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## **The past is a foreign country: On investigative cultures that investigate mass violence across cultures**

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THIJS B. BOUWKNEGT<sup>1</sup>

### **Abstract**

International criminal investigations are not only legal exercises but epistemological and cultural ones. Drawing on the author's work across human rights practice, international tribunals, journalism and historical scholarship, this essay observes that the investigation of mass violence is embedded in cultural and historical frameworks that often sit uneasily with internationalised institutions. It questions the assumed universality of international justice and traces the recurrent misalignment between elite legal actors and the local, often non-Western settings in which they intervene. Organised around the heuristic limits of investigating atrocity, the distinct cultures of (1) criminal and (2) historical inquiry, and the foreignness of both time (the past) and place (other societies), it argues that the deepest divergence lies not between law and history but in the prosecutor's orientation towards conviction rather than truth-finding, an orientation the historian or the investigative judge do not share. The essay makes the case for international investigation as a collaborative, historically grounded and culturally reflexive endeavour, one informed by culture and history as much as by law.

### **Key words**

Mass violence, atrocity, investigation, history, culture, international crime

### **Resumen**

Las investigaciones penales internacionales no son solo ejercicios jurídicos, sino también epistemológicos y culturales. Basándose en el trabajo del autor en los ámbitos de la práctica de los derechos humanos, los tribunales internacionales, el periodismo y la investigación histórica, este ensayo señala que la investigación de la violencia masiva está enmarcada en contextos culturales e históricos que a menudo chocan con las

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<sup>1</sup> Thijs B. Bouwknegt is Senior Researcher at the NIOD Institute for War, Holocaust and Genocide Studies (part of the Royal Netherlands Academy of Arts and Sciences, KNAW), and Visiting Research Professor at the University of Amsterdam (UvA).

instituciones internacionalizadas, y cuestiona la supuesta universalidad de la justicia internacional y analiza el desajuste recurrente entre los actores jurídicos de élite y los entornos locales —a menudo no occidentales— en los que intervienen. Estructurándose en torno a los límites heurísticos de la investigación de las atrocidades, las culturas diferenciadas de la investigación (1) penal y (2) histórica, y la extrañeza tanto del tiempo (el pasado) como del lugar (otras sociedades), el ensayo sostiene que la divergencia más profunda radica no entre el derecho y la historia, sino en la orientación del fiscal hacia la condena en lugar de hacia la búsqueda de la verdad, una orientación de la que ni el historiador ni el juez de instrucción participan. El ensayo defiende la investigación internacional como una labor colaborativa, con base histórica y culturalmente reflexiva, que se nutre tanto de la cultura y la historia como del derecho.

### Palabras clave

Violencia masiva, atrocidades, investigación, historia, cultura, delincuencia internacional

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## 1. Investigating the limits of investigations

At the Palace of Justice in The Hague, on 17 June 2026, the trial of Eugène N. opened. The Rwandan-Dutch man sat to answer four charges: the looting and destruction of Tutsi homes; incitement to genocide through the singing of extermination songs; and participation in the massacre of some three thousand Tutsi in a stadium at Mbazi in April 1994. The case file (investigated by the Dutch police and a Dutch investigative magistrate) was vast, comprising dozens of witness statements and expert reports. For several days, N. faced three Dutch judges. Each questioned him at length, through an interpreter. Thirty-two years after the genocide, the trial began with the “general context”. Responding to the Court’s neatly tabulated evidence, N. said that, in April 1994, there had only been “chaos”. One judge reached for details: “I’m very clear as to what you did not do, but I’m curious to hear what you did do”. He probed N. on his breakfast on 25 April 1994. The bench, through the interpreter, pressed on: “how did you know”, “what did you understand by this”, “was this your perception”, “who told you this”?<sup>2</sup> Beyond time and memory lapses, cultural differences ultimately disconnected the bench from the accused. And Dutch procedure from Rwandan reality. How, observers pondered, was this Court going to establish facts in the positivist Western manner on the strength of Rwandan testimony alone. That is the puzzle before us here.

