CULTURE UNDER CROSS-EXAMINATION

International Justice and the Special Court for Sierra Leone

Tim Kelsall
The Special Court for Sierra Leone stands on a sprawling site in central Freetown, shielded from the rest of the country by imposing grey walls. An outer wall, ranging between five and eight feet in height, displays signs warning people that to park or even stand in the court's vicinity is forbidden; an inner one, about fifteen feet tall, is crowned by coils of razor wire. A policeman brandishing an AK-47, accompanied by other security personnel, guards the entrance from a sentry post; above it, a sand-bagged gun turret takes aim at the main road. Visitors who pass through the court's steel gate are obliged to acquire a security pass from a razor-wired concrete reception area in the shape of a pill box, then walk through a car park area and into the court's inner compound through two sliding, steel doors; vehicles, meanwhile, are subjected to bomb checks. Inside, to the left, stand the prefabricated huts of the Office of the Prosecutor, reminiscent of a military barracks or prisoner of war camp, ringed by razor wire and a six-feet high fence carrying signs that read 'ID Cards Must be Shown at All Times', 'Restricted Access', 'Authorised Personnel Only', 'Visitors Must Be Escorted'. At various junctures gun-toting Nigerian soldiers stand guard, wearing dark sunglasses, blue helmets and military fatigues; sometimes they conduct drills and simulate combat situations. Past the Office of the Prosecutor and up a path stands the gleaming structure of the courthouse itself, architecturally designed, apparently, to evoke an impression of the scales of justice. It is protected not only by the Nigerian troops, but by blue-uniformed security personnel, the public gaining entrance through a metal detector. Down the hill to the left are the Defence offices and opposite them another set of steel
doors, walls, and razor wire, which guard the entrance to the detention centre where defendants indicted for war crimes are held. Between the prison and the courthouse resides a tank, a UN logo emblazoned on its side.¹

Inside this enclave the Special Court is implementing a global project to bring accountability under the rule of law to a region formerly destabilised by conflict and war. In this book I discuss some of the challenges posed to that project by the fact that the Court is surrounded by an unfamiliar social and legal culture, in which the way people think about human rights, human agency and appropriate social conduct often differs radically from the way international lawyers think about these things. I do so by focusing on the trial of the alleged leaders of the Kamajors, a popular militia that fought on the side of the democratic government in the country’s eleven-year civil war. The Kamajors, several thousand strong, were widely believed to be able to make themselves immune to bullets through magic, a technique which allowed them to defend their communities from rebel attack, won them widespread applause, and even helped them to restore civilian rule.² The Kamajor Society, however, was far from being universally benign. Some of its members reputedly looted and burned Sierra Leonean towns, indulged in acts of cannibalism, and committed violent acts of a grotesque and terrifying nature, such as decapitating victims and dancing around with their heads on poles.

The Civil Defence Forces (CDF) trial, as it was called, is a case with tremendous significance for the expanding global project of international criminal law, as well as for other post-conflict justice modalities. For reasons explained below, we are unlikely in the near future to witness international prosecutions in developed Western nations: international trials will focus mainly on countries that are part of the ‘Third World’, a trend already indicated by the first arrest warrants of the International

¹ Adapted from fieldnote, September 2004. By 2006 Mongolians had replaced the Nigerians. Vivek Maru, an astute observer of justice in Sierra Leone, once remarked to me that looking down on the Court from the Freetown hills, its saucer shaped roof glowing in the darkness, one could be forgiven for thinking that an alien spacecraft had landed in Sierra Leone. Prosecutor David Crane appears to have picked up on this imagery in a speech he gave in 2007 entitled, ‘The spaceship has landed’ (Crane 2007).

² Precise figures for Kamajor and CDF membership are hard to come by. After the war some 37,216 CDF were officially demobilised; the majority among whom would have been Kamajors (Humphreys and Weinstein 2004, 13). However, the real figures are likely to be much larger, since in some areas fewer than one in five CDF fighters possessed a modern weapon that would qualify them for demobilisation.
Criminal Court, all of which target African individuals. As in the CDF case, witnesses and defendants in these trials will come from societies with very different cultures or cultural mixes to those that predominate in the West, with varying ideas about morality, responsibility, evidence and truth. International justice, because of this, needs to learn the lessons of working with unfamiliar cultures fast.

Although the Special Court is regarded in some circles as 'a promising hybrid' (Dougherty 2004; Stromseth, Wippman and Brooks 2006), suggesting that it successfully blends elements of international and indigenous law and expertise, I will argue in this book that it failed in crucial ways to adjust to the local culture in which it worked. In its prosecution of the crime of enlisting child soldiers, for example, it levelled an inappropriate and ethnocentric charge at the CDF defendants. In its handling of the phenomenon of bullet-proofing, it proved deaf to an enormously important system of local magical belief. In its ruling on superior responsibility, it drew on an unrealistic Western norm. And in its assessment of evidence, it failed to find convincing means for assessing the credibility of witnesses, some of whom deployed, I argue, culturally grounded strategies of concealment in court. These failures had profound implications: they contributed to a laborious trial-process that dragged on for more than two years – one of the defendants dying before a verdict could be returned – and they raised serious questions about the quality of the convictions of the two surviving accused. Meanwhile, at a societal level, these failures threatened the Court's legacy in Sierra Leone.

In light of these depressing results, critics of the international justice project will doubtless find in my study more evidence that the aspiration to globalise law's rule is not only malign but misconceived. Supporters of the project will hopefully find stimuli to rethinking and reform.

AN EXPANDING PROJECT

Today, international criminal justice (ICJ) casts a wider net and has a longer reach than at any time in previous history. Inaugurated at Nuremburg and Tokyo with the International Military Tribunals to try the top leaders of the defeated Axis powers, ICJ was re-animated in the 1990s with the creation of the International Criminal Tribunal for the

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1 The countries concerned are Uganda, Democratic Republic of Congo, Central African Republic and Sudan.
2 For a less sanguine view, see Sriram (2006).
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Figure 1. The Court compound and environs.
former Yugoslavia (ICTY) (to try alleged perpetrators of war crimes and violations of international humanitarian law that occurred during the internecine conflict that convulsed the Balkans in the early 1990s) and the International Criminal Tribunal for Rwanda (ICTR) (to prosecute the masterminds of genocide that decimated the population of that tiny central African republic in April and May of 1994), following a forty-five year, Cold War freeze (Maguire 2000; Minear 1972; Minow 1998; Sands 2003).

These two landmark courts, known as the ad hoc tribunals, shaped the emergence of a new breed of hybrid tribunal in the next decade. Novel experiments in international and national law, situated in the countries where conflict occurred, hybrid tribunals have been opened in Bosnia (mopping up some of the lower level leaders not tried at the ICTY); Kosovo (targeting alleged perpetrators of violations that occurred during the conflict in Serbia-governed Kosovo in 1999); Timor Leste (where pro-Indonesia militias terrorised the population in the wake of the UN-sponsored referendum on independence in 1999); Sierra Leone (where a ghastly civil war raged from 1991 to 2002); and now Cambodia (targeting surviving leaders of Pol Pot’s murderous Khmer Rouge regime (1975–1979)). The most recent addition is a hybrid tribunal in The Hague to try those suspected of the car bomb killing of Lebanese Prime Minister Rafik Hariri in February 2005.

Contemporaneously, in 1998, over a hundred states signed the Rome Statute of the International Criminal Court, a new, permanent tribunal located in The Hague, with the power to try suspected war criminals and human rights violators in cases where national states are unable or unwilling to pursue prosecutions themselves. It has subsequently issued arrest warrants for individuals in Northern Uganda (where for years the Lord’s Resistance Army has been forcing women and girls into sexual slavery, abducting children, and mutilating and murdering the civilian population), the Central African Republic (where sexual violence was widely used as a weapon when the country slid into civil war in the wake of its failed democratic transition), the Sudan (where as many as 400,000 people may have died in conflict driven by government-backed janjaweed militias) and the Democratic Republic of Congo (where domestic and foreign armies and ethnic militia devastated the civilian population in the course of Africa’s ‘first world war’). Its first indictee, Congolese militia leader Thomas Lubanga, was transferred to The Hague in March 2006.
This ICJ expansion is nested in broader processes of ‘transitional justice’ and projects to build the rule of law. Transitional justice is a term used to describe the diverse mechanisms by which a society recently emerged from repressive rule or violent conflict attempts to hold wrongdoers accountable for their actions (Elster 2004; Roht-Arriaza 2006; Teitel 2000, 2003; ICTJ 2007). These mechanisms may include prosecutions, purges, publicly shaming offenders, opening police files, truth commissions, memorials and reparations, to name but a few (Minow 1998, 23; ICTJ 2007). In recent years transitional justice initiatives have multiplied with transitions to democracy in former dictatorships in Latin America, East and Central Europe and Africa, and by a spate of so-called ‘new wars’ in the more fragile of these transitional states (Kaldor 2006).

