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WEAVING A BROADER TAPESTRY

*Mark A. Drumbl**

Charles Jalloh delivers a comprehensive and authoritative survey of the legacy—in law—of the Special Court for Sierra Leone (SCSL). Through compendious research and considerable personal experience, Jalloh tracks the SCSL’s jurisprudential contributions and legal footprints upon a number of doctrinal areas: child soldiering, forced marriage, immunities, personal jurisdiction, and amnesties. Jalloh also examines the SCSL’s interface with Sierra Leone’s truth commission. Indeed, the SCSL is among the few courts that coexisted with other justice mechanisms rather than minimize them upon the transitional landscape.

The SCSL, as Jalloh notes, was a “consensual” institution with a mixed composition (national and international) that stood somewhat independently. This curious composition, it seems, served it well. It was a far smaller institution than its international contemporaries—the ICC, ICTY, and ICTR.¹ Unlike its peers, however, there seemed to be something organic about the SCSL—going back to Jalloh’s “consensual” characterization—which I think also served it well in its operations and enhanced its contributory energy. This is of course not to say that the SCSL was not hobbled with concerns that arose as its work persevered: cultural dissonances,² an awkward reticence to deal with violence committed by children,³ tone-deafness in terms of endeavoring to treat all parties to the conflict equally, accuracies in fact-finding,⁴ and an under-inclusive grasp of the harms occasioned by forced marriage⁵ come to mind. Jalloh’s exposition of the SCSL’s work is evenhanded and recognizes these elisions as it identifies the contributions.

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¹ The International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda.

² TIM KELSALL, *CULTURE UNDER CROSS-EXAMINATION: INTERNATIONAL JUSTICE AND THE SPECIAL COURT FOR SIERRA LEONE* (2009).

³ MARK A. DRUMBL, *REIMAGINING CHILD SOLDIERS IN INTERNATIONAL LAW AND POLICY* (2012).

⁴ NANCY COMBS, *FACT-FINDING WITHOUT FACTS: THE UNCERTAIN EVIDENTIARY FOUNDATIONS OF INTERNATIONAL CRIMINAL CONVICTIONS* (2010).

⁵ Valerie Oosterveld, *Forced Marriage and the Special Court for Sierra Leone: Legal Advances and Conceptual Difficulties*, 2 J. INT’L HUMANITARIAN LEGAL STUD. 127 (2011); Myriam S. Denov & Mark A. Drumbl, *The Many Harms of Forced Marriage: Insights for Law from Ethnography in Northern Uganda*, 18 J. INT’L CRIM. JUST. 349 (2020).

In reading Jalloh's book, I was, however, struck with a bigger picture observation. This is the dyad of favoritism and neglect. Jalloh himself feels it and sees it. He notes it: significantly fewer scholarly works have studied the SCSL than its peer tribunals. Whereas the ICTY had rounds and rounds of hagiographic legacy conferences following its closure, producing reams of books and edited collections, the SCSL has not riveted the gaze of international observers. Jalloh puts it brusquely yet smartly: it is a "forgotten African tribunal" based in an "uninfluential African state."⁶

To me this speaks volumes about the epistemology of international criminal law—from where do "we" know what we know?—and the genealogy of international criminal law—from where do "we" trace the lineage of what we claim to know? And here the overlooking of the SCSL belies the narrowness of this genealogy and the incompleteness of this epistemology. The formal and recognized and lauded "sources" of international criminal law are not representative of the full array of places and spaces in which justice is sought, stewed, and brewed. A more accurate historiography of international criminal law would far transcend the solemnity of The Hague. It would gaze well beyond convenient sites amid the centers of transnational civil society. For many decades, courts and commissions and ceremonies have labored creatively and intensely in scattered, othered spots and dots in the "hinterland." In thinking about the history and legacy of international criminal law, it is crucially important to give these actors their rightful contributory place. To learn from them, so to speak, so as to center the "other" and to embrace the peripheries. This, too, is part of the process of decolonizing a discipline.

Jalloh does so with his book on the SCSL. But, truth be told, owing to its international admixtures, the SCSL receives more attention than those many actors that, however creative, remain entirely national or local in composition. The work of the Supreme National Tribunal of Poland, for example, remains totally overshadowed by Nuremberg-related proceedings in adjudicating Holocaust atrocity in the imaginary of "where does international criminal law come from."⁷ Utterly marginalized, moreover, are entities that do not hew to the classic ideal type of what a "courtroom" should look like and intentionally refuse to transition towards liberal market capitalism.⁸

In sum, then, for me one broader takeaway of Jalloh's book is methodological in nature. Where should "we" look? With whom should "we"

⁶ CHARLES C. JALLOH, *THE LEGAL LEGACY OF THE SPECIAL COURT FOR SIERRA LEONE* 8 (2020).

⁷ Mark A. Drumbl, *Stepping Beyond Nuremberg's Halo: The Legacy of the Supreme National Tribunal of Poland*, 13 J. INT'L CRIM. JUST. 903, 905 (2015).

⁸ MARCOS ZUNINO, *JUSTICE FRAMED* (2019).

engage? Who is the “we”? Does the world really need yet another “qualitative methods” doctoral dissertation that interviews Hague lawyers at the ICC, ICTY, and ICTR? That defoliates some other arcane detail of the ICC’s Rome Statute? Perhaps the time has come to foster a more complete and less selective epistemology of international criminal law—to recognize that it is “happening” in far more ways and on many more days. And these happenings occur in many more places and spaces: to therefore finally give these venues their due, to diversify foundational and operational narratives, to thin imagined mythologies and upload actual personalities. Jalloh’s book helps redress a gap in the literature and rounds out the fullness of international criminal law’s sources. All the while, this impressive book also points to the need for much more work and inclusion of many more voices to recognize international criminal law as truly international.