tex. L. Rev.* 373; R. Posner, *Law and Literature* (2009); I. Ward, *Law and Literature: Possibilities and Perspectives* (2008); Aristodemou, *supra* note 8.

[30] R. Dworkin, *Law's Empire* (1986), at 228–32.

[31] R. M. Cover, 'The Supreme Court 1982 Term – Foreword: *Nomos* and Narrative', (1983) 97 *Harv. L. Rev.* 4, at 5.

[32] P. Brooks, 'Narrative in and of the Law' in J. Phelan and P. Rabinowitz (eds.), *A Companion to Narrative Theory* (2008), at 415.

[33] P. Goodrich, *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (1996), at 112: 'Law is a literature which denies its literary qualities. It is a play of words which asserts an absolute seriousness; it is a genre of rhetoric which represses its moments of invention or of fiction; it is a language which hides its indeterminacy in the justificatory discourse of judgment; it is procedure based on analogy, metaphor and repetition and yet it lays claim to being a cold or disembodied prose, a science without poetry or desire; it is a narrative which assumes the epic proportions of truth; it is, in short, a speech or writing which forgets the violence of the word and the terror or jurisdiction of the text'.

[34] C. Douzinas and R. Warrington, *Postmodern Jurisprudence: The Law of the Text in the Text of the Law* (1991).

[35] S. Singh, 'Narrative and Theory: Formalism's Eternal Return', (2014) 84 BYBIL 304, at 309: '[N]arrative analysis seeks to look beyond a legal theory text's apparent coherence and unity, its apparent self-sufficiency, rather seeking to highlight and then breach its "strategies of containment"'; R. West, 'Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory', (1985) 60 *N.Y.U.L.Rev.* 145.

constitutive, as well as reflective, nature of narrative,[36] and highlight the interrelationship of successional and configurational elements. Narratology also fosters reflexivity in the legal discipline by emphasizing point of view and perspective: 'who sees and who tells; the explicit or implicit relation of the teller to what is told; the varying temporal modalities between the told and its telling'.[37]

2.3. Narrative in international law

International legal scholarship has been described as characterized by a 'deracinated, anti-biographical, depersonalised, formally circumscribed, view-from-nowhere, prose style'.[38] Ricoeur's distinction between narrative's successional and configurational dimensions helps illuminate and parse the major approaches to narration in international legal scholarship. A consideration of the successional dimension reveals the prevalence of progress narratives in international legal thought, while a consideration of the configurational dimension reveals the constellation of norms operative in master narratives, such as constitutionalism, pluralism, and global administrative law.

2.3.1. Succession: progress narratives

In international law, Enlightenment-style 'progress narratives' are a familiar style of scholarship.[39] There frequently appears to be a clear 'teleological horizon which orientates … cognitive activity' at work in international legal discourse.[40] This horizon includes the increased centrality of individual rights in the international legal system,[41] and the increased juridification of international relations.[42] Although the sequential trajectory is conceived in a variety of ways,[43] progress narratives in international law are characterized by 'discipline optimism'.[44] Historical events are made to fall along 'an invisible line of progress', from Westphalia to a more just world:[45]

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36 A. Amsterdam and J. Brunner, *Minding the Law* (2000), at 111.

37 Brooks, *supra* note 9, at 24.

38 G. Simpson, 'The Sentimental Life of International Law', (2015) 3(1) *London Review of International Law* 3, at 11.

39 F. Kratochwil, *The Status of Law in World Society: Meditations on the Role and Rule of Law* (2014), at 136; T. Skouteris, *The Notion of Progress in International Law Discourse* (2010); T. Altwicker and O. Diggelmann, 'How is Progress Constructed in International Legal Scholarship?', (2014) 25(2) EJIL 425.

40 Ricoeur, *supra* note 19, at 294; D. Kennedy, 'The Disciplines of International Law and Policy', (1999) 12 LJIL 9, at 90: 'an elaborate disciplinary practice retelling international law's progressive development, which serves as a common intellectual background for professionals in the field'.

41 See, e.g., R. Teitel, *Humanity's Law* (2011); A. Trindade, *The Access of Individuals to International Justice* (2011); G. Frankenberg, 'Human Rights and the Belief in a Just World', (1999) 12 ICON 35.

42 See, e.g., K Alter, *The New Terrain of International Law: Courts, Politics, Rights* (2014); B. Kingsbury, 'International Courts: Uneven Judicialisation in Global Order', in J. Crawford and M. Koskenniemi (eds.), *The Cambridge Companion to International Law* (2012), at 203–27.

43 See, e.g., B. Simma, 'From Bilateralism to Community Interest in International Law', (1994) 250 RCADI 217; J. H. H. Weiler, 'The Geology of International Law – Governance, Democracy and Legitimacy', (2004) 64 ZaöRV 547.

44 O. Diggelmann, 'The Periodization of the History of International Law', in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), 997, at 1008.

45 D. Koller, '… and New York and The Hague and Tokyo and Geneva and Nuremberg and …: The Geographies of International Law', (2012) 23(1) EJIL 97, at 100.

> Individual episodic developments such as the conclusion of the Peace of Westphalia, the adoption of the UN Charter in San Francisco, the Nuremberg Trials, the Kyoto Protocol, or the establishment of the ICC in The Hague become no longer isolated phenomena to take on their own accord, but rather milestones falling on an invisible line of progress from injustice to a more rudimentary, and, finally, to a more advanced international law.

Such trajectories of progress have been called into question by contemporary international law historiography,[46] which has frequently adopted a posture of 'incredulity towards meta-narratives',[47] in favour of a narrative mode that highlights the contingency underpinning visions of progress. Such narratives emphasize the 'marginalized alternatives and choices which seem to question our self-assured satisfaction of having 'overcome' history',[48] and attempt to expose the 'dynamics of power and hierarchy' in conventional narratives.[49] Narrative accounts of international law that presumptively appeal to linear teleological developments tend to mask intractable value conflicts that characterize practice on the ground.[50] It is here that narrative has a powerful constitutive function, as observed by Friedrich Kratochwil:[51]

> Whatever the world community might be – a minimal *ordre public*, a practical association, or a value-based utopia – one thing seems clear: doctrines and actual practice often diverge widely and are only tenuously held together by metaphors, conceptual constructs, and narratives, instead of actual, settled practices.

2.3.2. Configuration: constitutionalism, pluralism, global administrative law

While the successional dimensions of international legal narratives are largely dominated by progress and teleology, the configurational effort to construct 'meaningful totalities out of scattered events'[52] are frequently variations on a cluster of master narratives: constitutionalism, pluralism, and global administrative law.[53] Master narratives can be understood as sharing a 'common rhetorical desire to resolve conflict by establishing audience expectations according to the known trajectories of its literary and rhetorical form'.[54] Martti Koskenniemi has conceived of constitutionalism and pluralism in explicit narrative terms,[55] describing a corresponding 'play

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46 See, e.g., M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001), at 2: 'no assumption about history as a monolithic or linear progress narrative is involved'; S. Moyn, *The Last Utopia: Human Rights in History* (2010); B. Fassbender and A. Peters, 'Introduction: Towards a Global History of International Law', in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), 1, at 2.

47 J. Lyotard, *The Postmodern Condition: A Report on Knowledge* (1979), at xxiv.

48 A. Boldizar and O. Korhonen, 'Ethics, Morals and International Law', (1999) 10 EJIL 279, at 294.

49 D. Kennedy, 'Law and the Political Economy of the World', (2013) 26 LJIL 7, at 23.

50 G. Simpson, 'Linear Law: The History of International Criminal Law' in C. Schwöbel (ed.), *Critical Approaches to International Criminal Law* (2014), at 159 (historical narratives that are privileged in international criminal tribunals include individualized historical narratives over structural histories; linear over fragmentary histories; and hegemonic histories which celebrate agency over counter-hegemonic, or social, accounts).