Meanwhile, rule of law projects attempt to institutionalise accountability under the law for present and future events. According to Jessica Matthews, ‘the rule of law is often held out these days as the solution to almost every international policy problem, from consolidating shaky democratic transitions, establishing sustainable economic development, and stabilizing post-conflict societies, to fostering new global norms’ (foreword to Carothers 2006, vii).

These developments are supported by a billion-dollar international industry (Oomen 2005, 890) of lawyers, scholars, journalists, transitional justice experts and consultants, departments or sections in First World governments, and the lobbying, intervention and participation of a host of influential legal and human rights NGOs, including Human Rights Watch, Amnesty International, the Open Society Justice Initiative, Lawyers without Borders, No Peace Without Justice, The International Center for Transitional Justice, and the Coalition for an International Criminal Court (which is itself a network of over 2,000 NGOs); they are the legal arm of what Alex de Waal has called the ‘humanitarian international’ (De Waal 1997), a global social movement that drives UN peace-keeping interventions and post-conflict accountability projects in crisis states around the world. Today, the conventional UN response to political transitions and post-conflict situations is to dispatch teams of legal technocrats who, with the support of the UN Office of the High Commissioner for Human Rights and the Office for Legal Affairs, support and assist local actors to implement transitional justice mechanisms, believing that accountability for past atrocities is required for rehabilitation to begin (Lutz 2006, 332).

The expansion of international justice has often been written about in triumphalist tones. In the field of criminal prosecutions, much of the
early commentary has been by avid supporters, 'the generation of the founders', who are often practitioners themselves (Drumbl 2005, 546–7). Human rights lawyer Geoffrey Robertson, for example, has gone so far as to claim a 'millennial shift, from appeasement to justice, as the dominant factor in world affairs' (Robertson 2002, xiii), stating confidently that 'International criminal justice is here to stay' (Robertson 2007, 1). Early apparent successes have led some to make exuberant claims, presenting ICJ as a panacea for post-conflict societies. Take for instance Antonio Cassese, first President of the ICTY, who has written that:

Trials establish individual responsibility over collective assignation of guilt ... justice dissipates the call for revenge, because when the Court metes out to the perpetrator his just deserts, then the victims' calls for retribution are met ... victims are prepared to be reconciled with their erstwhile tormentors, because they know that the latter have now paid for their crimes; a fully reliable record is established of the atrocities so that future generations can remember and be made fully cognizant of what happened.

(Cited in Stover and Weinstein 2004b, 3–4.)

Others argue that prosecutions provide an end to impunity: 'drawing a clear line for all to see' (Stromseth, Wippman and Brooks 2006, 251), a foundation for peace, and a deterrent to future violations (Rudolph 2001).

All these claims have been contested, of course. The impunity claim has been criticised on the grounds that international prosecutions tend only to target ordinary perpetrators or weak leaders in weak states (Minear 1972; Moghalu 2005, 125–52; Rudolph 2001; Allen 2006, 22; Maguire 2000; Sriram and Ross 2007). The deterrent effect of international trials has been thrown into doubt by the fact that some leaders have continued to order atrocities even after being indicted – for example in Bosnia – while in Congo, East Timor, Liberia and Sudan, the presence or threat of tribunals appears to have done little to abate war crimes (Rudolph 2001; Hazan 2006; Snyder and Vinjamuri 2003/4). The idea that retributive justice heals the wounds of victims and society has been dismissed on grounds that testifying may represent an 'injudicious catharsis' for victims (Stover and Weinstein 2004, 13), while for many survivors, tribunal justice fails to palliate their sense of injustice (Stover and Weinstein 2004a, 333). There is some evidence that criminal trials drive communities further apart 'by causing further suspicion and fear' (Stover and Weinstein 2004a, 323). When it comes to establishing a reliable record, it is clear that while some trials, for example Nuremberg, can produce a strong documentary record,
courts more often tell implausible or impoverished histories (Minear 1972; Osiel 1997, 61; Minow 1998, 47). Meanwhile, the lessons of these histories are often lost on the populations at which they are aimed (Maguire 2000, 131; Stover 2004, 116; Fletcher and Weinstein 2004, 33; Stover and Weinstein 2004a, 324, 334; Osiel 1997, 160). The quality of justice dispensed by international trials has also come under fire, with problems of lawlessness, retroactivity, prosecutorial bias, over-protection of witnesses, undue delay, unqualified judges, corruption of court officials and frequent changes to procedures and rules being just some of the problems identified (Minow 1998, 30; Elster 2004, 84; Minear 1972, 169; Forges and Longman 2004; Weinstein et al. 2006; Robertson 2007; Laughland 2007). And all this has come at vast expense, 'a scandalous waste of money' in the view of some commentators (Allen 2006, 12), with the ad hoc tribunals alone consuming around 15 per cent of the UN's entire budget (UNSC 2004), and convictions at the ICTR costing around $25 million a piece (Drumbl 2005).

INTERNATIONAL JUSTICE AND THE POLITICS OF CULTURE

There is also disquiet about the global role of international criminal justice, with some commentators using terms like 'new' or 'liberal' imperialism (Stromseth, Wippman, and Brooks 2006; Weinstein and van de Merwe 2007), 'liberal peace' (Duffield 2001), 'international judicial intervention' (Laughland 2007), 'international law fundamentalism' (Branch 2004) and 'lawfare' (Comaroff and Comaroff 2006). Behind this terminology is the idea that leaders in the West are seeking to pacify and civilise the Third World using peacekeeping missions, high-level prosecutions, and then programmes to strengthen the rule of law. Inevitably, this has led to concerns about culture. Is the new judicial intervention also a form of cultural imperialism? Can international criminal trials function satisfactorily in unfamiliar cultures? What are the prospects for the rule of law earning legitimacy if international interventions are imposed on local cultural beliefs and practices? Legal scholar Mark Drumbl, for one, has argued that the transplantation of domestic criminal law into the international context is based on the pernicious fiction that Western "[t]hey are imposed on the UN Se munity ha (UNSC 21 respecting are sketchy

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1 'T]he law may be categorized as "imposed" in the sense that it does not re reflecting the values and norms of the majority of the population or of that segment which will be subject to it' (Burman and Harrell-Bond 1979, xiii).

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that Western justice modalities are value-neutral and universal, when ‘[t]hey are in fact deeply culturally contingent’ (Drumbl 2005, 551). Even the UN Secretary General noted recently that ‘the international community has, at times, imposed external transitional justice solutions’ (UNSC 2004, 7) and official documents increasingly include nods to respecting indigenous justice beliefs, though the practical implications are sketchy at best.6

Cultural anxieties such as these stem from the fact that international criminal law is Western in origin: its ethical tenets flow from a Judaeo-Christian tradition (Kahn 1999, 46), while its standards of evidence are rooted in a scientific worldview and enlightenment philosophy. The ‘rationalist’ tradition of evidence in Anglo-American courts, for example, rests on a foundationalist epistemology, a correspondence theory of truth, and a scientific rationality. That is to say, courts function according to the principle that there exists an objective reality independent of what anyone thinks about the world, that knowledge corresponding to this value-free reality has the status of truth, and that the truth can be discovered by drawing inferences inductively from relevant evidence. In this tradition, judicial decision-making consists essentially in applying substantive law to the objective ‘facts’, as scientifically ascertained (Nicolson 1994, 727).

To be precise, Michael S. Moore has argued that the Western conception of criminal law requires a particular structure of moral and metaphysical belief. Morally, criminal answerability applies to an individual when (1) it can be shown that s/he acted, (2) that s/he did so intentionally, recklessly, or negligently (in other words that they had the requisite guilty mind, or mens rea) and (3) that in so acting, s/he caused some morally bad result (Moore 1985, 13). At a metaphysical level, this theory of moral culpability depends on the idea that persons are rational and autonomous. By rational, Moore means simply that individuals act for reasons, or on the basis of what he calls ‘valid practical syllogisms’, no matter how bizarre the premises. By autonomous is meant that individuals are in control of the actions of their own bodies; that is, that they have a will, even if it is not completely free (Moore 1985, 20, 23). Moore appears to think that these criteria are widely applicable cross-culturally; but this contention is the subject of some debate. The very stripped

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6 A policy paper for the International Criminal Court also states that the prosecutor ‘will take into consideration the need to respect the diversity of legal systems, traditions and cultures’ cited in Allen (2006, 129).
down nature of the criteria for criminal responsibility, rather than guaranteeing the idea's universality, just as easily reveals its cultural particularity. Lawrence Rosen, for example, has argued that while, on a trivial level, Moroccan individuals share the inner states, frames of mind and intentional structures identified by Moore, in practice Moroccan courts always inquire into the total social context of an individual's acts, since intentionality is regarded as a socially embedded phenomenon (Rosen 1985). In addition, the category term 'morally-bad result' would appear to be contingent on culture.  