There is something uncomfortable in deliberating international criminal justice in 2026. Atrocities are accruing. Investigations cannot keep up. Meanwhile, the certainties of the international legal order are depleting (Popovski and Malhotra 2023). Facts (and the truths constructed around them) are cloudier than ever. That is despite, or because of, the new informational technologies on which we have come to depend (McDermott 2024, McDermott *et al.* 2026). As international criminal investigations enter their fourth decade (begun at the United Nations tribunals for the former Yugoslavia and Rwanda), their institutions, instructions and instruments are no longer novel. Their retention, however, feels frail, compromised at times. At the International Criminal Court (ICC), prosecutors, judges and investigators face sanctions from powerful nations (Trump 2025). Inquiries into genocide, crimes against humanity, war crimes and aggression persist only on the fringes of global power in the West. The focus fell back on Africa and Asia (International Criminal Court 2025). Investigations and trials remain caught, unchanged, between universalistic prerogatives and peripheral veracities (Clark 2018, Clarke 2019a).

At this juncture we pause to reflect. What conceptualisations, what conventions, what customs of knowledge-gathering shape our broadened approach to past mass atrocity violence? And how, most importantly, do we deal with culture, the engine of humanness?

Some of us were educated to grasp culture. I am one of them. Trained in non-Western history, my investigative formation came with a strong dose of cultural anthropology and non-Western sociology. Beyond their immersive methodologies, this education provided a lens onto how societies deal with various mass violences, transmit memories and construct meanings. Culture always matters. Everywhere. Anytime. It defines how

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<sup>2</sup> Author’s trial observation The Hague, 17–19 June 2026. I attended the hearings together with Lucy Gaynor, see L. Gaynor (2026).

we, *homo sapiens*, connect, interact, and intersect (Bouwknegt 2026). And yet the institutions that pursue global justice for marginalised communities often proceed as if culture were irrelevant, optional at times (Kelsall 2009).

My reflections derive from past professional intersections of human rights examination, international criminal investigation, investigative journalism and professional historical inquiry. What follows rests on primary material: research conducted for Amnesty International, my experiences at the International Criminal Tribunal for Rwanda (ICTR) and the ICC, some twenty-five years of trial observation as well as fieldwork and myriad of interviews (Bouwknegt 2016, 2017, 2018, 2019a, 2019b, 2020, 2023, 2026; Holá and Bouwknegt 2019; Bouwknegt and Nistor 2019; Bouwknegt and Metekia 2022; Bouwknegt and Nauta 2023). From 2003 I worked with Amnesty International, primarily on Liberia and Sierra Leone, where questions of truth, accountability and reconciliation were as urgent as they were fraught. Between 2004 and 2006 I joined the ICTR and the ICC. There, amongst investigative work, I was engaged in contextual and analytical work that required close reading of, and close listening to, (oral) history. My task was to acquaint judges, prosecutors and counsel about the substantial questions of local history, and about ways of approaching historical evidence, the very core of what they were to adjudicate.

What struck me was how little tribunal staff knew about the situations in which we were operating: Rwanda, the Democratic Republic of the Congo, Uganda, Darfur. In Arusha, for instance, staff all read the same two books, which happened to be available in English (Gourevitch 1998, Human Rights Watch and *Fédération Internationale des Ligues des Droits de l'Homme* 1999). Their cultural, political and historical knowledge was anchored in two Western accounts, one of which was produced by activist organisations. Many staff were brilliant legal minds. Of that there is no doubt; all were profoundly committed. The point is not that lawyers ought to have been trained historians or anthropologists but that the institution made little room for neutral historical and cultural expertise and seldom drew on the scholarship coming from the very countries under investigation (compare Eltringham 2013). What was missing was not individual virtue. It was a cultural and historical toolbox in the design of the inquiry itself.

There were, besides, core assumptions about the places under scrutiny. At the ICC—even more than at the Special Court for Sierra Leone (SCSL), which sat in situ and employed local judges, investigators and prosecutors—there was a tendency to treat Africa as a blank backdrop for endemic atrocity. Senior staff assumed Sierra Leone itself was incapable of addressing its own questions of justice, rather than as an array of unique, textured societies (Crane 2005). International justice in Freetown was partially a white (wo)man's burden. Cosmopolitan legal actors often appeared to move through these settings as if through transit lounges, hardly ever disembarking to immerse themselves, to engage with people (compare Eltringham 2021). Contextual analyses were frequently seen as peripheral, complex, disruptive. They fell outside the comfort zone of judicial scripts. Too academic (also see Wilson 2011). And law has its own conventions. Its own requirements. Its own priorities. Its own tempo. Its own vernacular. And its own agents, who operationalise these in the field. At times, to scholars, criminal investigations seemed anti-epistemological (anti-empirical even), because they are so inherently biased towards sending bad guys to prison.