51 Kratochwil, *supra* note 39, at 167.

52 Ricoeur, *supra* note 19, at 278.

53 See L. Lixinski, 'Narratives of the International Legal Order and Why They Matter', (2013) 6(1) *Erasmus L.Rev.* 2.

54 J. Halverson et al., *Master Narratives of Islamist Extremism* (2011), at 14.

55 M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2005), at 512.

of narratives of unity and fragmentation'.[56] Constitutionalism narratives purport to offer continuity with domestic constitutional traditions by offering an overarching framework that determines the relationship of, and distribution of power between, institutions in the international legal order.[57] Given that domestic constitutionalism relies on an understanding of the common good that is arguably absent in the international community, there are inevitably transposition difficulties.[58] Moreover, the emphasis on unity and hierarchy in global constitutionalism narratives is destabilized by the complexities of regime proliferation and fragmentation.[59]

Set against unity and hierarchy, pluralism narratives posit an international legal order characterized by the 'heterarchical interaction of the various layers of law'.[60] They proceed on the basis of a situation in which two or more legal orders exist in the same juridical space, where each may have a plausible claim to authority.[61] While they squarely address the implications of overlapping and often conflicting levels of authority, pluralism narratives have been critiqued for failing to 'pose demands on the world' and sustain a distinct legal project.[62]

Meanwhile, the global administrative law (GAL) narrative responds to the lack of accountability attendant on the regime proliferation and fragmentation identified by constitutionalism and pluralism narratives. While accountability is frequently willed into being by constitutionalism or left under-specified by pluralism, accountability pursuant to the GAL narrative is effected by standards of transparency, participation, reasoned decision, legality, and effective review.[63] In an analysis attuned to the configurational activity at work in the GAL narrative, Susan Marks has considered the way in which the 'naming' of GAL modifies existing concepts:[64]

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56 M. Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics', in *The Politics of International Law* (2011), 331, at 355.

57 See, e.g., J. Klabbers, A. Peters, and G. Ulfstein, *The Constitutionalization of International Law* (2009); M. Kumm, 'The Legitimacy of International Law: A Constitutionalist Framework of Analysis', (2004) 15 EJIL 907; R. Collins, 'Constitutionalism as Liberal-Juridical Consciousness: Echoes from International Law's Past', (2009) 22(2) LJIL 251; E. de Wet, 'The International Constitutional Order', (2006) 55 ICLQ 51.

58 For critique, see M. Rosenfeld, 'Is Global Constitutionalism Meaningful or Desirable?', (2014) 25(1) EJIL 177; J. Dunoff et al., 'Hard Times: Progress Narratives, Historical Contingency and the Fate of Global Constitutionalism', (2015) 4(1) *Global Constitutionalism* 1.

59 See UN International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, A/CN.4/L.682, 13 April 2006; E. Benvenisti and G. W. Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law', (2007) 60 *Stan.L.Rev.* 101; M. Young (ed.), *Regime Interaction in International Law: Facing Fragmentation* (2012).

60 N. Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (2010), at 23; N. Walker, 'Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders', (2008) 6 ICON 373; N. Roughan *Authorities* (2013); P. Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (2012).

61 S. Douglas-Scott, 'Brave New World? The Challenges of Transnational Law and Legal Pluralism to Contemporary Legal Theory', in R. Nobles and D. Schiff (eds.), *Law, Society and Community: Socio-Legal Essays in Honour of Roger Cotterell* (2014).

62 Koskenniemi, *supra* note 56, at 353–4. For that reason, Koskenniemi advocates a constitutionalist mindset, understood as a 'programme of moral and political regeneration' rather than an architectural project: 'Constitutionalism as a Mindset: Reflections on Kantian Themes about International Law and Globalisation', (2007) 8 *Theo Inq L* 9, at 18.

63 B. Kingsbury, N. Krisch, and R. Stewart, 'The Emergence of Global Administrative Law', (2005) 68 LCP 15, at 17.

64 S. Marks, 'Naming Global Administrative Law', (2005) 37 *N.Y.U.J.Int'l Law & Pol.* 995, at 1001.

> [N]aming is not just a matter of sticking on labels. At least where we are speaking of social phenomena, it changes what is named. An element within a new conceptual framework is something different from what it was when considered as an isolated phenomenon; it has new features, prompts new enquiries, orients action in new directions.

What accounts for the staying power of the three master narratives canvassed above as exercises in naming? After all, international legal scholars repeatedly adopt these conceptual frameworks rather than branch out and tell alternative stories about the international legal order.[65] This may be because the persuasive appeal of a configuration of concepts increases if they conform to widely accepted norms.[66] Common to constitutionalism, pluralism, and GAL is a shared professional preoccupation with the existence of a coherent international legal system: 'how international law functions as a whole, and how a judgment or new legal instrument in one particular regime fits into the overarching narrative of the international legal "system"'.[67] Yet these three narratives have a tendency to transcend 'systemic considerations' and confer 'conceptual trumps'.[68] Constant resort to them can 'risk putting in the shade disputes over process, agency and orientation'.[69] Yet narratives of the international legal order are inevitably advanced to support differing political projects and normative agendas.[70] In that advancement, there is the distinct risk of attribution errors and selection bias on the part of whoever narrates.[71] As Fleur Johns observed, 'if a person with a hammer sees every problem as a nail, then a person with an architectural blueprint sees every problem as a foundation and every hammer-carrier as a 'mere' labourer implementing some architect's vision'.[72]

This section has not attempted to provide an exhaustive analysis of the successional and configurational dimensions of international law narratives, but rather to briefly outline their operative effect and interplay. International legal practice reveals that different actors leverage different narratives in support of different outcomes at different times.[73] Accordingly, it is critically important to keep narrative point of view or perspective firmly in view in evaluating the narration of the international legal order, a mandate that theories of unreliable narration significantly bolster.

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65 S. Ranganathan, 'The Value of Narratives: The India-USA Nuclear Deal in Terms of Fragmentation, Pluralism, Constitutionalisation and Global Administrative Law', (2013) 6(1) *Erasmus L.Rev.* 17, at 30.

66 R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights Through International Law* (2013), at 25.

67 J. Harrison, 'The Case for Investigative Legal Pluralism in International Economic Law Linkage Debates', (2014) 2(1) *London Review of International Law* 115, at 116. For a defence of international law as a system, see J. Crawford, 'Chance, Order, Change: The Course of International Law', (2013) 365 RCADI 137–252.

68 Kratochwil, *supra* note 39, at 139.

69 Marks, *supra* note 64, at 996.

70 M. L. Burgis-Kasthala, 'Over-stating Palestine's UN Membership Bid? An Ethnographic Study on the Narratives of Statehood', (2014) 25(3) EJIL 677, at 690: 'It is with storytelling that it may be possible to assign responsibility and authority to the speaker as situated within a disciplinary dialogue'.

71 L. B. Solum, 'Narrative, Normativity, and Causation', (2010) *Mich.St.L.Rev.* 597, at 602.

72 F. Johns, *Non-Legality in International Law* (2013), at 218.

73 Ranganathan, *supra* note 65, at 30.

3. Unreliable narration

3.1. Unreliable narration in literary theory

A narrator may display a range of possible attitudes towards her story, typically described as point of view or perspective.[74] Indeed, the relationships between the storyteller and her story, and the storyteller and her audience, constitute the 'essence of the narrative art'.[75] Narratology has a resulting analytic value:[76]

> We are always summoned to consider the possible omissions, distortions, rearrangements, moralizations, rationalizations that belong to any recounting. The more we study modalities of narrative presentation, the more we may be made aware of how narrative discourse is never innocent but always presentational and perspectival, a way of working on story events that is also a way of working on the listener or reader.

Unreliable narration is a mode of narration in which the teller of a story cannot be trusted or taken at her word, compelling the audience to 'read between the lines'.[77] While unreliable narration is often used to humorous effect, it can also reveal 'biased perspective, limited knowledge, or serious character flaws'.[78] In *The Rhetoric of Fiction*, Wayne Booth introduced the terminology of unreliable narration in literary theory.[79] Booth described a narrator as reliable when he 'speaks for or acts in accordance with the norms of the work (which is to say, the implied author's norms), unreliable when he does not'.[80] For Booth, narrators 'differ markedly according to the degree and kind of distance that separates them from the author, the reader, and other characters of the story'.[81] Vladimir Nabokov's *Lolita* is a well-known example of unreliable narration.[82] Read uncritically, the first-person narration would seem to function as an apologist tract for paedophilia. However, by concluding that Nabokov himself 'advocat[es] the ravishing of nymphets',[83] the reader fails to distinguish between the norms of the implied author and that of the unreliable narrator, Humbert Humbert. To appreciate the novel in the way the implied author apparently intended, the reader must make that distinction. A 'secret communion' between implied author and reader results:[84]

> We discover a kind of collaboration which can be one of the most rewarding of all reading experiences. To collaborate with the author by providing the source of an allusion or by deciphering a pun is one thing. But to collaborate with him by providing mature moral judgment is a far more exhilarating sport.

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74 See the discussion of voice, distance, and focalization in Abbott, *supra* note 28, at 70–75. Narrative perspective is a central preoccupation of enunciative narratology: see, generally, S. Patron, 'Enunciative Narratology: A French Speciality', in G. Olson (ed.), *Current Trends in Narratology* (2011), at 312.

75 R. Scholes and R. Kellogg, *The Nature of Narrative* (1966), at 240. Cf. no-narrator approaches to narrative theory: see, e.g., A. Banfield, *Unspeakable Sentences: Narration and Representation in the Language of Fiction* (1982).

76 Brooks, *supra* note 9, at 25.

77 Herman, *supra* note 10, at 282.

78 'Unreliable Narration' in Herman, Jahn, and Ryan, *supra* note 5, at 623.