A growing number of voices echo these and similar concerns. The critical legal studies movement, legal anthropology, feminist legal scholarship and post-modern legal scholars, among others, have in recent years criticised the patriarchy and ethnocentricity of Anglo-American law. For example, legal discourse theorists Joseph Conley and John O'Barr have pointed to the way in which male biases are built into the micro-linguistics of the disputing process itself (Conley and O'Barr 1998, 60–77). Donald Nicolson has criticised the politics of 'fact-positivism', arguing that, contrary to the law's ideology, fact and law are mutually constituted with potentially discriminatory effects; what counts as a punishable crime or a valid defence (a question of law) is inextricably bound up with perception-shaping assumptions one holds about the world (matters of fact) (Nicolson 1994; see also Geertz 1983, 173). People of colour, women and the poor, for example, often bring background assumptions at variance with those of the legal establishment to their interpretation of legal cases: 'Those whose stories are believed have the power to create fact; those whose stories are not believed live in a legally sanctioned "reality" that does not match their perceptions' (Scheppelle 1989, 2079). In cases involving different social groups in which different versions of the facts are offered, 'Whole worldviews may have come into collision' (Scheppelle 1989, 2098).

Certainly, the perceptual faultlines that separate the Western legal tradition from non-Western cultures have already been remarked upon in international trials. According to Harvard lawyer Judith Shklar:

When ... the American prosecutor at the Tokyo trials appealed to the law of nature as a basis for condemning the accused, he was only applying a foreign ideology, serving his nation's interests, to a group of people who

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7 There is a similarity here to criticisms of John Rawls' Theory of Justice. See, for example, Sandel (1992).
8 For a critique, see Shapiro (1985).
neither knew nor cared about this doctrine. The assumption of universal agreement served here merely to impose dogmatically an ethnocentric vision of international order. It was the claim that these universal rules were ‘there’ – the assumption of general agreement, which was so contrary to the cultural realities of the situation.

(Shklar 1964 and 1986, 128.)

Apparently, the Tokyo defendants themselves appeared to struggle with the trial, rejecting legal advice and pursuing their own legally irrelevant patterns of thought. One Asian judge castigated the tribunal for its cultural narrowness, ethical dogmatism and historical emptiness (Shklar 1964 and 1986, 156–7). The prosecution justified its mission by reference to the Christian-Judaic ethic, but ‘[w]hat on earth’, asks Shklar, ‘could the Christian-Judaic ethic mean to the Japanese?’ (Shklar 1964 and 1986, 183). The result was that the Tokyo trial was ‘a complete dud’ (Shklar 1964 and 1986, 124), its impact on the popular memory of the Japanese has been ‘virtually nil’, and the bodies of the executed are today housed in official shrines (Osiel 1997, 181, 182).

The problem of culture has not been lost on some of the new generation of international criminal justice advocates. In a brave and remarkable – if ultimately perplexing – speech, David Crane, formerly prosecutor at the Special Court for Sierra Leone, asks rhetorically whether the justice ‘we seek to impose’ is not merely ‘[w]hite man’s justice’. He proceeds to confess that:

Our perspectives are off-kilter. We simply don’t think about or factor in the justice victims seek … We approach the insertion of international justice paternalistically. I would even say with a self-righteous attitude that borders on the ethnocentric … We consider our justice as the only justice … We don’t contemplate why the tribunal is being set up, and for whom it was established … After set up, we don’t create mechanisms by which we can consider the cultural and customary approaches to justice within the region.

(Crane 2006, 1685–6.)

Cultural epiphanies such as Crane’s echo canonical anthropological studies that highlight important differences between Western and non-Western legal systems. As Merry notes, legal systems, ‘are often embedded in very different ways of thinking about the fact/law

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9 After making these startling admissions Crane proceeds to imply that ‘White Man’s Justice’ is the best justice, and that the Special Court for Sierra Leone enforced it in a culturally appropriate way. The evidence to be presented in this book suggests otherwise.
dichotomy, the nature of evidence, and the meaning of judging' (Merry 1988, 871). Studies of the law in Africa have suggested that African legal processes are more participatory, conciliatory, consensual, restorative and open to a wider notion of evidence than the typical Western court. For example, in his influential study of the Liberian Kpelle moot, Gibbs describes the way in which the moot is structured to produce a social outcome of consensus. He observes that the airing of grievances is more complete than in a courtroom, allowing the moot to consider the total social situation of the litigants: there is little delay between an offence and its airing; the setting is more informal, '[t]he robes, writs, messengers, and other symbols of power which subtly intimidate and inhibit the parties in the courtroom, by reminding them of the physical force which underlies the procedures, are absent; cross examination is in the hands of all the parties, and, further, 'the range of relevance applied to matters which are brought out is extremely broad. Hardly anything mentioned is held to be irrelevant' (Gibbs 1963, 282–3). Gibbs claims that the moot produces a consensual outcome, in contrast to the imposed justice of formal adjudicators (Gibbs 1963, 283).

Similarly, Gluckman's famous study of Barotseland courts revealed a judicial process which, while closer to Western practice than the Kpelle moot, nevertheless displayed similar features. According to Gluckman, a Lozi litigant comes to court, 'not as a right-and-duty bearing persona, but in terms of his total social personality' (Gluckman 1964, 65). Lozi judges tried at all costs to reconcile litigants, since they disapproved of irremediable ruptures in social relationships, dispensing justice that made it possible 'for the parties to live together amicably in the future'. Consequently, judges 'constantly have to broaden the field of their enquiries, [to] consider the total history of relations between the litigants, not only the narrow legal issue' (Gluckman 1964, 63–4).10 Similar findings have been made for other non-Western societies. Pospisil describes a situation among the Kapauku of Papua-New Guinea in which disputes were adjudicated by the local tonowi, or headman, noting, as in the African cases, that litigants' 'total personalities, and not only some arbitrarily selected or "logically related" facts, were relevant'.

10 Sounding a sceptical note, Van Velzen has criticised the presumed dichotomy between Western and African law, arguing that illegitimate comparisons have been drawn from different levels of the justice system. Discussed in Moore (1969, 272). Conley and O'Barr have also queried the competence of classical anthropologists in the languages of the systems they were studying (Conley and O'Barr 1998, 98–115).
(Pospisil 1981, 107). The system described by Pospisil was later disrupted by colonial rule, with the effect that:

to the Kapauku the state's legalistic procedure appears ridiculously over-formalized, relying only on partial evidence, making the judge into a mechanical mouthpiece of the written rules, destroying his creativity, and turning the formerly dynamic, ever (although slowly) changing law into a rigid set of rules. In their view, all this amounts to, in most cases, is hopeless injustice.

(Pospisil 1981, 108.)

In another study, Sally Falk Moore found that the politics of witnessing in Tanzanian colonial courts differed significantly from Western assumptions about what the role of witnesses should be. Colonial officers frequently complained about difficulties in finding the facts and the truth in their cases, adducing that local elders lacked Western fact-finding techniques, since they either already 'knew' the facts, or divined them by supernatural means. Added to this was the realisation that witnesses typically came to give partisan evidence, their testimony representing the current social standing of the plaintiff in the community, rather than the actualities of the case. African communities, Moore explains, are 'social settings where obligatory partisanship is a general rule of public behaviour'. For her, 'witnesses often testify (or fail to appear) with the idea of helping to construct a story favourable to the person to whom they owe a partisan account, either because of kin relationship, or for favours done in the past, for favours anticipated, for fear of displeasing, or the like' (Moore 1992, 37–8). Later in this book we will need to remember the importance of inter-group politics when we consider the testimony of witnesses at the Special Court.

Cultural difference is beginning to be taken seriously in the wider transitional justice community. While in 2002 a review of the truth commission literature decried the fact that 'the notion of culture hardly arises at all' (Avruch and Vejerano 2002, 42, 43), by 2005 astute observers such as Priscilla Hayner were beginning to ask whether truth commissions were always culturally appropriate: 'indigenous national characteristics may make truth-seeking unnecessary or undesirable, such as unofficial community-based mechanisms that respond to the recent violence or a culture that eschews confronting reality directly' (Hayner 2001, 186). Scholars of Cambodia have argued against raking over the truth in a Buddhist culture characterised by high social ideals of forgiveness (Hayner 2001; for a more exasperated view, see Maguire
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2005). Rosalind Shaw is another author to have criticised the methodology of truth commissions. She argues that truth commissions stem from a distinct Western tradition of confession and cathartic healing that is alien to local people in Sierra Leone, where the attainment of a 'cool heart' is more important to reconciliation than factually truthful accounts of past atrocities (Shaw 2005, 2006). Studies of the richness of Shaw's alert us to the sui generis impact of culture on accountability, an issue to which we shall have cause to return.\(^\text{11}\)