Over time it dawned on me that the adversarial system that had come to dominate the international criminal justice enterprise—focused on “prosecutions”—did not always marry happily with practised, cross-cultural historical inquiry (also see F. Gaynor 2012). Apart from the International Criminal Tribunal for the former Yugoslavia (ICTY), which employed an entire unit of scholars, mostly historians and linguists, the work of empirical historians and social scientists was not always appreciated. It added too much doubt about case theories (Wilson 2016, Petrović 2019).

There are parallels between law and history, but they do not necessarily connect. Where legal argumentation moves towards resolution, historical and sociological thinking requires continuous revision, asking new questions all the time. Answers are thus not static (de Baets 2003). Where the courtroom demands binary and final answers (guilty or not guilty), historians ask cluttered and changing questions about the myriad causes, courses, consequences, contingencies, causalities, complexities and cultures of mass violence. Slightly disappointed by law’s constraints on open-ended investigation, by its prosecutorial and adversarial culture, I turned to investigate the system itself. First as a journalist, then as an independent trial monitor. Covering international justice in the field (The Hague, Arusha, Freetown, Sarajevo, Phnom Penh, Dakar) afforded me both a broad perspective and a closer, nearly intimate, view.

For over two decades I observed trials against over 160 defendants, in two dozen courts and countries. N’s case was the latest. Some trials reached back to atrocities of the 1940s, from Polish concentration camps to extrajudicial killings in Indonesia. Others unfolded in real time, from piracy off the shores of Somalia to Facebook campaigns in support of ISIL. A host of suspects passed by. They ranged from presidents, politicians, professors, priests and prison wardens to protestors, peasants and pirates. The cultural variations across these places, spaces and agents could not be greater. Imagine, each within its own unique context, the distance between the Khmer Rouge’s president Khieu Samphan and the Ugandan child soldier Dominic Ongwen (Holá and Bouwknegt 2019).

What I saw in courtroom after courtroom (each a distinct cultural site, peopled by various cultural actors and diverging legal and moral cultures, addressing myriad cultures of violence) was not merely the administration of justice but a continuing cultural collision.

No investigation was the same. No trial was the same. They collide in worldviews, in languages, in memory, in assumptions, in ideology, in evidence, in agency, in dynamics. A cliché, but no less true: much gets lost in translation in the international justice carousel, both literally and figuratively (also see Elias-Bursac 2015). Even roles are reconfigured when international criminal justice intervenes. Survivors become “witnesses”. Perpetrators become “insiders” (Bouwknegt and Nistor 2019). Activists become “experts”. Evidence is like a chameleon. It travels minds, continents and sentiments. It adjusts to cultural frameworks, and vice versa. It becomes a genre of itself through cultural filtering. International procedure resembles a cultural domino: Malian evidence-providers speak through Canadian interpreters to a panel of judges from Czechia, Korea and Bolivia, and through different registers of trauma, class and education. And law itself shifts its colours no less. As a Liberian proverb has it, “law is chameleon-like, only those who know it well can tame it”.

Each agent approaches truth differently. Judges must hear what can be most clearly expressed in legal terms. They often discount what resists codification. Prosecutors come armed with foreign precedents. Counsel argue culture in defence (Higgins 2017). Survivors come bearing unheard stories. And sometimes these stories break down under the weight of cross-examination. Not because they are false, but because they are told in registers unfamiliar to the court. Or because of Western, forensic-style questioning about credibility and reliability. More than before do we know that nothing is more changeable than people's thoughts and recollections. Truths come under attack. Fact-givers retract. The structural inequalities between privileged jurists and the neediest of atrocity witnesses cannot be overstated. Elite versus local, Western versus non-Western, educated versus uneducated—these divides run deep (Christensen 2023).