79 W. Booth, *The Rhetoric of Fiction* (1961). See also W. Riggan, *Picaros, Madmen, Naifs, and Clowns: The Unreliable First-Person Narrator* (1981).

80 Ibid., at 158.

81 Ibid., at 155.

82 V. Nabokov, *Lolita* (1959).

83 Riggan, *supra* note 79, at 14.

84 Booth, *supra* note 79, at 307.

The concept of implied authorship is complex and controversial.[85] In his seminal analysis, Booth postulated that the implied author plays a vital role in literary communication, but left the metes and bounds of the concept open. Theorists working within the rhetorical narrative tradition consider the implied author to be an indispensable category of textual analysis,[86] and that the implied author provides a standard against which to test the reliability of the narrator's statements.[87] In its partial focus on the notion of authorial intention, the concept of the implied author is said to function as a 'yardstick for an ethical kind of criticism and as a check on the potentially boundless relativism of interpretation'.[88] However, theorists working within the cognitive narrative tradition have drawn attention to the elusive nature of the implied author concept,[89] arguing that the implied author is 'a construct inferred and assembled by the reader from all the components of the text'.[90] Some cognitive narratologists mooted the reconceptualization of the implied author as a reader's strategy to resolve ambiguities and textual inconsistencies by projecting an unreliable narrator as an integrative hermeneutic device.[91] Ansgar Nünning has argued that an adequate model of unreliable narration needs to combine insights offered by both rhetorical and cognitive narrative theories, offering a more sophisticated analysis of the interplay between textual data and interpretive choice (or reader-response):[92]

> In the end it is both the structure and norms established by the respective work itself and designed by an authorial agency [rhetorical approach], and the reader's knowledge, psychological disposition, and system of norms and values [cognitive approach] that provide the ultimate guidelines for deciding whether a narrator is judged to be reliable or not.

Notwithstanding ambiguities surrounding the implied author concept, literary theorists have advanced numerous taxonomies of unreliable narration.[93] James Phelan identified six kinds of unreliability: misreporting, misreading, misevaluating, underreporting, underreading, and underregarding.[94] Shlomith Rimmon-Kennan argued that unreliable narration might exist where there is: (i) a contradiction between the narrator's views and the real facts, (ii) a gap between the true outcome of the action and the narrator's erroneous early report, (iii) a consistent clash between

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85 See T. Kindt and H. Müller, *The Implied Author: Concept and Controversy* (2006); A. Nünning, 'Deconstructing and Reconceptualizing the Implied Author: The Resurrection of an Anthropomorphized Passepartout or the Obituary of a Critical Phantom?', (1997) 8(2) *Anglistik* 95.

86 See, e.g., T. Yacobi, 'Narrative and Normative Patterns: On Interpreting Fiction', (1987) 3(2) *J.Lit.Stud.* 18; J. Phelan, *Living To Tell About It: A Rhetoric and Ethics of Character Narration* (2005), at 38–49; D. Shen, 'Implied Author, Authorial Audience and Context', (2013) 21(2) *Narrative* 140.

87 See S. Chatman, *Coming to Terms: The Rhetoric of Narrative in Fiction and Film* (1990), at 77.

88 A. Nünning, 'Reconceptualizing Unreliable Narration: Synthesising Cognitive and Rhetorical Approaches', in J. Phelan and P. Rabinowitz (eds.), *A Companion to Narrative Theory* (2005), 89, at 92.

89 For cognitively-influenced accounts of narrative perspective, see W. Van Peer and S. Chatman (eds.), *New Perspectives on Narrative Perspective* (2001).

90 S. Rimmon-Kennan, *Narrative Fiction: Contemporary Poetics* (1983), at 87.

91 Nünning, *supra* note 88, at 95.

92 Ibid., at 105.

93 See, e.g., D. Cohn, 'Discordant Narration', (2000) 34(2) *Style* 307; G. Olson, 'Reconsidering Unreliability: Fallible and Untrustworthy Narrators', (2003) 11(1) *Narrative* 93.

94 Phelan, *supra* note 86, at 31–65.

the views of other characters and the narrator, and (iv) internal contradictions, double-edged images, and the like in the narrator's own language.[95] Per Krogh Hansen offered four types of unreliability: intranarrational (occurring within a single narrator's discourse), internarrational (where one narrator's unreliability is unveiled in contrast to other narrative versions), intertextual (based on manifest character types), and extratextual (predicated on the knowledge the reader brings to the text).[96] Meanwhile, pragmatic approaches to unreliable narration posit a narrator as unreliable where she deviates from the obligations of co-operation and relevance that are presupposed in a communicative situation.[97]

The phenomenon of unreliable narration is relatively underexplored outside the context of fictional narrative.[98] This is partly because the implied author and narrator inevitably collapse into one in non-fictional texts, where narration is an act of 'direct telling from author to audience'.[99] Unreliability in this context becomes principally a matter for the reader's judgement.[100] Yet in the autobiography genre, for instance, there are many of the same manifestations of unreliable narration as in fiction.[101] Accordingly, the transposition of unreliable narration to fields such as law and politics has been described as a 'highly fertile area of research'.[102]

An analysis of unreliable narrative perspective in terms of cognitive frames avoids the fraught concept of the implied author, and emphasizes the 'reader's knowledge, psychological dispositions and systems of norms and values'.[103] Frame theory, as developed by the sociologist Erving Goffman, examines the relationship between text and reader in terms of the frames of reference that the reader brings to the interpretive task.[104] Artificial intelligence researchers posit frames as the store of situational and contextual knowledge used to integrate specific information into larger conceptual frameworks.[105] In the narratology context, frames supply the defaults that fill gaps and enable the reader to understand a given text.[106] However, cognitive frames are not fail safe:[107]

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95 Rimmon-Kennan, *supra* note 90, at 7–8.

96 P. K. Hansen, 'Reconsidering the Unreliable Narrator', (2007) *Semiotica* 165, at 241–4.

97 T. Heyd, 'Understanding and Handling Unreliable Narratives: A Pragmatic Model and Method', (2006) 162 *Semiotica* 217 (citing Grice, 'Logic and Conversation', in P. Cole and J. Morgan (eds.), *Syntax and Semantics, Vol 3: Speech Acts* (1975), at 41; D. Sperber and D. Wilson, *Relevance: Communication and Cognition* (1995)).

98 On the difference between narrativity and fictionality, *supra* note 16.

99 Phelan, *supra* note 86, at 67.

100 M. Fludernik, 'Fiction vs Non-Fiction: Narratological Differentiation', in W. Füger and J. Helbig (eds.), *Erzählen und Erzähltheorie im 20* (2001), at 85–103.

101 D. Shen and D. Xu, 'Intratextuality, Intertextuality and Extratextuality: Unreliability in Autobiography versus Fiction', (2007) 28(1) *Poetics Today* 43.

102 Nünning, *supra* note 88, at 104.

103 Ibid.

104 E. Goffman, *Frame Analysis: An Essay on the Organization of Experience* (1974), at 3 (distinguishing between the 'content of a current perception and the reality status we give to what is thus enclosed or bracketed within perception').

105 See, e.g., M. Minsky, 'A Framework for Representing Knowledge', in J. Haugeland (ed.), *Mind Design II: Philosophy, Psychology, Artificial Intelligence* (1997), at 111; R. Schank and R. Abelson, *Scripts, Plans, Goals and Understanding: An Inquiry Into Human Knowledge Structures* (1977).

106 See M. Jahn, 'Frames, Preferences and the Reading of Third-Person Narratives: Towards a Cognitive Narratology', (1997) 18 *Poetics Today* 441.

107 M. Wählisch, 'Cognitive Frames of Interpretation in International Law', in A. Bianchi, D. Peat, and M. Windsor (eds.), *Interpretation in International Law* (2015), 331, at 334–5.

> Because frames result in the interpreter considering certain features and ignoring others, blind spots can appear and help generate a limited view. Once established in the mind of the interpreter, frames can lead to conclusions that block consideration of other possible facts and interpretations. If the facts do not fit into the pre-existing frame, the frame stays while the facts are ignored. If a scenario is activated in the mind, other options are downplayed due to the suspicion that they are incompatible. Eventually, alternative ways of thinking are suppressed, which can create 'tunnel vision'.