In the field of international criminal justice, the question of cultural difference has been most vigorously debated in the case of Northern Uganda (Allen 2006; Baines 2007; Branch 2004). In December 2003 Uganda's President Museveni invited the International Criminal Court to investigate the situation in the north of the country, and in particular the question of atrocities committed by the Lord's Resistance Army (LRA), a millenarian movement led by spirit-medium Joseph Kony, which has been terrorising the region in a conflict lasting more than a decade. The invitation immediately met with uproar. A vociferous constituency of local activists and their foreign supporters argued, among other things, that retributive justice was foreign to local traditions of forgiveness and reconciliation. According to James Otto, head of Human Rights Watch in Gulu: 'The ICC timing is bad. It has no protection mechanism. We have our own traditional justice system. The international system despises it, but it works. There is a balance in the community that cannot be found in the briefcase of the white man' (cited in Allen 2006, 87). For Paramount Chief David Acana II: 'The best way to resolve the 18 year old war in our region is through *Poro lok ki mato oput* (peace talks and reconciliation) as it's in the Acholi culture ... I wonder who will help [the ICC] in giving evidence to prosecute Kony since the Acholi do not buy their idea of taking him to court because the Acholi have forgiven all the LRA!' (cited in Allen 2006, 134). *Mato oput* (literally bitter root or juice) refers here to a traditional reconciliation ceremony in which the perpetrator of an offence and a representative of the victim's clan participate in a joint ritual in which the offender admits his wrongdoing and promises to compensate the offended party; both parties then drink the blood of a slaughtered sheep mixed with bitter herbs and roots, binding them in reconciliation. If the conflict is between entire clans, it ends with *gomo tong*, the bending of spears (Allen 2006, 132–3). In recent years, elements of this ceremony and others (such as dipping the
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\(^{11}\) See also the chapters in Huyse and Salter (2007).
toe in a broken egg), have been directed toward re-integrating ex-LRA combatants by urban based peace-building NGOs – often of Christian inspiration – who claim great success for these rituals, as have some foreign journalists and transitional justice proponents.

Through interviews with the inhabitants of IDP camps, ex-combatants, and traditional authorities, including spirit mediums, Tim Allen, an anthropologist with extensive experience in the area, uncovers a rather different story. Away from the staged consensus of official meetings, Allen says, internees in IDP camps are quite willing to countenance prosecution for the top leaders of the LRA, and admit to living together with ex-LRA combatants only with difficulty. In the words of one local councillor: ‘According to me the people are very open to the ICC because Kony has committed atrocities. He has refused to come back home when people have tried to talk to him. Some people say they should kill such people. Some want to forgive them. Most people think they should go to court’ (Allen 2006, 142). Further, authentic mato oput, though enjoying something of a revival in clan disputes, is not being used to re-integrate ex-combatants, while peace-making ceremonies such as ‘the bending of the spears’, much lauded by advocates of traditional justice, have not taken place in twenty years. The ersatz rituals concocted in town by peace-NGOs are, by comparison, not given much credence by Allen’s informants. Extracted from their rural setting, and presided over by a generation of modern leaders with a controversial genealogy, they lose some of their traditional efficacy. Instead, the popularity of the new rituals is driven, at least in part, by the political-economic interests of the professional peace-makers. Allen concludes that: ‘People in northern Uganda require the same kinds of conventional legal mechanisms as everyone else living in modern states. Far from there being widespread antipathy for the ICC, those that know about it are generally positive’ (Allen 2006, 168).

Allen’s book provides a convincing antidote to romanticised notions of indigenous accountability and misinformed ideas about the fundamental incompatibility of retributive justice and African culture. But it leaves several questions unanswered. For instance, Allen reports that for some local people, Kony’s actions are to be explained by the fact that he is possessed by an evil spirit (see also Behrand 1999 for the antecedents of the LRA). How would such claims fare in a Western-style

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12 Richard Wilson, finding a virulent strain of popular, retributive justice in South African townships, makes a similar critical observation in respect of that country’s TRC (Wilson 2001).
In this book, Leone is an example of making Anthropol
Leone's people and the Specia into a snake culture is s:
reality being and space in the context of some indiv
Kondewa, and existing as a culture is societies'. I
chapter and time, telling from

**WHITE MAN'S JUSTICE?**

criminal court? As suggested by Moore's criteria of culpable action, and
as we shall see in Chapter 4, which discusses the role of the supernatu-
ral, the Western jurisprudential tradition would tend either to dismiss
such claims out of hand, or else treat them as indicia of insanity, leading
in all probability to acquittal. Would acquitting Kony satisfy local
desires for retribution? According to one of Allen's informants: 'If they
arrest him, will they arrest the spirit? It will jump elsewhere ... If they
arrest Kony, the spirit will just continue. It is the spirit that has forced
Kony to do things' (Allen 2006, 156). Would incarcerating Kony solve
the problem of his evil spirit? What resonance can Western judicial
mechanisms have when Western and local views of human responsibil-
ity are incommensurate?

Further, Allen has little to say about whether the procedural form of
a Western criminal court would be adequate or suitable to trying Kony.
As some commentators have observed, getting the type of evidence a
Western court demands from out of a non-Western culture, is no mean
feat. On the basis of some of the judgements at the ICTR Robert Cryer,
for example, has observed that: 'It is no novelty to say that inter-cultural
understanding of demeanour, conduct and character can be difficult.'
Problems are created when cultures encourage evasiveness, exaggeration,
euphemism or understatement, and by the wide variations that govern
norms of eye-contact and facial expression: 'These factors are highly rel-
vant in determining the credibility of a witness and the possibility of
inter-cultural misunderstanding is very real' (Cryer 2007, 4). In these cir-
cumstances, '[i]t would be all too easy for judges to apply social and cul-
tural standards of trustworthiness and openness to witnesses who do not
share them' (Cryer 2007, 1). These observations are consistent with a liter-
ature on inter-ethnic communication that points to the large potential
for miscommunication even between ethnic groups who speak the same
first language (Gee 1996; Gumperz 1982). They resonate also with the
argument of Stromseth _et al._ that 'interveners need to be better educated
about the language and culture of the societies in which they are working'
(Stromseth, Wippman, and Brooks 2006, 326). Holding a meaningful
trial in a context such as Northern Uganda may be extremely problem-
atic, then. It is a huge leap from the finding that there is some indigenous
desire for retribution and some scepticism about the invented traditions
of peace-keeping NGOs, to the conclusion that an international crimi-
nal trial, doubtless costing millions of dollars, located thousands of miles
from Uganda, is the solution.
In this book I will argue that, rather like Uganda and Rwanda, Sierra Leone is a society with a number of cultural features that contributed to making the application of international justice a fraught affair. Anthropologists and historians have long argued that, for some of Sierra Leone's peoples, the visible world is believed to be activated by an invisible reality beneath the surface of everyday events; local conceptions of time and space differ significantly from those in the West; fighting factions in the country's civil war made frequent recourse to supernatural help; some individuals were thought to be able to 'shape-shift' (indeed Allieu Kondewa, alleged 'High Priest' of the Kamajor militia and a defendant at the Special Court, is widely thought to have been able to turn himself into a snake, and to make himself invisible); and, in addition, everyday culture is said to be characterised by an 'aesthetics of ambiguity' and the valorisation of secrecy, founded in the region's long tradition of 'secret societies'. In short, and as I will discuss at greater length in the following chapters, many Sierra Leoneans have different ideas of social space and time, of causation, agency, responsibility, evidence, truth and truth-telling from those employed by international criminal courts.

STUDYING CULTURE IN INTERNATIONAL TRIALS

If culture is important to international trials, how should we study it? The existing literature on international justice provides few positive clues. To date, the vast majority of scholarship on international trials falls into two main categories: legalistic and politico-historical. Regarding the first, several books have concentrated on the rules, procedures, and decisions of international tribunals (Boas 2007; Cryer et al. 2007; Jones and Powles 2003; Schabas 2006). Written by lawyers or legal scholars, this literature tends to focus on the tribunals' foundation in law, the form and scope of indictments, the procedures for hearing and admitting evidence, and the legal arguments used to secure convictions or acquittals. The burden of analysis falls on tribunal rules, legal doctrines, procedural submissions and judicial decisions. The question of culture rarely arises, and this is for two reasons. First, international jurisprudence is, or at least claims to be, a self-enclosed and self-referential system of knowledge that justifies its decisions largely by reference to legal precedents. Logically speaking, anything that stands outside this system – radically different systems of knowledge and belief, for instance – is regarded as irrelevant: international lawyers do not generally have to justify their
decisions by reference to the beliefs of the Tutsi, the Serbs, the Mende or the Acholi, since, in the world of international law, sub-national ethnic communities have no role.\(^\text{13}\) Second, focusing on rules and decisions, jurisprudential analysis pays little attention to the status of the trial as a social encounter, where different modes of being and different world-views might conceivably collide. Unless such collisions are expressly referenced in judicial decisions – and there are good reasons why they are not – they do not figure prominently on the radar of most legal scholars.