As jurist Nancy Combs (2010) has shown, many trials unravel amid such deep epistemic dissonance. Fact-seekers, fact-providers and fact-interpreters mean to address the same pains of the past. Yet they often talk past one another. Their regimes of truth, even truth as such, diverge. They regard the pain of others and translate it into forensic language and legal jargon. The whole business is messy. Investigators arrive with case theories and ask questions that have no answers. Witnesses misremember. Prosecutors cherry-pick, counsel misconstrue, judges misinterpret, amid all these evidentiary uncertainties. The problem is that international criminal procedure offers a narrow tunnel through which only certain forms of knowledge may pass. The rest is filtered out: cultural dimensions, historical causes, sociological dynamics. This is how internationalised legal systems, and their investigators, translate the world into admissible evidence. They must add legal connotation but strip away cultural meaning.

Culture and history, it seems, are part of international justice's collateral damage. I returned to professional history in 2012, joining the NIOD Institute for War, Holocaust and Genocide Studies. It offered a unique vantage point from which to explore two interrelated themes. First, the "dealing with the past" ("transitional justice", a socio-political phenomenon that includes criminal investigations), particularly when the past is interpreted by non-historians, mainly jurists. Second, how various inquiries work on the ground (Bouwknegt 2020). At NIOD I was able to reflect more systematically on the assumptions underlying these transitional inquiries. I came to see that what we call "international justice" is a highly particular human rights project, captured in a patchwork of political constraints, norms and expectations (Bouwknegt and Nauta 2023). It carries its own professional ethics. In that culture, investigators are under pressure to deliver results, prosecutors to build coherent and winnable cases, judges to maintain the image of procedural integrity and to produce consistent jurisprudence. All to fight "cultures of impunity".

Today I am part of a national inquiry into the Netherlands' role in the war in Afghanistan (2001–2021). This is a scholarly historical investigation, not a legal one. It examines Dutch conduct within the broader NATO coalitions, encompassing military engagement, nation-building and development assistance. The team consists of some twenty researchers: historians, anthropologists, political scientists, sociologists, social psychologists and criminologists. We include Afghan researchers, engage with local historiographies, travel to the region. Our methodology is interdisciplinary. Our approach is contextual. I do not claim it is any better than a judicial inquiry (there is only

imperfection in our field), but it is different. For one thing, we are freer to engage with culture. And the theme of culture returns to us with force, by its very nature. With fifty-one countries involved in the Afghan war, cultural differences abound, not only between “us” in the West and “them” in Afghanistan, but also within “us”.

Assumptions differ. Narratives diverge. Between Reykjavík, Nuku’alofa, Tokyo and Santa Ana, each foreign intervener impacted Afghanistan on its own terms. Cultural differences exist as much at home as abroad. The Dutch military, The Hague’s foreign service and the proxy-governmental development sector each carry their own unspoken codes, values and silences. Within each country, ministries, agencies and militaries all interpret events differently. What this inquiry has taught me is that cultural divergence is not only a matter of West versus non-West, global South versus North. Even when one investigates one’s own country, or that of close neighbours, cultural differences come into play.

This realisation complicates one of the most persistent myths underlying international justice as a cosmopolitan project: the notion that culture is something belonging to others, typically the non-Western “other”, so often deemed a victim of culture, suffering in impunity. To essentialise the non-Western world as the locus of cultural challenges risks masking the diversity and the dysfunctions within Western institutions themselves (compare Üngör 2020). That includes our inability to know the other well enough on their own terms (Said 1978). Moreover, the very authority by which outsiders represent other cultures is itself partial, constructed and historically contingent (Clifford 1988). The problems of global justice are here too, percolated into and embedded in the very frameworks through which we seek to investigate, understand and adjudicate the world (Clarke 2019b).

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So we return to the insights that might advance international criminal investigation. Culture is not a decorative addendum to method but a mode of knowledge in itself. It is a way of approaching witnesses and archives, of framing questions, of listening, of translating between global norms and local realities (also see Vredeveldt *et al.* 2023). And it matters not only in distant contexts but at home, in how we read our own past, our own complicity, our own systems. The differences (and yes, sometimes the devil) are in the details. In what is elicited. In what is remembered, and what is forgotten. In how stories are told. In what is written into the record, and what is left unsaid. Investigators must be attentive to these details, acknowledge multiple registers of truth, and recognise their own limitations in understanding others.