3.2. Unreliable narration in international law

A 'turn to narration' in international law accords with an increasing focus, in some quarters, on international law as a profession.[108] Various critical approaches to international law have drawn on the Weberian insight that the 'legal order is a projection of the legal staff's knowledge of it'.[109] David Kennedy has described international law as a 'group of people pursuing projects in a common professional language',[110] while Koskenniemi has identified international law as 'what lawyers do and how they think'.[111] Although Kennedy and Koskenniemi do not use the vocabulary of unreliable narration, they identify the perils of expertise and managerialism respectively,[112] where international law becomes 'rules of thumb or soft standards that refer to the best judgement of the experts in the [sub-disciplinary] box' from which they emanate.[113] This can lead to the phenomenon of 'frame-consistent inferences',[114] where lawyers with a background in a related area have ready access to analogies from that area when analysing novel issues. According to Koskenniemi, political conflict is 'waged on the description and re-description of aspects of the world so as to make them fall under the jurisdiction of particular institutions'.[115] Such 'description and re-description' lends itself to consideration through the optic of unreliable narration or cognitive frames, revealing the instrumentalist interpretive posture of experts and the myopia of the managerialist mindset.

The 'situatedness' of narrators in international law is illustrated by reference to the 'interpretive community', a concept from literary theory that has already been effectively transposed to international law.[116] Ian Johnstone described the

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[108] O. Schachter, 'The Invisible College of International Lawyers', (1977) 72 NWULR 217; J. d'Aspremont, T. Gazzini, A. Nollkaemper, and W. Werner (eds), *International Law as a Profession* (2016) (forthcoming); J. Crawford, 'International Law as Discipline and Profession', (2012) 106 *Proceedings of the Annual Meeting (ASIL)* 471; M. Reisman, 'International Law as a Profession: Dilemmas of Identity and Commitment', in *The Quest for World Order and Human Dignity in the Twenty-First Century* (2012), at 455–79.

[109] M. Weber, *Max Weber on Law in Economy and Society* (1954), at 6–7.

[110] D. Kennedy, 'One, Two, Three Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream', (2007) 31 *NYU Rev.L.&Soc.Change* 641, at 650.

[111] M. Koskenniemi, 'Between Commitment and Cynicism: Outline for a Theory of International Law as Practice', in *The Politics of International Law* (2011), 271, at 293.

[112] See, e.g., D. Kennedy, 'The Politics of the Invisible College: International Governance and the Politics of Expertise' (2001) 5 EHRLR 463.

[113] M. Koskenniemi, 'International Law: Constitutionalism, Managerialism and the Ethos of Legal Education', (2007) 1 *E.J.Leg.Stud.* 1, at 8.

[114] A. Roberts, 'Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System', (2013) 107(1) AJIL 45, at 56.

[115] Koskenniemi, *supra* note 56, at 337.

[116] S. Fish, *Is There a Text in this Class? The Authority of Interpretive Communities* (1982); I. Johnstone, *The Power of Deliberation: International Law, Politics and Organizations* (2011), at 33–54; M. Waibel, 'Interpretive Communities in International Law', in A. Bianchi, D. Peat, and M. Windsor (eds.), *Interpretation in International Law* (2015),

interpretive community in international law as 'loosely composed of three concentric circles of officials, professionals and civil society representatives associated with a field of legal practice [which] sets the parameters of discourse surrounding that practice and affect how the law is interpreted and applied'.[117] The 'inner' concentric circle consists primarily of a network of government and intergovernmental officials who, 'through the process of formulating, negotiating, adopting and applying rules, come to share a set of assumptions, expectations and a body of consensual knowledge'.[118] This inner circle is surrounded by a second circle of officials, lawyers, and other experts engaged in professional activities associated with the practice or issue area regulated by the norm. Around these two concentric circles is a more 'amorphous constellation of actors whose interests are affected', including social movements, media, and transnational civil society: 'they are the broad audience who listen to and critique the reasons given by policy makers for the decisions they make, on the basis of values as well as technocratic considerations.'[119]

Johnstone's concentric conception of the interpretive community usefully highlights the various actors involved in the battle for 'semantic authority' in international law,[120] and reveals the persuasive force of international law argumentation that has intersubjective purchase across the concentric circles. However, Johnstone indicates that where opinion on an international legal issue is divided, then 'almost by definition no interpretive community exists, or perhaps there are multiple communities'.[121]

Unreliable narration and cognitive frames 'add value' in international legal theory by calling attention to subjectivities. They provide a vocabulary for mapping consensus and dissensus within international law's interpretive community in a manner that is acutely sensitive to point of view, perspective, and 'disputes over process, agency and orientation'.[122] As Iain Scobbie has argued, 'identifying authorial predispositions is crucial to evaluating the weight to be given to an argument' in international law.[123] The concentric structure of the interpretive community helps illuminate the ways in which unreliability may be identified. To adopt Hansen's typology of unreliability,[124] the concentric structure of the interpretive community highlights the propensity for intranarrational, internarrational, intertextual, and extratextual unreliability to be identified, as various narrators compete for 'semantic authority' in international law.[125] Meanwhile, cognitive frames shape the narration,

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at 147–65. On situatedness, see O. Korhonen, 'New International Law: Silence, Defence or Deliverance?', (1996) 7 EJIL 1; D. Peat and M. Windsor, 'Playing the Game of Interpretation: On Meaning and Metaphor in International Law', in A. Bianchi, D. Peat, and M. Windsor (eds.), *Interpretation in International Law* (2015), 3, at 14–15.

117 Johnstone, *supra* note 116, at 44.

118 Ibid., at 41.

119 Ibid., at 41–43.

120 I. Venzke, *How Interpretation Makes International Law* (2012), at 62–64.

121 Johnstone, *supra* note 116, at 44.

122 Marks, *supra* note 64, at 996.

123 I. Scobbie, 'A View of Delft: Some Thoughts About Thinking About International Law' in M. Evans (ed.), *International Law* (2014), 53, at 64.

124 Hansen, *supra* note 96.

125 Venzke, *supra* note 120, at 62–64.

and are 'frequently oriented by strategic policy aims that impact on the use of vocabulary and the direction of interpretation'.[126] At stake in acts of framing are:[127]

> questions of authority, jurisdiction and institutional responsibility, where particular frames set the conditions for apprehension, recognition and regulation but also make the frame and that which is enframed always open to redescription, contestation and reconfiguration.

The analytic potential of the fusion of unreliable narration, cognitive frames, and interpretive communities in international law theory will be examined in a case study in the following section, focusing on the practice of targeted killing by the Obama administration.

4. Tales of Targeted Killing

The contestable legality of targeted killing or extrajudicial executions as a counterterrorism strategy has given rise to significant debate in international law's interpretive community.[128] While the practice of targeted killing predates the so-called 'War on Terror', there has been particular controversy about the escalating use by the US of 'drone strikes' by unmanned aerial vehicles against alleged members of al-Qaeda and related organizations in the aftermath of the 11 September attacks. Much of the voluminous recent scholarship on targeted killing aspires to doctrinal exegesis.[129] This includes fierce debate about the definition of an armed conflict, whether members of a non-state terrorist organization should be regarded as combatants rather than civilians pursuant to the laws of war, concerns about compliance with *jus in bello* requirements such as distinction and proportionality, and the permissibility of pre-emptive self-defence in the event of an imminent threat.

4.1. Successional and configurational analyses

Successional dimensions can be discerned in existing approaches to the narration of targeted killing. In a variation of the progress narrative that is familiar from the debates on humanitarian intervention,[130] the inner concentric circle of US government officials has proffered a narrative that justifies the necessity of a 'War on Terror'.[131] The gist of this narrative is that:[132]

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126 Wählisch, *supra* note 107, at 332.

127 S. Dehm, 'Framing International Migration', (2015) 3(1) *London Review of International Law* 133, at 137.

128 See, e.g., P. Alston, 'The CIA and Targeted Killing Beyond Borders', (2011) 2 *Harv. National Security J.* 283; K. Heller, 'One Hell of a Killing Machine: Signature Strikes and International Law', (2013) 11(1) JICJ 89; R. Goodman, 'The Power to Kill or Capture Enemy Combatants', (2013) 24(3) EJIL 819; C. Finkelstein, J. Ohlin, and A. Altman (eds.), *Targeted Killings: Law and Morality in an Asymmetric World* (2012).

129 See, e.g., N. Melzer, *Targeted Killing in International Law* (2009).

130 A. Orford, *Reading Humanitarian Intervention* (2003), at 158–85.

131 *National Security Strategy of the United States* (2002). See C. Flint and G.-W. Falah, 'How the United States justified its war on terrorism: prime morality and the construction of a "Just War"', (2004) 25(8) *Third World* Q. 1379; R. Krebs, *Narrative and the Making of US National Security* (2015); A. Hodges, *The 'War on Terror' Narrative: Discourse and Intertextuality in the Construction and Contestation of Sociopolitical Reality* (2011).

132 A. Soueif, 'The Function of Narrative in the "War on Terror"', in C. Miller (ed.), *War on Terror: The Amnesty Lectures* (2009), at 28. See also A. Kundnani, *The Muslims are Coming: Islamophobia, Extremism and the Domestic War on Terror* (2014).