To a great extent, this oversight is shared by historical and political analyses of trials. Take for instance Kenneth Minear’s account of victor’s justice at the Tokyo tribunal (Minear 1972). It consists mainly of an analysis of the political debates surrounding the form of the tribunal and its indictments, the shortcomings of the Bench and its legal decisions, and the inherent prosecutorial bias. Except by reference to a few pivotal remarks by legal counsel, and vivid description of the courtroom, the encounter of the trial itself is barely discussed. Thus the cultural collisions remarked upon by Shklar (Shklar 1964 and 1986) hardly figure at all, except obliquely in a section on translation. Peter Maguire’s excellent book on the International Military Tribunal and the American trials at Nuremburg takes a similar form (Maguire 2000). The analysis ranges across a large number of trials, scrutinising the indictees, the arguments of the prosecution, the reasoning – both onstage and offstage – of the judges, and the post-trial aftermath. But, save for a few dramatic exchanges that are used to enliven the story, what really went on in court goes largely unaddressed. John Laughland, likewise, has produced a blistering attack on the trial of Slobodan Milosevic, in which he criticises the legality of the trial, the scope and nature of the indictment, judicial bias in the proceedings, the fact that the court was a law unto itself, the numerous changes to the indictment and the rules, the provisions for protecting witnesses, and the conditions of Milosevic’s detention and his trial in absentia, drawing on numerous court documents to make his case (Laughland 2007). Nevertheless, the number of courtroom exchanges described is rather few, and when they do appear, it is usually to illustrate an egregious example of prosecutorial bias, or because Milosevic is making Laughland’s argument in his own words.

\(^{13}\) In my experience, international lawyers are often quite interested in these issues, though the professional demands of the courtroom encourage them to focus on the black letter aspects of the case. The recent UN and ICC guidelines on this matter provide some grounds for optimism that sensitivity to cultural difference is now on the agenda.
I do not mean to criticise these books, which are highly successful in illustrating the arguments they wish to make. But those arguments are not, to any great extent, about culture, perhaps because culture – at least in the European context of the Nuremberg and Yugoslav tribunals – was not a pressing issue at trial.¹⁴

The same cannot be said for the ICTR. Reports suggest that the tribunal experienced some of the same cultural difficulties as the Sierra Leone court (Cryer 2007), but these have not been extensively written about. Kingsley Moghalu, in one of only two book-length accounts of the tribunal, focuses instead on the high politics of the trial (Moghalu 2005). Chapters are devoted to, among other things, the task of capturing indictees, to the challenges of holding the tribunal in Arusha, to the substantive content of some of its most celebrated cases, to the political controversy surrounding the release of media defendant Jean-Bosco Barayagwiza, and to the political obstacles put in the place of Carla del Ponte’s pursuit of the Rwandan Patriotic Front. The courtroom, however, remains pretty much a closed set, with Moghalu content to assert blithely that, while the tribunal itself has been surrounded by politics, the judicial process was largely politics free (Moghalu 2005, 4). Although the story Moghalu tells is itself fascinating, it misses the opportunity to unpack the cultural politics of the trials.

In order to illuminate the role of culture in an international tribunal, my study takes a different approach, which I refer to as anthropopolitical. I provide a case study, of a single trial, informed by a combination of anthropological and political methods.

Of all the social sciences, anthropology – and in particular cultural anthropology – has been most closely connected to the study of culture.¹⁵ Culture itself is a controversial concept, and has generally been understood by anthropologists to mean one of four things. Put simply, ‘culture’ can refer to: (1) the ontology, cosmology, or worldview of a people, community or society; (2) their systems of signification, encompassing obviously language (verbal and non-verbal), but also art, monuments, music,
and dance; (3) their traditions, by which I mean patterns of valued behaviour carried into the present from the not-too-recent past; and (4) their total way of material and symbolic life. The first three of these definitions, upon which most of my analysis focuses, are nicely captured by Clifford Geertz’s famous premise that ‘man is an animal suspended in webs of significance he himself has spun’, culture being those webs (Geertz 1973, 5). The fourth definition, associated most obviously with Edmund Tylor, I invoke when I discuss some characteristic forms of Sierra Leonean social organisation.16

Clearly, there is overlap between these different definitions or dimensions of culture. Clearly also, most communities are to some extent culturally heterogeneous, meaning that when we talk about culture, we often mean ‘cultures’. Critics of ‘culturalist’ arguments often attack them on the grounds that they ‘reify’ culture, or ‘essentialise’ it, or make it ‘determining’, or ‘unthinking’ or ‘homogenous’, or assume that it is ‘timeless’.17 I hope that no-one will be able sensibly to level those accusations against my argument. In this work, I argue that culture is the key to understanding certain features of the CDF case, and certain forms of behaviour in court, without arguing that ‘people do things simply because that’s their culture, or because they’ve been conditioned by society to do those things, or that they merely enact whatever script the sociocultural order places in their hands’ (Paul 1990, 431). The un-nuanced idea that culture is a kind of blueprint that programmes behaviour is a misconception that I associate more with the judges at the Special Court for Sierra Leone (see Chapter 6) than with my own argument.

Culture, in my understanding, is diverse, changing and, rather than determining, a fund of resources on which individuals draw, as well as a structure of constraints they face. To provide a hypothetical example: If I, a UK citizen, wish to forcibly overthrow a British government I regard as illegitimate, the mainstream of my culture presents certain resources, such as ideas about political legitimacy, models of military or paramilitary organisation, traditions of struggle against undemocratic regimes,

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16 ‘Culture, or civilization, taken in its broad, ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society’ (Tylor 1958 [1871], 1).

17 Some critics prefer the term ‘ideology’ to ‘culture’: ‘The term ideology reminds analysts that cultural frames have social histories and it signals a commitment to address the relevance of power relations to the nature of cultural forms and ask how essential meanings about language are socially produced as effective and powerful’ (Woolard and Schieffelin 1994). I agree with this take on culture, but I am not so sure we need the term ‘ideology’ to remind us of it. For a similar critique, see Mitchell (1995).
modes of communication and rhetorical techniques stretching back at least to the overthrow of King Charles I, all of which have evolved over time. But it also presents certain constraints. Unlike the defendants in Sierra Leone’s CDF trial, I could not, for example, mobilise my supporters on grounds that I was able to make them invisible or immune to bullets by means of special immunising medicines. To begin with, I do not know how to make such medicines, and there are no analogues in the culture on which I could improvise. Next, even if I possessed the medicines and understood the rituals to activate them, very few people would follow me, since the cultural mainstream in Britain is generally sceptical of magical belief.

With these caveats in mind, I can now state that this work is anthropological in two main senses. First, my reading of the trial has been informed by a reading of the anthropological literature on Sierra Leone and its culture area, drawing in particular on the work of contemporary anthropologists such as Mariane Ferme, William Murphy, Danny Hoffman and Rosalind Shaw. To a large extent, I have viewed the transcript through an anthropological frame. This has meant that certain cultural features of the conflict, the case and the courtroom have been more obvious, and hopefully more transparent to me, than they would be to someone who lacked this background, for example a lawyer or a historian. Second, the study has relied for part of its insight on ethnographic methods. I began studying the Special Court for Sierra Leone in 2003, making repeat field trips in 2004, 2005, 2006 and 2008, amounting to a little over seven months in all. I was present at the Court when the first indictees were still held in a detention centre on Bontie Island, and when the controversial indictment against Charles Taylor was unsealed. I was there in 2004 for an extended period during the opening of the trials, and I returned to consolidate my findings on three subsequent occasions, including at the very close of the CDF trial. During these trips I was able easily to integrate into the Court’s social scene: attending its parties, sharing its gossip, discussing with international lawyers their views about international justice and their experience of the trials, as well as on occasion conducting formal interviews. During the days I spent most of my time observing and taking notes on trial proceedings, where one of the things that struck me most was the laboured, tortuous, inconclusive nature of many of the encounters between counsel

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Hoffman actually appeared as an expert witness in the CDF trial, and his insights have been extremely helpful to me.
and witnesses, a feature that I was later to discover characterised the entire trial.\textsuperscript{19} Witnesses struck me, and many of the lawyers, as evasive. However, I knew from my knowledge of the anthropological literature that this was not necessarily because witnesses were telling lies. It was clear that much would hinge on how the judges would interpret evasive speech genres. I also knew from the anthropological literature that magical beliefs were deeply held in Sierra Leone, and testimony about magical beliefs rapidly began to emerge in the trial.\textsuperscript{20} Again, an enormous amount hung on what weight the judges would give to magical belief, both as a source of military power, and, as we shall see, as a form of military discipline. I also spent some of 2005 studying local courts in an upcountry town, an experience that taught me about the legal culture in which the trial operated, and provided a useful point of comparison to the proceedings in Freetown.

In addition to being anthropological, I also describe my approach as ‘political’. Teaching and researching African politics for more than a decade has sensitised me to certain aspects of the trial that non-Africanists might not have noticed, or might not have interpreted in the same way. One was the importance of religion and the occult to local questions of power; another was the dominance of patron-client and patrimonial relations, both of which will be discussed in due course. In addition, and like the works by Minear, Maguire and Moghalu referred to above, this study is alive to the international and institutional politics that informed the trial, though these are not its main focus. Instead, this study is political primarily in the sense of being concerned with the \textit{micro-politics of meaning production}. Truth, in this optic, is not simply ‘out there’ waiting to be discovered. As Michel Foucault observed in a now famous interview:

\begin{quote}
Each society has its regime of truth, its “general politics” of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.
\end{quote}

\textsuperscript{19} Sitting in the public gallery as a member of the court audience provided me an invaluable exposure to the character of courtroom encounters; but the structure of the British academic year meant that I could only be present for a fraction of the trial. To fill in the gaps, I have been reliant on trial transcripts. I should also note that requests to interview the defendants and the judges fell on deaf ears, except in the case of Judge King.