## **2. Cultures of inquiry**

Having dwelt on the people who investigate, I turn now to the two great traditions of inquiry they move between, the criminal and the historical, and to what each does to the past it touches.

If we are to do justice to the past, whether recent or distant, by investigating it, we must listen not only across borders but across disciplines, languages and cultures. For the past is a foreign country, where things are done differently. And the past speaks in different tongues. In the wake of atrocity, the impulse to reckon with and understand the past is

not only a moral and legal undertaking. It is also a political, cultural and intellectual act. To investigate mass violence is to enter a highly contested domain. Facts do not hang in the trees, ready to be selected and picked. They are framed, narrated and often weaponised. In the realm of international criminal investigation and historical inquiry, we encounter a multiplicity of actors and a diversity of approaches. Beneath it all, we also confront the core socio-psychological dilemma of transitional justice: how to deal with an atrocious and violent pasts, and towards what end? (Owen 1996). Criminal investigations are just one sub-genre within the broader realm of post-atrocity truth politics.

To deal with the past is never merely to recount it. It is to grapple with it, reinterpret it, interrogate it and, only at times, put it on trial. Thereafter, history keeps rewriting itself. It always takes its own route. Sometimes literally, sometimes metaphorically. In doing so, we engage not only with what happened, but with how societies remember, forget, justify and condemn. Since the 1900s this process has been institutionalised through a vast array of mechanisms: judicial commissions of inquiry in the Congo Free State (1904) and Namibia (1918), the military trials in Istanbul (1921), the United Nations' War Crimes Commission of the 1940s, Nuremberg and Tokyo, the truth commissions and human-rights trials of the Southern Cone (Argentina, Chile) in the 1980s, historical clarification commissions, fact-finding missions, international criminal investigations, commissions of inquiry and other documenting mechanisms. Each framework seeks to excavate truths for various social, emotional and political reasons, but does so in a different way, for a different audience, with different implications.

In our shared intellectual terrain, the investigation of mass violence, we find various genres of truth-searching: truth-seeking, truth-finding, truth-ascertainment, truth-documentation. Each represents a distinct modality through which individuals, institutions and societies attempt to make sense of, and speak about, the otherwise unimaginable atrocities of the remote or recent past, to catalogue the otherwise unfathomable pain (Schabas 2014). To some societies, silencing the past is the answer. To many other societies, however, truth is itself a form of justice. They do not simply ask what happened; they probe why it happened, and who should, or should not, be held to account, on what grounds, and how, on what terms and in what arena. Crucially, they also ask how we know what we think we know, displaying old lies and valorising new truths. None of this is neutral. These exercises are deeply embedded in politics, power and philosophy.

Here I focus on two dominant cultures of inquiry that currently shape the global landscape of post-atrocity investigation: criminal investigation and historical investigation. Both are methods of engaging with mass violence. Both involve truth-seeking and truth-production. And both serve the present, even as they look to the past and gesture towards the future. Yet the differences between them are significant, not merely in methodology, but in worldview and tradition. Prosecutorial investigations, especially those led by international courts and tribunals, seek confirmation. For example: Vladimir Putin has launched a war of aggression, and we must prove it. Historical investigations seek understanding, asking why Putin invaded Ukraine, and with what implications. One is driven by the imperative to assign guilt and mete out punishment; the other by the desire to comprehend complexity and offer explanation.

The divergence sharpens at one point above all, when the prosecutor investigates. For the prosecutor's orientation is conviction, not truth-finding as such; and it is truth-finding, the patient ascertainment of fact, that the historian shares with the investigative judge. The historian, moreover, does best to study mass violence dispassionately, amorally, non-judicially and apolitically, freeing, for example, the very concept of genocide from the legal, political and emotional constraints that distort it, even if such detachment is an ideal more than an attainable state (Üngör 2012, Bouwknegt 2026).