> what is under threat today is a set of values and a way of life – Western, of course, and American specifically – that constitute civilisation itself. And that the threat comes from forces of darkness, from a great evil that emanates from Muslim countries.

In a somewhat ironic inversion of the teleology that typically orients international legal thought, much of the literature on targeted killing depicts drone strikes by unmanned aerial vehicles as technologically 'progressive' and unprecedented, with commentators quick to stress the discontinuities with prior military tactics.[133] This focus on technological innovation leads to the 'eventing' of targeted killing as a narrative stratagem,[134] apparently necessitating a rupture in settled approaches and doctrinal frameworks. Paul Kahn explains the implications of this successional narrative trajectory as follows:[135]

> Political violence is no longer between states with roughly symmetrical capacities to injure each other; violence no longer occurs on a battlefield between masses of uniformed combatants; and those involved no longer seem morally innocent. The drone is both a symbol and a part of the dynamic destruction of what had been a stable imaginative structure … The drone operator is neither combatant nor law enforcer, yet he is a fact around which our norms are going to have to organize themselves – not the other way around.

However, efforts to uphold the *sui generis* nature of targeted killing have been challenged on the grounds of ahistoricism. For example, the focus on remote piloting in drone use has downplayed continuities with earlier uses of air power.[136] Indeed, Samuel Moyn argues that it is possible to narrate the modern history of warfare in ways that make 'current developments only new versions of continuous practices'.[137] He goes on to articulate an inclination to be 'tentative about how new the drone is and how far it actually or symbolically unsettles traditional frameworks'.[138]

Turning to configurational narrative elements, targeted killing has eluded widespread explanatory co-option by the master narratives of the international legal order – constitutionalism, pluralism and GAL – canvassed in Part 2 above. That said, particular aspects of the practice have been framed instrumentally by different members of international law's interpretive community to pursue particular projects. A number of academics have drawn attention to clear fragmentation concerns at a doctrinal level, given that targeted killing exists at the interstices of the law of armed conflict and international human rights law.[139] The *New York Times* has

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[133] The US described its drone program in terms of its ability to 'distinguish … effectively between an Al Qaeda terrorist and innocent civilians', and describes its drones as capable of conducting strikes with 'astonishing' and 'surgical' precision: J. Brennan, 'The Ethics and Efficacy of the President's Counter-Terrorism Strategy', 30 April 2012. Available at: http://www.lawfareblog.com/2012/04/brennanspeech/ (accessed 7 August 2015).

[134] See F. Johns, R. Joyce, and S. Pahuja (eds.), *Events: The Force of International Law* (2011).

[135] P. W. Kahn, 'Imagining Warfare' (2013) 24(1) EJIL 199, at 224.

[136] See, e.g., P. Satia, 'Drones: A History From the British Middle East', (2014) 5(1) *Humanity* 1.

[137] S. Moyn, 'Drones and Imagination: A Response to Paul Kahn', (2013) 24(1) EJIL 227, at 229.

[138] Ibid., at 233.

[139] See, e.g., M. Milanovic, 'The Lost Origins of *Lex Specialis*: Rethinking the Relationship between Human Rights and International Humanitarian Law' in J. Ohlin (ed.), *Theoretical Boundaries of Armed Conflict and Human Rights* (2014); J. d'Aspremont and E. Tranchez, 'The Quest for a Non-Conflictual Coexistence of International Human Rights Law and Humanitarian Law: Which Role for the *Lex Specialis* Principle?', in R. Kolb and G. Gaggioli (eds.), *Research Handbook on Human Rights and Humanitarian Law* (2013).

insistently called for judicial review of targeting decisions, revealing a constitutionalism narrative frame.[140] Appeals by civil society, UN officials, and the academy for greater transparency and accountability in targeting decisions echo the normative prerogatives of GAL.[141] However, in advocating a multi-perspectival 'turn to narration', it is pluralism that helps map hermeneutic dissonance within international law's interpretive community. As Kennedy observed in the context of law and warfare, we 'learn to operate in a complex world of pluralism, of multiple perspectives on the validity, persuasiveness, and strategic usefulness of legal norms and institutional competence'.[142]

4.2. Selecting the texts

An analysis of unreliable narration in the context of targeted killing must begin by identifying texts that are amenable to narratological analysis. What follows is a far from exhaustive list of texts appearing from different concentric circles of international law's interpretive community. (The narrative implications of the selection of particular texts and their presentation in sequential form is not lost on this author, who will discuss below the ineradicable implicatedness of the scholar in international law's interpretive community, and the resulting need for self-reflexivity.)

1. Philip Alston's report to the UN Human Rights Council in May 2010, in his capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions.[143] Alston defined targeted killings as the 'intentional, premeditated and deliberate use of lethal force … against a specific individual who is not in the physical custody of the perpetrator'.[144] He argued that the failure of the Obama administration to 'comply with their human rights law and IHL obligations to provide transparency and accountability for targeted killings is a matter of deep concern'.[145] He concluded by arguing that states should 'publicly identify the rules of international law they consider to provide a basis for any targeted killing they undertake'.[146]

2. The 2010 judgment of the US District Court in the high-profile litigation brought by the American Civil Liberties Union (ACLU) and the Center for Constitutional Rights (CCR), challenging the alleged approval of the targeted killing of Anwar al-Awlaqi, an American citizen in Yemen.[147] ACLU and CCR claimed that the US's drone programme asserted a 'sweeping authority to impose extrajudicial death'

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[140] 'A Court for Targeted Killings', *New York Times* (13 February 2013).

[141] See, e.g., UN Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Philip Alston – Study on Targeted Killings*, A/HRC/14/24/Add.6, 28 May 2010; A. Buchanan and R. Keohane, 'Toward a Drone Accountability Regime', (2015) 29(1) *Ethics and International Affairs* 15; N. Crawford, *Accountability for Killing: Moral Responsibility for Collateral Damage in America's Post-9/11 Wars* (2013).

[142] D. Kennedy, *Of War and Law* (2006), at 127.

[143] UN Human Rights Council, *supra* note 141.

[144] Ibid., at 1.

[145] Ibid., at 87.

[146] Ibid., at 93.

[147] *Al-Awlaqi v. Obama*, 727 F. Supp.2d 1, 46–52 (DDC 2010). See generally J. Dehn and K. Heller, 'Targeted Killing: The Case of Anwar al-Awlaki', (2011) 159 *U.Pa.L.Rev.* 175; R. Chesney, 'Who May Be Killed? Anwar al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force', (2010) 13 YIHL 3.

and that it accordingly violated al-Awlaqi's rights under the US Constitution and international law.[148] It asked the court to enjoin the President from killing al-Awlaqi until he presented 'a concrete, specific, and imminent threat to life or physical safety', and asked the Court to order the Obama administration to 'disclose the criteria that are used in determining whether the government will carry out the targeted killing of a US citizen'.[149] In a motion to dismiss, the Obama administration argued that the claims required the Court to decide non-justiciable political questions and that 'information properly protected by the military and state secrets privilege would be necessary to litigate this action'.[150] The Court agreed, concluding that 'questions of justiciability require dismissal of this case at the outset'.[151] al-Awlaki was subsequently killed in September 2011.

3. The speeches of senior Obama administration officials, purporting to outline the legal basis for the targeted killing programme.[152] Key speeches include: Harold Koh's speech to the American Society of International Law, in his capacity as Legal Adviser to the US State Department, in March 2010;[153] Attorney-General Eric Holder's speech at Northwestern Law School, in March 2012;[154] and the speech by John Brennan, Assistant to the President for Home Security and Counterterrorism, in April 2012.[155] The general position, revealed in the speeches, was that 'US targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable laws, including the laws of war'.[156]

4. The release of a civil society report titled 'Living Under Drones' in September 2012, researched and written by law clinics at NYU and Stanford University.[157] The report explicitly rejects as false the 'dominant narrative about the use of drones [as] a surgically precise and effective tool',[158] and evidences the damaging effects of US drone strike policies. The report calls for the US to 'fulfil its international obligations with respect to accountability and transparency, and ensure proper democratic debate about key policies'.[159]

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148 Ibid., (Complaint for Declaratory and Injunctive Relief).
149 Ibid.
150 Ibid.
151 Ibid.
152 See C. Gray, 'Targeted Killing: Recent US Attempts to Create a Legal Framework', (2013) 66 CLP 75. For a discussion of speechmaking, see R. Ingber, 'Interpretation Catalysts and Executive Branch Legal Decisionmaking', (2013) 38 *Yale J.Int'l L.* 359.
153 H. H. Koh, 'The Obama Administration and International Law', Annual Meeting of the American Society of International Law, 25 March 2010. Available at: http://www.state.gov/s/l/releases/remarks/139119.htm/ (accessed 7 August 2015). See T. McKelvey, 'Defending the Drones: Harold Koh and the Evolution of US Policy', in P. Bergen and D. Rothenberg (eds.), *Drone Wars: Transforming Conflict, Law and Policy* (2015), at 85.
154 E. Holder, Speech at Northwestern University School of Law, 5 March 2012. Available at: www.justice.gov/lso/opa/ag/speeches/2012/ag.speech-1203051.html/ (accessed 7 August 2015).
155 Brennan, *supra* note 133.
156 Koh, *supra* note 153.
157 *Living Under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan* (September 2012). Available at: http://livingunderdrones.org/ (accessed 7 August 2015).
158 Ibid., at v.
159 Ibid., at ix.