\textsuperscript{20} Indeed, they are even referred to in the indictment.
Meaning that power, knowledge, and truth are inextricably intertwined (Foucault 1980, 131). As I hope to show, the truth, or verdict, that emerged from the trial would be intimately connected to questions of power and resistance within the courtroom.

My approach to these questions has been influenced by discourse analysis and social linguistic techniques (Gee 1996, 2005; Gumperz 1982; Locke 2004; Phillips and Hardy 2002). Like much ethnography, most discourse analysis is concerned with the way in which language (broadly conceived) is used to produce, negotiate, mediate and reproduce social power. As Gee notes: ‘language in use is everywhere and always “political”’ (Gee 2005, 1). Language inevitably involves us taking perspectives on 'what is “normal” or not; what is “acceptable” or not; what is “right” or not; what is “real” or not’ (Gee 2005, 2). A popular sub-field of discourse analysis has been cross-cultural encounters, focusing on how representatives of different cultural groups manage their relationships with one another through language (Gee 1996, 2005; Gumperz 1982). Much of the resulting work highlights instances of intercultural misunderstanding, which has been instructive for my analysis of trial sessions at the Special Court.

Particularly influential has been the work of legal discourse analysts John Conley and William O’Barr. A key theme in their research has been to demonstrate how language has been used to exert power in the courtroom:

For most people the law’s power manifests itself ... in the details of legal practice, in the thousands of mini-dramas re-enacted every day in lawyers' offices, police stations, and courthouses around the country. The dominant element in almost every one of these mini-dramas is language. To the extent that power is realized, exercised, abused or challenged in such events, the means are primarily linguistic.

(Conley and O’Barr 1998, 2.)

Conley and O’Barr’s close analysis of courtroom interactions has provided me with inspiration for the broader analysis of trial transcripts that follows here. It is by analysing actual interactions in court that I have been able to reveal the ways in which, as Umphrey has noted, ‘trials literally stage clashes of meaning’ (Umphrey 1999, 412).

If Conley and O’Barr have focused in particular on the overwhelming power that the structure of the courtroom provides to lawyers, Marco Jacquemet’s *Credibility in Court* has helped me to see that witnesses are not always passive objects of manipulation (Jacquemet 1996). Jacquemet
discusses the Camorra trials in Southern Italy, a period of Southern Italian history in which hundreds of individuals were convicted on the basis of insider-witness testimony during an offensive against organised crime. Just a couple of years later, almost all this insider witness testimony was thrown out by appeals judges. Jacquemet's point is that credibility, and thus truth, is a communicative construct framed by wider structures of power. His work demonstrates brilliantly the ways in which insider witnesses (the pentiti) brought the elliptical genres of Neapolitan gang talk into the courtroom, a mode of discourse that either by accident or, more likely design, avoids reference to deictic markers such as specific dates, places, times and even names – facts that could be cross-checked and therefore refuted by the defence. Jacquemet shows how in the original trial the judges connived with the pentiti in their creation of a vague and sketchy evidential record that was nonetheless dignified with the status of a 'truth' used to convict defendants, while in the appeal hearings, a more exacting bench dismissed evidence that suffered from these imprecisions (Jacquemet 1996). I have used Jacquemet's analysis of courtroom encounters in the Camorra trials to light up problems in evidence at the Special Court for Sierra Leone.

Discourse analysts such as Gumperz, Jacquemet and Conley and O'Barr have developed a range of techniques for analysing language, some more detailed than others. 'Narrow' techniques, which can be incredibly detailed, utilise an extensive notational grammar for coding in minute detail prosodic variations: 'The ways in which words and sentences of a text are said: their pitch, loudness, stress, and the length assigned to various syllables, as well as the way in which the speaker hesitates and pauses' (Gee 1996, 94; see also Locke 2004). Even narrower techniques record variations in facial expression or bodily comportment. 'Broad' techniques, by contrast, limit themselves to recording precisely the content of speech. For reasons of choice and necessity, I have mostly used the latter (for an overview of different approaches, see Brenneis 1988). Narrow techniques are extremely time consuming, and, with thousands of pages of trial transcript to analyse, it was clear to me that my time would be more productively spent using a broad approach that attempted to capture the importance to the entire trial of the cultural encounters I was studying. Added to this, the trial at the Special Court for Sierra Leone is conducted in simultaneous translation, with transcripts transcribing the English translation, which is what the judges and lawyers generally listen to. Though translators are instructed to
mimic the style of original speech, they inevitably do this imperfectly, so a minute analysis of translators' changes in pitch and stress would seem not to advance our knowledge very far. Neither are audio recordings of native language testimony currently available and, even if they were, I do not speak a native language, and would thus be completely dependent on research assistance for my insights. Of course, the slippage between original testimony and its translation is a fascinating question, and would be well served by these techniques; but it is not the principal object of my study here.

Following an initial period of ethnographic observation, then, my method was to read the entire public transcript of the trial, coding it according to features that my knowledge of the anthropological literature and my ethnographic experience of the trial had led me to think were important, such as testimony about the supernatural or about the wider political context of the war, or occasions where communication ran into difficulties, either because of problems with translation, misunderstanding, or evasion. I then focused on what appeared to be the most consistently occurring, or most critical of these features to the case, reviewing each occurrence, and constructing an illustrative and analytical narrative that draws on specific excerpts from trial testimony. The end product is an interpretive analysis of the role of cultural difference in the CDF trial.

A HISTORY OF THE CONFLICT AND OVERVIEW OF THIS BOOK

The territory known today as Sierra Leone was given its name (Serra Lyoa) by the Portuguese explorer Pedro da Sintra in 1462. For the next three centuries the territory experienced more or less constant warfare, as it was repeatedly invaded by peoples fleeing the expansion of Islamic empires in the Mande world of the Western Sahel (Kup 1962; Shaw 2002). Europeans profited from and encouraged the trade in slaves that went with these struggles, further exacerbating violence, population displacements, and ethnic realignments (Kup 1962; Shaw 2002). In 1787, the British established a settlement for freed slaves at Freetown on the western peninsula, which in 1808 became a crown colony; in the hinterland, however, insecurity continued to reign, as warrior chiefs and war-mongering merchants fought over the spoils of long-distance trade (Abraham 1974, 1978; Clapham 1976; Gberie 2005; Kup 1962;
McGowan 1990; Migdal 1988; Shaw 2002). In 1896, Britain extended its authority inland, creating a Protectorate over Sierra Leone’s modern borders. It governed the colony under a dual system of law: the English law for the Western Area, where the Angophile Krio – descendants of the freed slaves – predominated, and customary law, administered by native chiefs, for the hinterland. After an early rebellion and one or two subsequent revolts, a modicum of peace was secured, and some economic development in agriculture and minerals – especially diamonds – ensued (Kilson 1966; Gberie 2005).

In 1961, Sierra Leone was granted independence, its first President being Milton Margai of the Sierra Leonean People’s Party (SLPP), which had its base in the ethnically Mende districts of southern Sierra Leone. In 1967, the SLPP was defeated at elections by the All People’s Congress of Siaka Stevens, which was stronger among the Temne and Limba people of the North, and among ethnically mixed populations of diamond diggers in the east of the country. Immediately there was a pro-SLPP coup, before a second coup restored Stevens to power. Stevens proceeded to create a de facto and then de jure one-party state, staying in power by using a mixture of coercion and bribery. By the time he handed the reins to his successor, Joseph Momoh, in 1985, the state was perilously weak (Reno 1995; Kpundeh 2004; Richards 1996; Gberie 2005; Abdullah 2004; TRC 2004). Then, in 1991, a group of around 100 men, comprised largely of high school drop-outs, mercenaries from Burkina Faso, and fighters from Charles Taylor’s National Patriotic Front of Liberia, invaded Sierra Leone from neighbouring Liberia, calling themselves the Revolutionary United Front (RUF). They were led by one Foday Sankoh, a cashiered army corporal imprisoned in the 1970s for his part in an alleged coup plot, who had subsequently worked as an itinerant photographer. In the 1980s, Sankoh had fallen in with a group of student radicals and disaffected urban youth influenced by Pan-African ideology and the Green Book radicalism of Libyan leader Muammar Ghadaffi. Towards the end of the decade he and a handful of these radicals found their way to Ghana, and thence to Libya, where they received training in guerrilla warfare. It was in Libya, allegedly, that Sankoh met Charles Taylor and a deal was struck whereby each would assist the other in overthrowing their respective country’s regimes (Abdullah 2004a; Gberie 2005).