The logic of prosecutorial investigation, particularly at the international level, is forward-facing. Its goal is clear. It is to ascribe individual agency to collective violence, to attribute individual criminal culpability, to secure retribution, to isolate the offender from society. It purposefully shifts narratives from local injustice to global justice, framed, somewhat in contradiction, within individual criminal responsibility for collective violence (also see Mamdani 2015). It distils wrongdoing into a ledger of charges drawn from the catalogues of international law: the Genocide Convention, the Geneva Conventions, the Torture Convention, the Rome Statute. What it seeks is validation. A charge is made, evidence is marshalled, a verdict is reached. The past, in this framework, is a crime scene, framed in a technical language that claims judicial precision. Historical events, patterns and structures are labelled as "violations". The focus falls on individual agency: who ordered the massacre, who pulled the trigger, who buried the evidence? International prosecutions follow an epistemology of scandalising first and deducing later. Blame the rebel. Accuse him at the bar of public sentiment. Open investigations and search for incriminating proof. Then send him away (Bouwknegt and Nauta 2023).

The standard of proof at trial is, however, unyielding: "beyond any reasonable doubt". The outcome, ideally, is final and precedent-setting. But investigations face stark limitations, jurisdictional and political constraints that distort the historical record and ignore local demands. The ICTR never prosecuted members of the Rwandan Patriotic Front (RPF), a combatant party to the Rwandan civil war (Cruvellier 2010). That is not truth-finding; it is fact-selection by deselection. The Extraordinary Chambers in the Courts of Cambodia looked only at the Khmer Rouge (1975–1979), not at the US bombing campaign that preceded its rise (Hinton 2018). China and Vietnam, the other international players, were equally left out of scope. Diplomatic reliance, resource scarcity and the vagaries of international attention also steer investigative directions. What is not politically feasible remains invisible to investigators. As a result, prosecutorial investigations flatten complexity and rule controversy out of the past. They isolate undesirable individuals from systems, crimes from causes, facts from context. At the centre stands the perpetrator of unimaginable atrocity. In that very process, we risk reducing the past to a courtroom drama, where history is reimagined solely as a culture of impunity, an illiberal order, as evil, as brutal, as emotional—and its audience the international justice community, which by itself forms a cultural group.

Historians, by contrast, approach the past as a textured, contradictory, open-ended territory. They are permitted to judge, but they are not expected to. They look not for perpetrators but for systems, structures and the long-term causes and consequences of violent behaviour. They can give space to the uncontrolled voices of victims, survivors and bystanders, even those worlds apart from the atrocity, yet always connected. Their

method is inductive. Questions emerge from the violence, the eyewitnesses, the documentary sources, not from criminal hypotheses or political rancour. Their standard of truth is plausibility and probability, because the past is not a forensic site. Historians' conclusions are therefore always provisional, revisable, continuously open to discussion and reinterpretation.

Eighty years after the Second World War, historical inquiry into the Holocaust continues. It does not change the nature of that world-historical crime (it does not deny the genocide), but it offers new insights. Unlike judges, historians change their minds all the time. In this sense, history might offer a different kind of justice: not retributive but epistemic. Its justice can be poetic. Its power lies in acknowledgement, the story told and heard. It seeks not punishment but tools that may assist a cathartic explanation—*vergangenheitsbewältigung*, the active working-through of the past. Where prosecutors seek clarity, historians are comfortable with ambiguity. Historians do not essentialise the bad. They recognise that the same society which produces cruelty may also produce resistance, solidarity, even beauty. The past is not merely a place of horror; it is a landscape of human complexity.

Historians reflect on this broader scope. They speak of mass violence, political repression, colonial legacies, structural injustice, terms that resist the tidy boundaries of legal categories such as genocide and crimes against humanity. War is violent. It is a human act (one that defines the history of the world, our nationality, our identity, our culture), not merely a crime. Even when it is lawful (in defence against violence), it can be awful (violent). The story is human. Historians, moreover, are not bound by jurisdictions; they can cross borders in time and space, challenge politicised mandates and interrogate the very frameworks within which criminal investigations operate. They answer to society, not to the United Nations assembly and council, nor to the national governments or "State Parties" that regulate and finance them. Not subject to the same political constraints, they can often see more.

This methodological freedom is both a strength and a curse. Historians, on their turn, lacked judicial resources (manpower and money), the diplomatic backing to enforce access to official sources or crime sites, and the military protection to investigate in dangerous circumstances. They cannot subpoena. They must navigate the inaccessibility of archives, unreliable sources, fading memories, biased documents and the treacherous terrain of oral history and testimony. At the same time, they face the limitlessness of sources. They must weigh conflicting narratives, sift the silences, reconstruct events from fragments. But their flexibility allows for a more holistic view, one that includes not only the spectacular violence of genocides, but also the everyday conditions that made it possible.