5. The freedom of information litigation brought by the *New York Times* and the ACLU, seeking disclosure of the government legal memos used to justify al-Awlaqi's targeted killing.[160] The government's motion to dismiss was accepted by the US District Court at first instance in January 2013, despite salutary narrative references to the 'Alice-in-Wonderland' nature of proceedings and a 'veritable Catch-22 of security rules that allow the executive branch to declare legal actions that seem on their face incompatible with our Constitution and laws', while keeping the reasons for their conclusion a secret.

6. The Department of Justice 'White Paper', leaked in February 2013, which purported to spell out the Obama administration's legal position regarding the overseas targeted killing of US citizens alleged to be al-Qaeda leaders.[161]

7. President Obama's speech on counterterrorism policy at the National Defence University in May 2013,[162] and the simultaneously released fact sheet entitled 'US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities'. In this speech, the President authorized the declassification of materials pertaining to al-Awlaqi 'to facilitate transparency and debate on this issue and to dismiss some of the more outlandish claims that have been made'.[163]

8. In 2013, two UN Special Rapporteurs – Christof Heyns and Ben Emmerson – released major reports on drones, which were debated at the UN General Assembly.[164] Heyns recommended that 'States must be transparent about the development, acquisition, and use of armed drones. They must publicly disclose the legal basis for the use of drones, operational responsibility, criteria for targeting impact (including civilian casualties), and information about alleged violations, investigations and prosecutions'.[165] Emmerson's report argued that the 'single greatest obstacle to an evaluation of the civilian impact of drone strikes is lack of transparency'.[166]

9. In March 2014, the UN Human Rights Committee issued its concluding observations assessing US compliance with the International Covenant on Civil and Political Rights.[167] In relation to targeted killing, the Committee recommended that, subject to operational security, the US should 'disclose the criteria for drone

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[160] *New York Times and ACLU v. US Department of Justice* 11 Civ 9336 (2 January 2013).

[161] See D. Kaye, 'International Law Issues in the Department of Justice White Paper on Targeted Killing', (2013) 17(8) *ASIL Insights* 1; D. Cole, 'How We Made Killing Easy', *New York Review of Books* (6 February 2013).

[162] Obama, 'Remarks by the President at the National Defense University', 23 May 2013. Available at: http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university (accessed 7 August 2015).

[163] Ibid.

[164] UN General Assembly, *Extrajudicial, Summary or Arbitrary executions*, A/68/382, 13 September 2013.

[165] Ibid., at 108.

[166] UN General Assembly, *Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, 18 September 2013, at 41.

[167] UN Human Rights Committee, *Concluding Observations on the Fourth Report of the United States of America*, adopted by the Committee in its 110th session, 10–28 March 2014.

strikes including the legal basis for specific attacks, the process for target identification and the circumstances in which drones are used'.[168]

10. In June 2014, the US Court of Appeals for the Second Circuit ordered the Obama administration to disclose (with redactions) the memo containing the government's reasoning as to the lawfulness of al-Awlaki's killing. The Second Circuit overturned the District Court's decision (see (5) above) on the basis that the collection of statements and disclosures made by the administration amounted to a waiver of secrecy and privilege. The release of the memo was described by the ACLU as a 'victory for transparency',[169] and as a first step in 'clos[ing] the gap between the administration's *official narrative* of the targeted killing program and the *actual facts* about the program'.[170] That said, the substance of the memo was criticized by the *New York Times* as a 'slapdash pastiche of legal theories that was cleverly tailored to the desired result'.[171]

4.3. Transparency and reliability

An internarrational and extratextual analysis of the texts above yield important insights that complement, and reveal the subjectivities of, extant successional and configurational narrative approaches to the practice of targeted killing. Appeals to transparency in the outer concentric circles were met by auto-interpretation from the inner circle by way of response, whether through official speeches or unofficial leaks. The narration of targeted killing is an example of 'legal discourse starting in the broader, outer circle of the interpretive community, gathering steam and penetrating the corridors of power'.[172] Repeated calls for the legal justification regarding the decision to target al-Awlaqi, emerging from the outer circle, might be conceived as an advocacy project deliberately designed to cast aspersions on the reliability of government officials in the inner circle. In its appeals to transparency and accountability, Alston's report came to be emblematic of the posture towards targeted killing in the outer circle, described by one commentator as the 'international legal – media – academic – NGO – international organization – global opinion complex'.[173]

The interplay between secrecy and transparency has a significant bearing on the identification of unreliable narration, whether cast in terms of underreporting, or internarrational or extratextual unreliability. Of course, transparency is a core element of the GAL narrative configuration.[174] However, the argumentative strategy in this article is not to narrate a GAL reading of the targeted killing debate, but to track the way in which transparency is discursively deployed at critical junctures by different actors within international law's interpretive community.

A concerted effort has been made, in Special Rapporteur recommendations and civil society-directed litigation, to transform contentious foreign policy advice from

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168 Ibid., at 9.
169 J. Jaffer, 'Obama's Drone Memo is Finally Public', *The Guardian* (24 June 2014).
170 J. Jaffer, 'The Drone Memo Cometh', *Just Security* (21 June 2014).
171 'A Thin Rationale for Drone Killings', *New York Times* (23 June 2014).
172 Johnstone, *supra* note 116, at 93.
173 K. Anderson in J. Goldsmith, *Power and Constraint: The Accountable Presidency after 9/11* (2012), at 200.
174 Kingsbury, Krisch, and Stewart, *supra* note 63.

a 'black box' to a site of contestation and critique on transparency and accountability grounds.[175] The widespread desire for secret advice to be disclosed reveals extensive mistrust about the candour and political neutrality of the legal advice provided within the executive branch.[176] The existence of freedom of information legislation and subsequent litigation has reshaped the governance terrain by turning a spotlight on executive legal interpretation. The availability or public promulgation of government information provides distinct incentives to ensure that it is 'factually right, neutral, comprehensive and well-judged'.[177] However, the prospect of disclosure heightens hermeneutic sensitivity and means that advice might be written in a way that 'anticipates scrutiny from outside the circle of decision makers to whom it has been tendered … los[ing] its character of candid guidance offered in confidence'.[178] Jack Goldsmith has suggested that a duty of disclosure 'might lead to a two-track legal analysis – the real analysis and the one for popular consumption'.[179]

In the counterterrorism context, 'public interest' advocacy has shifted from habeas corpus petitions, demanding that bodies are released, to freedom of information campaigns, demanding that information is released. Filing cabinets and inboxes, rather than prison cells, are the new targets for emancipation. The body that is now sought are the legal principles used to justify a foreign policy decision. While government lawyers have condoned the legality of targeted killing at conferences and campuses (in Cliffs Notes form),[180] they have resisted disclosure of their actual advice in the courtroom on non-justiciability and state secrets grounds. Selective leaks of advice appear to be the preferred method of disclosure, as demonstrated by the release of the infamous White Paper.[181] This form of stage-managed and selective 'whistleblowing' conveniently avoids the rigours of an adversarial process to test the plausibility of the content.[182]

The redactions in the recently released al-Awlaki memo point to the existence of an 'entire body of secret law, a veritable library of authoritative legal opinions produced by Justice Department lawyers but withheld from the American public'.[183] What became of the 'duty to explain', defined by Koh as the 'important transparency norm that senior US government lawyers, and the Legal Adviser of the Department of State in particular, are expected not just to give legal advice in private but also to explain in public the international legal basis for what the United States has done'?[184] In the parlance of the New Haven School of international law, the duty to

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175 For a discussion of 'lawfare', see Goldsmith, *supra* note 173, at 223–33.

176 See H. Bruff, *Bad Advice: Bush's Lawyers in the War on Terror* (2009), at 61–83.

177 M. Shroff, 'The Worldly Task', in C. Geiringer and D. Knight (eds.), *Seeing the World Whole: Essays in Honour of Sir Kenneth Keith* (2008), at 267.

178 M. Weller, *Iraq and the Use of Force in International Law* (2010), at 253.

179 J. Goldsmith, 'The Irrelevance of Prerogative Power, and the Evils of Secret Legal Interpretation', in C. Fatovic and B. Kleinerman (eds.), *Extra-Legal Power and Legitimacy: Perspectives on Prerogative* (2013), 214, at 230–31.