Thus began Sierra Leone’s most recent war. In addition to the Revolutionary United Front (RUF), the most prominent factions in the conflict were the National Provisional Ruling Council (NPRC), a
faction of the army that overthrew the government of Joseph Momoh in 1992; the Civil Defence Forces (CDF), a collection of militias based on local hunting societies, including the Tamaboros, the Gbethis, the Donsos, the Kapras, and most importantly the Kamajors, that arose to protect local communities from rebel attack, frequently using magical methods; Executive Outcomes, a South African mercenary organisation employed by the NPRC to fight the RUF; the Economic Community of West African States Monitoring Group (ECOMOG), a largely Nigerian peace-keeping force; the Armed Forces Revolutionary Council (AFRC), a military faction that took power in 1997, forming an alliance with the RUF; the West Side Boys, a splinter group of the AFRC; and the United Nations Mission in Sierra Leone (UNAMSIL), a multinational peace-keeping force.

To provide a basic timeline: after the RUF invaded Sierra Leone in 1991 they were engaged unsuccessfully by the army, a faction of which returned to Freetown and overthrew the government in 1992, forming the NPRC. The NPRC enjoyed some initial success, but its efforts soon foundered, evidence emerging that some army soldiers – dubbed ‘sobels’ – were colluding with the rebels to strip the civilian population of their assets. In May 1995, Executive Outcomes arrived, providing government forces a shot in the arm. Working in tandem with the neo-traditional hunting societies, they scored significant victories against the rebels, paving the way for civilian elections in February 1996, which were won by Ahmad Tejan Kabbah’s SLPP. In November, the rebels signed a peace agreement at Abidjan. However, the terms of that agreement were soon violated and hostilities resumed; Sankoh travelled to Nigeria, where he was detained, while Sam Bockarie – a former hairdresser and disco-dancing champion – assumed charge of the RUF. Then, in May 1997, the government was overthrown in a military coup led by junior officers: Kabbah and his cabinet went into exile in Guinea; Major Johnny Paul Koroma – a poorly educated, corrupt, and over-promoted soldier – became head of the AFRC, teaming up with the RUF to form ‘the junta’, or ‘People’s Army’. In February 1998, the junta was driven from Freetown and major towns in the south and east of the country by a combination of the hunting societies, now organised as the CDF, and ECOMOG, who restored the Kabbah regime. As we shall see, events during this period – May 1997 to February 1998 – were the focus for most of the CDF trial. After losing power, the AFRC and RUF regrouped in the north and east of the country, launching a devastating assault on Freetown in January 1999. After a few weeks they were pushed back up north by ECOMOG,
and signed a peace agreement with the government at Lomé in July 1999 (Gberie 2005; Hirsch 2000; Keen 2005; TRC 2004).

The Lomé Accord granted the rebels a blanket amnesty, provided for UN peacekeepers and a Truth and Reconciliation Commission, and made Foday Sankoh (who had previously been captured, tried, and condemned to death) chairman of a new Commission on Strategic Minerals, effectively granting him control over the diamond industry plus vice-presidential protocol status. In spite of these blandishments, it was clear that some RUF cadres wanted to keep fighting (Gberie 2005, 162). UN peacekeepers were harassed, and in May 2000, 500 UN troops were kidnapped, including an entire Zambian battalion (Keen 2005, 262). With RUF troops moving towards Freetown, only to be halted by soldiers and CDF, Sankoh appeared to be plotting a government takeover (Gberie 2005, 166). On 8 May 2000, his house was surrounded by a mob wanting to arrest him. Shots were fired, civilians killed, and Sankoh escaped dressed as a woman, only to be apprehended some days later and charged by a Freetown court (Gberie 2005; Keen 2005, 265; TRC 2004, vol. 3A, 412–18). The British government sent additional troops to shore up the faltering UN mission the same day.

These events spelled the beginning of the end for the RUF, who were overawed by British military strength. In April 2000, a small British contingent successfully defended Lungi airport from attack, inflicting heavy casualties on a much larger RUF force. Then, on 10 September, they more or less annihilated AFRC splinter group the West Side Boys, which had taken a group of British soldiers hostage. In September 2000, the RUF began incursions into Guinea, but were pounded by Guinean helicopter gunships, operating with South African and British logistical support (Gberie 2005, 171–4). In 2001, the RUF positions in the diamond fields were overrun by the Donsos, a hunter group also receiving support from Guinea. At the same time, a ban on diamond exports from Sierra Leone was squeezing the RUF’s economic receipts, and with support from Liberia drying up, a new, more moderate leadership under the control of Issa Sesay began to cooperate more enthusiastically with demobilisation (Gberie 2005; Keen 2005, 267–76). By January 2002, 72,490 combatants had been demobilised and Kabbah declared the war officially over, a collection of ministers, peacekeepers, journalists and aid workers gathering to burn a mound of weapons at Hastings just outside Freetown (Hoffman 2004, 47). In May 2002, Kabbah’s party was re-elected in countrywide elections with a large majority (Kandeh 2003).
The conflict had several defining characteristics. The RUF and the Sierra Leonean Army shunned pitched battles for the most part, preferring to avoid each other and prey upon the civilian population instead (Keen 2005). All the armed factions, the RUF in particular, used child soldiers, many of whom were forcibly abducted from their communities and then inducted into the movement by committing atrocities, sometimes against their own relatives (Keen 2005; TRC 2004; Zack-Williams 1999). Indeed, the war became notorious for the encyclopaedia of spectacularly violent acts perpetrated mainly on civilians, which included mutilations, decapitations, immolations, physical and sexual humiliation, sexual slavery, and the RUF signature atrocity of limb amputation, an outrage adopted with even more enthusiasm by the AFRC. Many young fighters reported being given drugs to make them fearless (Peters and Richards 1998), and the violence sometimes appears to have taken a saturnalian form. The RUF had a definite cultish, sect-like aspect, and Foday Sankoh on various occasions claimed that his rebellion was inspired by visions from God (Gberie 2005, 60, 136; Richards 2004). Early on in the war, certain RUF commanders claimed magical powers – Rambo, for instance, being believed in some circles to be bullet-proof (Opala 1994) – and, as we shall see, bullet-proofing and other uses of magic were employed to great effect by hunting societies such as the Kamajors. Various commentators have noticed the chameleonic nature of the conflict, armed factions frequently disguising their identity, soldiers sometimes dressing as rebels and vice versa (Keen 2005; TRC 2004, 550–2), while rebels sometimes donned the traditional garb of Kamajors. The conflict did not have a strong ethnic character. However, there is some evidence that the Kamajors, who were mostly Mende, tended to associate the RUF and the army with northern groups, especially the Temne and the Limba, and that they targeted the lives and property of Temne and Limba individuals, as well as members of other northern tribes, during sweeps of Bo town, at roadblocks, and when the diamond fields were invaded in 1998 (TRC 2004, vol. 3A, 518–23). Finally, the violence often fed on or ignited complex local political feuds (Bangura 2004, 31; TRC 2004, vol. 3A, 514–15).

There have been several debates in the literature about the motivating factors behind the war. One of the first analyses, by journalist Robert Kaplan, blamed the conflict on state corruption, population pressure, and environmental catastrophe, a nexus that was driving unemployed youth into forms of atavistic violence and criminality, a thesis that
became known as ‘new barbarism’ (Kaplan 1994). This was responded to by Paul Richards, who rebutted the environmental catastrophe thesis, and portrayed the rebels instead as excluded if misguided intellectuals wedded to a radical egalitarian vision, who, quite rationally, resorted to spectacular forms of violence in order to get their voices heard (Richards 1996). Richards’ position was fiercely challenged by a group of Sierra Leonean academics, among them Yusuf Bangura and Ibrahim Abdullah, who played down the intellectual roots of the movement, arguing that the individuals who eventually invaded Sierra Leone, and the cohort they attracted, were from a lumpen class socially predisposed to wanton, criminal violence (Abdullah 2004a; Bangura 2004; Rashid 2004). Another group of scholars found the root cause of the war in diamonds. Diamond wealth provided the incentive for Charles Taylor to finance and support the war, diamond proceeds paid for many of the RUF’s guns, and the armed factions, peacekeepers included, spent much of their time mining (Gberie 2005, esp 180–96; Hirsch 2000; Keen 2005). David Keen has shown how in a context of economic collapse, the perpetuation of war sustained multifarious economic agendas (Keen 2005, esp 36–50, 107–31). In addition, he explains the extravagant violence and cruelty of the armed factions by reference, among other things, to the feelings of anger and humiliation young men experienced under a social system that failed to grant them respect (Keen 2005, esp 56–81). The TRC, meanwhile, prefers to explain the savagery by reference to ‘traumatic initiations’ and to the administration of drugs (TRC 2004, vol. 3A, 531, 556, 562–4). Recent work has shown that most RUF recruits came from rural areas, heavily qualifying the ‘urban lumpen’ thesis, though many do seem to have come from an excluded social class (Fanthorpe 2001; Peters and Richards 1998; Humphreys and Weinstein 2004). Richards has pointed to the way in which many recruits had earlier been victims of rough justice at the hands of chiefs, accused of offences such as adultery, and forced either into conditions of debt-bondage, or out of the community and into the diamond mines (Richards 2005). Krijn Peters has revived the idea that fighters were engaged in an intergenerational struggle for a fairer society, and that at least some elements of the RUF did have a transformative social vision, which, he says, had some affinities with that of Cambodia under Pol Pot (Peters and Richards 1998; Peters 2006).

