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What Narratives Do

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A community of scholars: members of the international law association in Vienna 1926[1]

'This workshop where ideals are fabricated—it seems to me just to stink of lies.'

Friedrich Nietzsche, On the Genealogy of Morality (2007 [1887]), §I.14

Narratives play a crucial role when it comes to who, how, and what is remembered from the history of international law. Why? What is the role? And what are the narratives? To begin with, Narratives can be understood as a discursive form in which meaning emerges and is stabilized at different levels of ordering.

For example, we tend to live our lives in light of a conception of where we are from and what kind of person we want to be, and that conception arises in large parts from the stories we tell about ourselves, to ourselves, and to others. At this first level of ordering, narratives play an

[1] Photo: Rainer Noltenius.

important role in conferring and stabilizing meaning with regard to who we are and who we want to be as *individuals*.

Narratives do the same for any *collective*, i.e. for any social group. Just consider the well-studied roles that narratives have played in the formation of nations, and of *national identities*. There would be no 'imagined communities' of nationals without narratives, and without the stories that members of communities tell about themselves.

Moving closer to the field of international law, any *community of scholars*maintains narratives about their community, what is important to them, and what it is they are doing: as such, narratives interact with *disciplinary identities*.

More specifically then, narratives are crucial with regard to who, how, and what is remembered from international law. This is what I will continue to focus on and unpack: the role of narratives in international law in the dynamics of remembering and in the construction of memory.

Who remembers?

But before I do just that: next to individuals and social groups, one could also consider narratives to work on a still higher level of ordering, at the level of *humanity*. Whether to think of narratives of humanity is desirable – or even possible – remains a hotly disputed question.

In the very first pages of the *Journal of the History of International Law* (founded in The Hague, then moved to Heidelberg) Philipp Allott argued in 1999 that this is the way to go: 'History is public memory', he wrote, and the task before us, as he saw it, is to help construct the history of international law as the history not of any social group, but of humanity as such, as an expression of the 'memory of the human species itself, a species memory'.

The opening editorial of that same issue, written by the Journal's founding editor, Ronald St. John Macdonald, suggested, however, a different route: Macdonald urged awareness of the 'plurality of human civilizations and cultures', hoping that the new Journal 'will intensify the study of various pasts [note the plural] of international law'. (Also see Karen Knop's superb treatmentof Macdonald's historiographical method)

What is being negotiated in this first issue is the very desirability and even possibility of a collective memory which is that of humanity as such. It is a crucial question that is glossed over in the title of the roundtable at the inaugural workshop of the MPIL100 project, of which the present intervention formed part: ''Actors, archives, canonization. Who, how, and what is remembered from 100 years of international law?'' The title implements a passive voice to avoid any question-begging 'we'—who does the remembering?

Dipesh Chakrabarty recently revived the debate that also percolated the first issue of the *Journal on the History of International Law*. Contra the stance taken by Allot, Chakrabarty

disputes that humanity as a social (rather than biological) unit could be the carrier of any history. Like Macdonald, he opts for plurality as the starting point and then demands a related sensitivity for the power-ridden distribution of whose memory matters or is side-lined, and what those memories cast aside or, rather, revere.

Sometimes the obvious may bear repeating: who, what, and how the past is being remembered depends on who does the remembering.

Who is Remembered? Narratives and Canon-Making

But, of course, not everybody's memory of the past is equally influential for the field. I therefore approach the question of who, what, and how the past is being remembered in interaction with questions about the construction of canons, with a focus on the role that narratives play here. How do narratives contribute to the emergence of canons, and how do canons, in turn, sustain certain narratives?

Here I draw on a wonderful symposium on canon-making that Paolo Amorosa and Claire Vergerio recently convened in the *Leiden Journal of International Law*. Canons, they start off, are important anchors of disciplinary identity. They enable conversations within and across disciplines and facilitate scholars' self-identification.

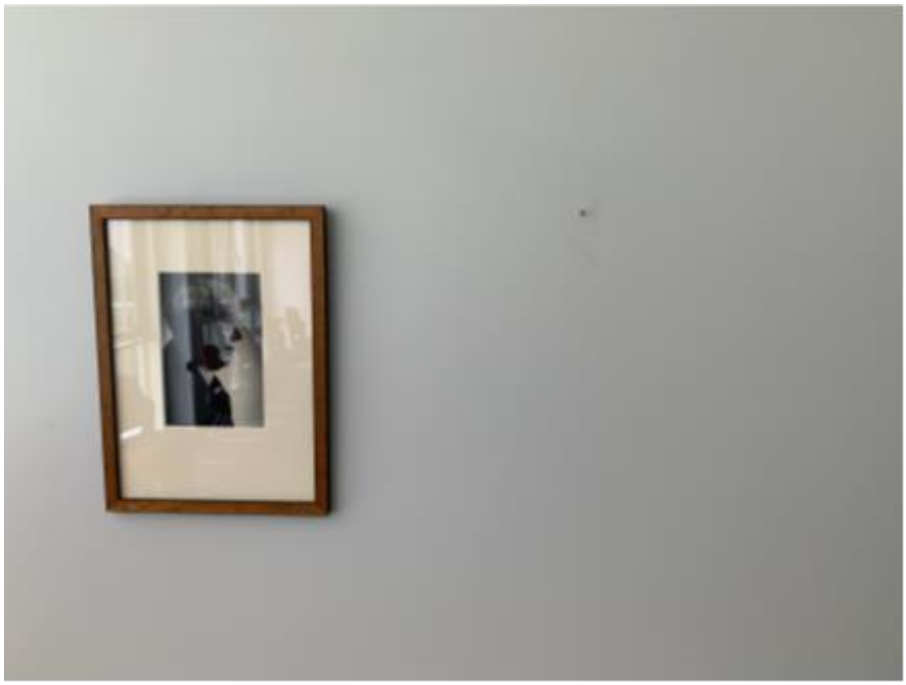

Photo of the MPIL's Directors' Gallery in room 014. The picture was taken on 1.6.2023, when the Institute's summer party was held. On the left, it shows the portrait of the Institute's founding director Victor Bruns. The portrait of his successor Carl Bilfinger was taken down by unknown persons. (Photo Philipp Glahé)