180 For analysis of the deficiencies of the speeches, see Gray, *supra* note 152, at 105.

181 *Supra* note 161. See D. Pozen, 'The Leaky Leviathan: Why the Government Condemns and Condones Unlawful Disclosures of Information', (2013) 127 *Harv.L.Rev.* 512.

182 G. Greenwald, 'The NYT and Obama Officials Collaborate to Prosecute Awlaki After He's Executed', *The Guardian* (11 March 2013). See generally R. Sagar, *Secrets and Leaks* (2013).

183 Jaffer, *supra* note 169.

184 H. H. Koh, 'The State Department Legal Adviser's Office: Eight Decades in Peace and War', (2012) 100 *Geo.L.J.* 1747, at 1754.

explain 'myth system' is in tension with the 'operational code' of actual practice.[185] The actual practice appears to favour a 'secret life of international law', where the legal advice that informs decision-making is seldom visible outside government.[186]

Should the constant chatter about transparency, emerging from the outer circle of international law's interpretive community, be regarded as an unmitigated victory for civil society and as a paean to the virtues of reliable narration? Or is transparency more in the nature of a 'pacifying ideology'?[187] Whose interests has transparency ultimately served? An extratextual analysis of Alston's influential report (see (1) above) reveals that its focus on transparency masked a failure to take account of immanent legal regulation.[188] The continued focus on transparency in the aftermath of Koh's speech arguably distracted from more fundamental issues about the basis for the use of force in the first place.[189] Moreover, the fetishization of transparency as a panacea for unreliability fails to recognize the subversive potential of the availability of information, which can be used instrumentally to achieve a wide variety of goals.[190] Providing a comprehensive account of targeting criteria would potentially function as a road map for those who are targeted, who can then modify their behaviour to fall just outside the criteria.[191] Ultimately, transparency emerges as something of a mixed blessing, an ambivalence well articulated by Anne Peters:[192]

> Is the quest for transparency misguided because it aims only at the symptoms and hides the causes? Is it a "triumph of form over results"? Does not striving for transparency become "a distraction, diverting time and resources from substantive outcomes"? Are we merely performing "rituals of verification"?

If the reader is agnostic about the merits of transparency, what new stories might be told about targeted killing? A disquieting successional narrative emerges, where targeted killing's relationship to international legal normativity is 'mutually constitutive'.[193] International lawyers have repeatedly prepared to accept targeted killing as a practice by couching it in legal rather than extra-legal terms. An iterative progression can be discerned from targeted killing as secret strategic directive to codified practice in purported compliance with international law,[194] of which Obama's institutionalization of a 'kill list' or 'disposition matrix' is a recent chapter.[195]

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185 T. Cheng, *When International Law Works: Realistic Idealism after 9/11 and the Global Recession* (2012), at 49–53.

186 D. Bethlehem, 'The Secret Life of International Law', (2012) 1(1) CJICL 23, at 29; D. Bethlehem, 'Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors', (2013) 106 AJIL 770.

187 Marks, *supra* note 64, at 998.

188 Johns, *supra* note 72, at 7–8.

189 Gray, *supra* note 152, at 87.

190 A. Bianchi, 'On Power and Illusion: The Concept of Transparency in International Law', in A. Bianchi and A. Peters (eds.), *Transparency in International Law* (2013), 1, at 14–15.

191 See Julius Stone's discussion of precise criteria as a 'trap for the innocent and a signpost for the guilty': *Conflict Through Consensus: UN Approaches to Aggression* (1977).

192 A. Peters, 'Towards Transparency as a Global Norm' in A. Bianchi and A. Peters (eds.), *Transparency in International Law* (2013), 534, at 568–9.

193 S. Krasmann, 'Targeted Killing and its Law: On A Mutually Constitutive Relationship', (2012) 25(3) LJIL 665.

194 On the potential effects of the US drone strikes on the development of international law, see M. Aronsson, 'Remote Law-Making? American Drone Strikes and the Development of *Jus Ad Bellum*', (2014) 1(2) *Journal on the Use of Force and International Law* 273.

195 S. Shane and J. O. Becker, 'Secret Kill List Proves a Test of Obama's Principles and Will', *New York Times* (29 May 2012). See also R. Sanders, '(Im)plausible Legality: The Institutionalization of Human Rights Abuses in the American "Global War on Terror"', (2011) 15(4) IJHR 605.

A revisionist narrative might posit that the preoccupation with transparency in the outer circle of the interpretive community helped legitimate the practice of targeted killing in the inner circle by forcing it to be engaged with on a legal turf. Yet, as Grégoire Chamayou observed:[196]

> To apply norms designed for a conflict to slaughtering practices, and to be willing to pursue the discussion without questioning the presupposition that these practices still stem from within that normative framework, ratifies a fatal confusion of genres.

Aspirations to escape this Gordian knot engage the critical problem of silencing technology,[197] and the difficulty of evaluating the appropriate course of action before it is an operational *fait accompli*, where a narrator finds herself in the province of ex post facto justification.

4.4. Towards a critical narratology

> You have recorded all the facts faithfully and exactly – though you have shown yourself becoming reticent as to your own share in them … You see now why I drew attention to the reticence of your manuscript … It was strictly faithful as far as it went – but it did not go very far, eh, my friend.[198]
>
> *Agatha Christie*

The foregoing analysis of targeted killing through a narratological lens demonstrates that theories of unreliable narration have the potential to critically evaluate how narratives are generated, sustained, and called into question in international law. Stories are always told from a 'point of view, for a purpose, and create a perspective on happenings – even create happenings through perspective'.[199] Rather than merely allocating aspects of an international practice to a particular successional or configurational narrative mode, an alternative narratological strategy is to foreground the multi-perspectival narration and cognitive frames at play within an interpretive community. This approach allows the reader to make an internarrational or extratextual evaluation of the narrators, frequently exposing unreliability in the process.[200]

The disaggregation of international law's interpretive community to its constituent narrators accords with Kennedy's call, in the context of law and war, for a 'typology of projects and sites of articulation'.[201] Such a typology reveals fierce contestation among competing narrative visions.[202] Interpretive communities are revealed as 'centers for disciplinary power and exclusion … creat[ing] room for specific forms of politics, allowing certain voices to be heard and others to be

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196 G. Chamayou, *Drone Theory* (2015), at 163.
197 A. Leander, 'Technological Agency in the Co-Constitution of Legal Expertise and the US Drone Program', (2013) 26(4) LJIL 811; D. Hollis, 'The Fog of Technology and International Law', *Opinio Juris* (15 May 2015).
198 A. Christie, *The Murder of Roger Ackroyd* (1993), Ch. 23.
199 Brooks, *supra* note 9, at 28.
200 Riggan, *supra* note 79, at 10.
201 D. Kennedy, 'Lawfare and Warfare', in J. Crawford and M. Koskenniemi (eds.), *The Cambridge Companion to International Law* (2012), at 158.
202 I. Venzke, 'Legal Contestation about Enemy Combatants or the Exercise of Power in Legal Interpretation', (2009) 5 *Journal of International Law and International Relations* 155.

silenced'.[203] The struggle for control of the narrative is ultimately a struggle for interpretive power, with the resulting ability to 'kill or capture' conflicting narrative visions.

It is revealing to track the prevalence of particular narrative configurations in particular professional contexts.[204] A narrator's interpretive agenda, and cognitive frame, is invariably closely aligned with, and often distinctly circumscribed by, their professional role.[205] This is compounded by professional self-identification as, first and foremost, a domestic constitutional lawyer or an international lawyer. For example, if an international legal adviser in government service ignored a domestic policy directive in giving advice, that would likely result in their advice being regarded as 'virtuous but marginal' in the ultimate decision-making.[206] This shifting narrative orientation, based on professional role, is perhaps most apparent when a particular individual oscillates between different roles that map on to different concentric circles of international law's interpretive community. One might contrast Koh's 'calculated opacity' as the Legal Adviser to the State Department,[207] with his interpretive posture after returning to academia.[208]

A typology of projects in the targeted killing context reveals fundamental disagreements across the concentric circles of the interpretive community as to the appropriate interpretive methodology to adopt.[209] Frame-consistent inferences mean that lawyers from different professional backgrounds often approach the law of war in fundamentally disparate ways.[210] However, the mutually constitutive nature of targeted killing and its law reveals that narration from opposing factions now invariably adopts a legal vernacular:[211]

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203 W. Werner, 'Book Review – Ian Johnstone *The Power of Deliberation*', (2013) 10 IOLR 247, at 252.