The story of the Special Court, meanwhile, begins on 12 June 2000, when President Kabbah wrote to UN Secretary General Kofi Annan, requesting that he create a court ‘powerful enough to bring justice to
his country' which would try the leaders of the RUF, 'for crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages' (Dougherty 2004, 316). At the time when he wrote, the Lomé Peace Accord – which provided for a general amnesty and TRC21 – had been breached by the rebels, four UN peacekeepers had been killed and around 500 taken hostage, and the RUF clearly posed a threat to the government (Dougherty 2004). The request for a court appears to have been an idea to lock the UN into a long-term solution to Sierra Leone’s conflict.

The UN proved receptive and, five days later, in Resolution 1315, the Security Council declared that, ‘a credible system of justice and accountability for the very serious crimes committed [in Sierra Leone] would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace’ (SCSL 2003a, 2) – talks between the government of Sierra Leone, the Secretariat, and the Security Council began. After a series of discussions, it was agreed to establish a court that would fulfil some of the same functions as the pre-existing ad hoc tribunals for Rwanda and the former Yugoslavia, but at a much reduced cost. The court would be established by a treaty between the government of Sierra Leone and the UN, created simultaneously in international and Sierra Leonean law, it would be situated in-country, with a mixed staff, be funded by voluntary contributions, and have a three-year mandate (Dougherty 2004). It would be tasked with prosecuting a small number of perpetrators, expressed in the statute as:

persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment and implementation of the peace process in Sierra Leone.

(SCSL 2002, Article 1, para. 1.)

The statute, which was finalised in February 2001, was a medley of international and national law. Many of the international clauses were lifted from the ICTY and the ICTR while national laws, for example the 1926 Prevention of Cruelty to Children Act and the 1861 Malicious Damage Act, were included because their provisions were thought better

able to capture some of the conflict’s most prevalent violations, such as
abusing girl children or abducting girls for immoral purposes, and set-
ting fire to dwellings, public buildings or other buildings (Dougherty
2004, 317–18). In the event, these national crimes were not charged in
the indictments.

The Court was also intended to leave a powerful legacy in Sierra
Leone. This included its state-of-the-art, twin-chamber courthouse,
office blocks for the defence and prosecution, and high-security deten-
tion centre – what Prosecutor David Crane described as ‘a wonder multi-
acre justice site’ (ICG 2003, 19–20). It was hoped also that indictments
of former leaders would go some way to changing the legal culture in
Sierra Leone, proving that even ‘big men’ were not above the law; it
was believed that working at the Court would help build the capacity
of Sierra Leonean staff, creating competencies that would later diffuse
throughout the domestic justice sector; and finally, it was thought that
the Court would be a spur to some harmonisation of domestic law (ICG
2003; Kerr and Lincoln 2008; Sriram 2006).

Because of funding bottlenecks, the Court was not finally established
until 16 January 2002. The first court staff arrived six months later. The
Prosecutor, David Crane, was an American, Pentagon lawyer, nomi-
nated by the UN. His deputy, Desmond de Silva, a British QC (who
had earlier defended one of the CDF defendants for his part in the 1967
coup), had been chosen by the government of Sierra Leone (Dougherty
2004). Joining the Court later was Head of Investigations Alan White,
a friend and colleague of Crane’s, who was deputised by Tamba Gbeki,
a Sierra Leonean detective. The Court’s main funders were the United
States, Britain, the Netherlands and Nigeria.

A little over a year later, the Court indicted thirteen persons for crimes
that included murder, rape, enslavement, looting and burning, sexual
slavery, extermination, acts of terror, conscription of children into an
armed force, forced marriage and attacks on UNAMSIL peacekeepers
(SCSL n.d.). Of those indicted, RUF leader Foday Sankoh was subse-
quently turned over to the Special Court but died in custody before his
trial could begin. His right-hand man, Sam Bockarie, was murdered in
Liberia before he could be captured by the Court. AFRC leader Johnny
Paul Koroma disappeared, and it is not clear at time of writing whether
he is alive or dead. Liberian president Charles Taylor found exile in
Nigeria, though he was later handed over to the Court, which is try-
ing him in The Hague. That left Issa Sesay, acting RUF leader at the
time the RUF finally complied with the Lomé peace deal, Morris Kallon,
a high-ranking commander and one of the initial RUF contingent to invade Sierra Leone in 1991, and Augustine Gbao, connected in most people's minds with the kidnap of UN peacekeepers. On the AFRC side were the little-known Alex Tamba Brima, Santigie Borboh Kanu and Ibrahim 'Bazzy' Kamara, tried and convicted in 2007. Finally, to most people's surprise, were the alleged leaders of the CDF: the widely popular Chief Samuel Hinga Norman (by then Minister for the Interior), a former businessman called Moinina Fofana, and the notorious but mysterious Allieu Kondewa.

The Prosecutor charged Samuel Hinga Norman (National Coordinator), Moinina Fofana (Director of War) and Allieu Kondewa (High Priest) with eight counts of war crimes, crimes against humanity and other serious violations of international humanitarian law. The trial was remarkable for a number of reasons: it prosecuted an individual – Hinga Norman – and an amalgamation of local militia groups – the CDF – that were hugely popular in some Sierra Leonean circles; it was punctuated by political drama at various points; it was built on an investigation that in many respects was incompetent; it relied mostly on witnesses who were illiterate, and who testified in ways that revealed their unfamiliarity with the culture of a Western courtroom; and it elicited

Figure 2. The Bench, Trial Chamber 1. From left to right: David Crane (foreground), Justice Thompson, Justice Iloc, Justice Boutet.
large amounts of evidence of supernatural phenomena that came to form a plank in the defence of the accused. In Chapter 2 I provide an overview of the CDF trial.

In addition to charging Norman, Fofana and Kondewa with committing, ordering, planning, instigating or aiding and abetting war crimes and crimes against humanity, the prosecution alleged that they were responsible as superiors for crimes committed by their subordinates. Two expert witnesses in the CDF trial testified about the CDF's military character. The prosecution argued that it was an unconventional yet recognisable military organisation, with clear lines of command and control. The defence argued that it was more in the nature of a militarised social network, in which command and control were fluid and decentralised. Each interpretation had very different implications for the fate of the accused, and for the broader question of prosecuting international crimes in conflicts of this kind. In Chapter 3 I outline the arguments and discuss the evidence in the light of broader historical and political knowledge about the nature of non-Western societies.

Superior responsibility is the subject for Chapter 4 also. For the first time in an international court, the prosecution alleged that a defendant (Allieu Kondewa) was responsible for the crimes of his subordinates by virtue of the mystical powers he possessed, the trial chamber eliciting a considerable body of evidence centred on ritual ceremonies in which CDF initiates were reportedly rendered immune to bullets via the consumption or application of esoteric medicines. Bullet-proofing was central, for reasons to be explained, to the charges against the three accused, two of whom used its obverse side as a plank in their own defence. In Chapter 4 I show how, through this testimony, the worldview of the court and that of the accused and witnesses threatened to collide.

The Court also made jurisprudential history when it became the first international tribunal to try defendants for the crime of enlisting children in hostilities. By doing so it had to perform two tricky operations: first, it had to prove that even though the Rome Statute was not in effect for most of the period covered by the indictment, enlisting child soldiers was nevertheless a crime under customary international law; and, second, it had to show that an international benchmark of childhood was relevant to a country where children are often feared for their close relations with the spirit world, and where becoming an adult is intimately connected to rituals of initiation, such as were practised by the Kamajors. In Chapter 5 I deploy a critical analysis of the trial testimony and motions
surrounding the child soldiers charge to show how the international community imposed its norms on Sierra Leone.

I have already referred in passing to the importance of secret societies. Although secrecy and strategies of concealment are not unique to Sierra Leone, they are particularly prevalent there. In Chapter 6 I discuss how techniques of secrecy and dissimulation affected the trial. I hypothesise that witnesses viewed court staff with circumspection. In some cases this led them to not tell the full truth in their pre-trial statements; in others it led to them not telling the full truth in court, problems that became particularly acute under questioning by hostile lawyers from the opposite team. During these moments, I suggest, witnesses fell back on a repertoire of culturally prized linguistic strategies designed to protect them from the possibly malefic intentions of potential adversaries. They hedged, they qualified, they equivocated, they evaded, and in many cases they ran rings around the lawyers, problems compounded by a slipshod investigation and a witness protection regime that provided witnesses incentives to lie.

In Chapter 7 I look at cultural issues in the Special Court's other trials: the RUF, AFRC and Charles Taylor. Although the issue of mystical powers was much less pronounced in these trials, superior responsibility, child soldiers and witness credibility caused similar problems, as did the issue of forced marriage, another new charge under international law.

I conclude the book by suggesting some practical reforms that could help mitigate some of the difficulties encountered when trying to hold a Western-style trial in a non-Western culture. I discuss some ethical issues, some epistemological problems, and I end by advocating a more pluralistic, dialogical, polyphonic approach.