Despite their differences, both cultures of inquiry operate under similar pressures. Both face the erosion of memory, the loss or decay of evidence, the enormity of digital data, and the basic politics of truth and propaganda: how it is constructed, by whom, and to what end. Both must weigh source availability, reliability and credibility. Both are prey to anchored political narratives, to selective histories and national mythologies, to double standards. We are surrounded by biases at all times. We are trapped by them, And neither of us is ever fully immune to power, including the power of culture.

Moreover, the personnel of atrocity investigation often straddle both worlds. Many of us, historians and criminal investigators alike, have worked for human rights organisations, international tribunals and academic institutions, moving between genres of truth-seeking: rapid-response documentation, courtroom testimony, scholarly analysis. This hybridity reflects the complexity of the field, but also its contradictions, which cross-fertilise, and which exact an emotional and ethical toll on those who shuttle between bearing witness, building cases and writing history (Bouwknegt 2026). Human rights organisations, for instance, often act as ‘first responders’. They document atrocities in real time, collect the rawest survivor testimonies and write reports designed to mobilise outrage and action. But these reports, however powerful, are not always analytically rigorous. They hover between journalism and law—urgent, moral, sometimes methodologically fragile. Their truths are probably prosecutable, but not necessarily historical, nor usable as criminal evidence.

Truth commissions inhabit an in-between space. Their substantive mandates are broader than those of courts. They seek national or transnational narratives of wrongdoing, often through public conversation between prey and predator, and their goals are reconciliation and the reform of unjust structures, rather than condemnation and imprisonment. They gather stories, convene hearings, produce public reports. Their truths are narrative, collective, conversational. Throughout their disclosure and reception (live in conversation), they remain fluid, open to transgenerational dialogue. But they too are shaped by political mandates, temporal constraints and institutional limitations. Thus, in our realm of post-atrocity investigation, we encounter a pluralism of truth-seeking practices, each with its own logic, limits and contributions.

To engage with transitional justice, the umbrella under which criminal investigation takes place, is to engage with a widening landscape of atrocity inquiry. Some would resist housing criminal trials under that umbrella at all. Transitional justice is an avowedly political project of worldmaking, a way of talking about the past that prescribes a particular future, not to be conflated with the seemingly neutral adjudication of crimes (Moon 2025). The caution is well taken. The two are not the same. Yet the distinction can be pressed too far, for international criminal justice is itself political through and through—in whom it charges, which pasts it admits, which it consigns to shadow. Both are political affairs. Neither is innocent of worldmaking. And the frameworks we carry into investigations are themselves cultural artefacts, reflecting not only what we know but why and how we came to know it, including cultural biases. Investigation, therefore, is a deeply cross-cultural endeavour: not only because of the temporal and geographical distances in play, but because of the epistemological diversity in the backgrounds of its practitioners, interlocutors and recipients.

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The past, as foreign country, is not a unified narrative waiting to be uncovered. It is a chaotic mosaic, shaped by, and shot through with, cultural differentiation. Cosmopolitan investigators must therefore attune themselves to local power asymmetries, to linguistic nuance, to the unequal distribution of narrative authority. Testimony from an uneducated rural survivor in Kivu does not carry the same institutional weight as an official United Nations cable, yet both must help to assemble the puzzle. Ultimately, whether through courts, commissions, NGOs or historical

scholarship, the pursuit of truth after mass violence remains a fraught undertaking. It is about balancing culture, knowledge, meaning, blame, punishment and, ultimately, power. Truth does not exist as a single object. It is pursued, performed, narrated, and always, politically and emotionally, contained.

### **3. The past is a foreign country: They do things differently there**

If the previous section set two cultures of inquiry side by side, this section and the next concern the cultures they inquire into, first the culture of another time, then that of another place. The investigation of historical events, particularly those involving mass violence, is fraught with challenge. Beyond culture as such, investigators must grapple with the complex interplay of time and space. Space complicates our navigation (across physical terrain, across archives, across shifting institutional boundaries), but it is time that transforms meaning, because it transcends layered cultural spaces. Time, perhaps, presents the more intractable barrier, one that historians are trained to navigate. It not only reshapes the material traces of the past. It drives and transforms cultural, social and political contexts. Time erodes the certainty we crave in the present for the sake of surviving into the future.