Canons are contested, and they change. I was told that the portrait of the Max Planck Institute's first director in Heidelberg, Carl Bilfinger, is taken down every so often in the Institute's meeting room to then reappear in an equally clandestine fashion. Bilfinger was notably a resolved national socialist. Soon after the war, he resigned from his directorship of the Kaiser-Wilhelm-Institute, which he had led since 1943.

Bilfinger may not be a canonical figure in international law, but whoever makes him temporarily disappear seems to contest that this former director of the Max Planck Institute today enjoys the pride of place in the meeting room.

Paolo Amorosa has himself shown how James Brown Scott, writing in the 20th century, put 16th century Francisco de Vitoria on a pedestal as the founding father of international law. Amorosa further studied what enabled this positioning of Vitoria, what role narratives have played in that regard, and what the focus on Vitoria has then meant for the legal field, namely a marked commitment to human rights and to a universalist conception of international law.

By drawing attention to contingencies in the history of an author's reception, Amorosa and Vergerio in their LJIL symposium, highlight questions of who is included and excluded in canon-making, and they reflect on shifting concerns and power relations over time. In short, dynamics of reception matter much more than the outstanding quality or characteristics of any author.

The point with regard to either canons or narratives is not that they are historical constructs. They are. What else would they be? But rather, the point is: first, how have they come about and, second, what are they *doing* in any moving present.

Those two points are linked. I have myself been concerned with questions of how to convey historical contingencies, and how to convey a sense for the possibility of alternative paths. We know *ex post* that some things happened and others did not. However, an outcome that was possible does not become necessary only because it happened. Neither does it become impossible only because it did not happen. How to convey this? There is always an underlying reason: a reason why Carl Bilfinger did become a director, and why Carlo Schmid did not. But Schmid *could have*. To convey this sense of contingency, developments have to be embedded in thick descriptions that ground claims to possibility between, and distinguish them from, unconstrained speculation. For that, the work with historical resources—archives and oral histories—remains key. This takes me to the role that narratives play in how history is being remembered in international law.

Remembering How? Narratives and Archives

It remains the case that many historical accounts in international legal scholarship continue to rehash other secondary literature and repeat received narratives without much further ado. I am

referring to monographs about this or that question, this or that doctrine, whose second chapter is often a historical one, summarizing the developments that were bound to lead to the present. They turn to history not—as many historians would do—as a realm of possibility, but as a prequel to the present. Those chapters are often tied up with a sort of rationalizing analysis that speaks about legal history as a kind of unfolding of timeless ideas. Received narratives partake in this practice, arise from it, and, in turn, stabilize it.

Let me offer a quick example from my own work, recently published in the Institute's *Zeitschrift für öffentliches Recht und Völkerrecht* (ZaöRV). Secondary literature repeats in a self-referential fashion that the first bilateral investment treaty (BIT) was concluded between Germany and Pakistan in 1959, and that the regime has since then developed with the intention to facilitate the economic development of the host state. When I stumbled on those claims once again, I started to look for an account of what led to this first BIT, and I did not find any. My archival research then showed, among other interesting things, that the reasons why Germany concluded this first BIT and then others, were due to concerns about Germany's imbalance of trade and payments. The development of the host countries was not a consideration for the BIT practice at all.

Archival resources are, sure enough, open to interpretation and subject to appropriation in different, competing narratives. But they can and do also nicely irritate narratives, such as those underlying the investment regime. This brings me to my last and final point:

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Who and what is being remembered, I have already submitted, is also an expression of the interests and sensibilities of whoever does the remembering or, put differently: archives do not themselves reveal historical truths, but are subject to interpretation and woven into narratives. And yet, some interpretations and narratives do certainly fare better amidst archival sources when compared to others. A lot of work remains for critically testing the narratives that "we" continue to tell.

But narratives can be engaged differently as well, not by questioning narratives with regard to their historical accuracy, but rather with a view to what it is that those narratives have been doing over time. This is the kind of genealogical inquiry in which Friedrich Nietzsche was invested: the point of his *Genealogy of Morality* was not that people have been wrong about why and how their morality has emerged. Rather, Nietzsche wanted to show and critique what those mistaken beliefs and their related narratives have been doing. In Amia Srinivasan's take on Nietzsche's genealogy:

> *"The crucial question for such critical genealogists is not 'are our representations true', but 'what do our representations do?' What practices and forms of life do they help*

> *sustain, what sort of person do they help construct, and whose power do they help entrench?"*

It seems clear to me that many of the narratives—about investment law, but also about many other fields of international law—are narratives that legitimize international law as such. They also sustain exaggerated believes in international law's problem-solving capacity. However, it is not just international law that those narratives support; they empower anyone who can pursue their interests *legally,* who has the possibility to kill legally, to outcompete legally, or to pollute legally.