204 See J. Dawes and S. Gupta, 'On Narrative and Human Rights', (2014) 5(1) *Humanity* 149.

205 For a discussion of role-differentiated morality, see M. Windsor, 'Government Legal Advisers Through the Ethics Looking Glass', in D. Feldman (ed.), *Law in Politics, Politics in Law* (2013), at 117–37. See also N. Kassop, 'Rivals for Influence on Counterterrorism Policy in the Obama Administration: White House Political Staff versus Executive Branch Legal Advisers', (2013) 43(2) *Presidential Studies Quarterly* 252.

206 G. Simpson, 'International Law in Diplomatic History', in J. Crawford and M. Koskenniemi (eds.), *The Cambridge Companion to International Law* (2012), 25, at 25.

207 Chamayou, *supra* note 196, at 167.

208 Compare Koh, *supra* note 153, with Koh, 'How to End the Forever War?' (Oxford Union, 7 May 2013). In March 2015, a group of students at New York University wrote an open letter of no-confidence in Koh's academic appointment at that institution, on the basis of his 'direct facilitation of the US government's extrajudicial imposition of death sentences'. A counter-petition circulated, lauding Koh's 'unquestionable personal commitment to human rights'. For discussion, see 'Drone Strikes and International Law: Fallout Reaches The Ivory Tower', *The Economist* (22 April 2015); E. Massimino, 'The Wrong Litmus Test for Activists', *The Washington Post* (30 April 2015); P. Alston, 'Harold Koh and the Battle of the Dueling Petitions', *Just Security* (20 April 2015); R. Goodman, 'Advancing Human Rights From Within: The Footsteps of Harold Koh', *Just Security* (10 April 2015). See generally C. Edelson, 'The Law in Service to Power: Academics and Executive Branch Lawyers', (2013) 43(3) *Presidential Studies Quarterly* 618.

209 A. Bianchi, 'The International Regulation of the Use of Force: The Politics of Interpretative Method', in L. van den Herik and N. Schrijver (eds.), *Counter-Terrorism Strategies in a Fragmented International Legal Order* (2013), at 283–316.

210 D. Luban, 'Military Necessity and the Cultures of Military Law', (2013) 26(2) LJIL 315, at 315: 'For military lawyers, the starting point is military necessity, and the reigning assumption is that legal regulation of war must accommodate military necessity. For humanitarian lawyers, the starting point is human dignity and human rights. The result is two interpretive communities that systematically disagree not only over the meaning of particular law-of-war norms, but also over the sources and methods of law that could be used to resolve the disagreements.'

211 D. Kennedy, *supra* note 142, at 116.

> Law now offers an institutional and doctrinal space for transforming the boundaries of war into strategic assets, as well as a vernacular for legitimating and denouncing what happens in war. Once the law in war becomes a strategic asset, able to be spoken in multiple voices – an ethically self-confident voice of sharp distinctions, a pragmatic voice of instrumental assessment – we can anticipate that it will be used differently by those with divergent strategic objectives.

A typology of sites of articulation reveals the way in which readers co-opt narrators for their own projects. A narrator regarded as reliable in one context may be excoriated as unreliable in another. To make allegations of unreliability is to promulgate a new narrative of one's own. For example, a *New York Times* article that purported to provide an authoritative account of what led to the al-Awlaki strike claimed to be 'based on interviews with three dozen current and former legal and counterterrorism officials and outside experts'.[212] After reading this piece, another leading columnist wrote an article, recasting the other journalists as unreliable narrators: 'It's standard government stenography, administration press releases masquerading as in-depth news articles'.[213] Tracing unreliability, and the ability to call others to account, plays an important part in constituting narratives:[214]

> Asking you what you did and why, saying what I did and why, pondering the differences between your account of what I did and my account of what I did, and vice versa, these are essential constituents of all but the very simplest and barest of narratives.

The emphasis placed on unreliable narration in this article does not minimize the need to consider the professional identity and cognitive frames of the reader who responds to said narratives. Thus, in crafting arguments, the international legal scholar is not a passive chronicler of international practices but is deeply implicated in international law's interpretive community. While positivist scholarship may often appear to be an exercise in 'normative abstinence',[215] at pains to distinguish the Jekyll of *lex lata* and the Hyde of *lex ferenda*, it has the potential to grant the imprimatur to norm entrepreneurs who seek to develop the law in accordance with their own ends.[216] Doctrinal discussion of targeted killing has the tendency to disembody the act of killing.[217] The drone strike is presented as a technical accomplishment, the intended victim as a 'target'. The technical questions asked distance the reality of bloodshed and conflict. Thus, narratives, even of the doctrinal variety, have the ability to strip away, and create, humanity and inhumanity. What is required is the ability to read critically, translating

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[212] M. Mazzetti, C. Savage, and S. Shane, 'How a US Citizen Came to Be in America's Cross Hairs', *New York Times* (9 March 2013).

[213] Greenwald, *supra* note 182. See M. Hakimi, 'The Role of Media as Participants in the International Legal Process', (2006) 16 *Duke J.Comp.& Int'l L.* 1.

[214] MacIntyre, *supra* note 21, at 253.

[215] Solum, *supra* note 71.

[216] For a discussion of cognitive frames and norm entrepeneurs, see M. Finnemore and K. Sikkink, 'International Norm Dynamics and Political Change', (1998) 52(4) *International Organization* 887.

[217] On the concerning normalization of targeted killing as a state practice, see J. Waldron, 'Death Squads and Death Lists: Targeted Killing and the Character of the State' (presentation at *Ethics in War* conference, West Point, 27 March 2015).

what is hidden behind technical language rather than capitulating to professional expertise.[218]

One way for narrators and readers to militate against allegations of unreliability is for their legal analysis to be married with disclosure of their underlying jurisprudential commitments and methodological assumptions. This conscientiously counters Duncan Kennedy's characterization of the 'hermeneutic of suspicion', where jurists seek to uncover hidden ideological motives behind the 'wrong' legal arguments of their opponents, while affirming their own 'right' answers innocent of ideology.[219] Such disclosure is particularly pressing where legal work takes place at the intersection of conflicting values, such as the public's opportunity to obtain information about government activities versus the interests of the executive branch in maintaining secrecy about matters of national security.

Ultimately, narrativizing international law brings to the fore the 'disputes over process, agency and orientation' that the master narratives of the international legal order avoid.[220] To merely perform the allocative function of conduct in international practices to such narratives, whether of the successional or configurational variety, is to cede the battle.[221] Rather than permitting international practices to be co-opted to particular narrative agendas uncritically, a focus on unreliable narration helps us pay close attention to consensus and dissensus within international law's interpretive community. Judith Butler has suggested that to 'call the frame into question is to show that the frame never quite contained the scene it was meant to limn'.[222] For Butler, the critical objective is to expose the 'orchestrating designs of the authority who sought to control the frame'.[223] In the final analysis, close attention to multi-perspectival narration is nothing less than a valiant effort to narrate without silencing, without consuming the voices of others.[224]

5. Conclusion

This article has examined the existence of unreliable narration in international law, and the ability of narrators to 'kill or capture' narratives to advance their particular projects. Rather than uncritically subscribe to the 'nightmare' of the technological progress narrative or the 'noble dream' of transparency, the case study on targeted killing highlighted the fundamental significance of point of view and perspective in international law's interpretive community. More generally, unreliable narration is ultimately a function of where a given reader is situated within international

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218 Sennett in P. Brooks (ed.), *The Humanities and Public Life* (2014), at 102.

219 D. Kennedy, 'The Hermeneutic of Suspicion in Contemporary American Legal Thought', (2014) 25 *Law Critique* 91. On ideology, see Herman and Vervaeck, *supra* note 10; S. Marks, 'Big Brother is Bleeping Us – With the Message That Ideology Doesn't Matter', (2001) 12 EJIL 109; J. Olesen, 'Towards a Politics of Hermeneutics', in A. Bianchi, D. Peat, and M. Windsor (eds.), *Interpretation in International Law* (2015), at 311–30.

220 Marks, *supra* note 64, at 996; Alber, 'Narrativisation', in Herman, Jahn and Ryan, *supra* note 5, at 386: 'the process of narrativisation consists of giving narrative form to a discourse for the purpose of facilitating a better understanding of the represented phenomena'.

221 See F. Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (1982).

222 J. Butler, *Frames of War: When Is Life Grievable?* (2010), at 9.

223 Ibid., at 12.

224 J. B. White, 'Law as Language: Reading Law and Reading Literature', (1982) 60 *Tex.L.Rev.* 415, at 444.

law's interpretive community vis-à-vis the narrator, and whether their cognitive frames, or the interpretive method they apply to evaluate international practices, diverge. Ultimately, mapping unreliable narration is a valuable critical project in international legal theory, offering a generalizable framework for the evaluation of narrative transmission in the international legal order, while fostering reflexive inquiry about the state of international law as a professional discipline.