One of the most natural stumbling blocks for any fact-seeker investigating mass atrocity is precisely this: the past is not only distant but also profoundly different. In this sense the past is a foreign country, “they do things differently there”, even when that country is geographically or culturally familiar (Hartley 1953). The South African Truth and Reconciliation Commission articulated this tension marvellously. To understand the apartheid era, one had to investigate what was effectively another country (Truth and Reconciliation Commission of South Africa 1998, §17):

The way its stories are told and the way they are heard change as the years go by. The spotlight gyrates, exposing old lies and illuminating new truths. As a fuller picture emerges, a new piece of the jigsaw puzzle of our past settles into place.

The political transformation to a democratic South Africa, now reimagined as the “Rainbow Nation”, required a reckoning with a deeply different past. That past was a world apart, a culture of systemic racism and political violence. To understand that political violence was to enter a cultural world governed by other legalities, other moralities, other logics.

Time puts pressure on everything, forcing matter to alter its course continuously. Destination unknown. It is uncontrollable, and it travels at the speed of light. Consider how fast things change, how rapidly and thoroughly cultures transform. The practices, languages, norms, values and truths of one generation often become unrecognisable to the next, condemnable, even. We see this not only across generational cultures (one raised in an analogue world, the other with artificial intelligence) but within sub-cultures, class cultures, and across varying levels of technological and industrial development. A working-class woman in eighteenth-century Amsterdam, an indigenous bureaucrat in colonial Batavia and a queer teenager in today’s Rotterdam all live with different assumptions about the world. Each is shaped by their respective time and immediate cultural reference frame.

Yet this is something we too often forget to problematise, especially in international investigations: that our greatest epistemological and interpretive challenge may well be

anachronism. We treat the past as though it were the present, in anticipation of how the future will judge us. We interrogate the motivations of historical actors with a hindsight that pre-informs us that certain acts must have been intentional and causal: genocide or crimes against humanity. We trace linear plots backwards, reading the past as a conspiracy to murder an exact number of people, then confirm our suspicion with the fact that the crime indeed occurred. But this backward-looking teleology is a mistake, one often uncovered by judges, the triers of fact. History is never a script. If anything, it is contingent. It cannot be pre-determined.

Along with time, we must consider how information and memory weather. Sources (archives, testimonies, institutional records) age. They shift and deteriorate, not only physically but, naturally, through cultural change. To investigate the Armenian massacres of 1915 in the Ottoman Empire through the records of the courts martial, for instance, would require the investigator to learn an altogether different language. A similar challenge arises in Rwanda, which in 2010 changed its official language from French to English. Political landscapes change, and political cultures with them. Consider the Dutch case. Today the Netherlands finds itself piloting the rise of neo-nationalism. Once famed for its liberalism, with The Hague as the “capital of international peace and justice”, the country now exhibits growing hostility towards non-Western immigrants and Islam. A state that once championed human rights has shifted, culturally and politically, towards prioritising national identity over global responsibility.

Institutions change too. Ministries of Colonial Affairs no longer exist. They have become Ministries of Foreign Affairs. Their mandate is no longer to administer overseas territories but to conduct diplomacy, international cooperation and development. That renaming reflects not merely an administrative change but a cultural-moral shift, and it was smoothed by changes in discourse. A new set of norms. A new way of seeing the world. A new lexicon. Such changes raise real challenges when we investigate the past. Are we truly able to understand the functions and worldviews of past institutions, or are we merely interpreting them through a modern frame? The Dutch trajectory illustrates this vividly. Once embedded in the transatlantic slave trade, colonial exploitation and imperial mass violence, the Netherlands now positions itself morally as host to the International Court of Justice (ICJ,) the ICC and a range of other institutions of international justice. This transformation is not simply ideological; it is also epistemological. What was once deemed civilisation was later understood as domination, destruction and deprivation (van Dis 2024). What was once viewed as economically necessary is now ethically reprehensible.

These developments, of norms, morals, laws, manners and languages, are precisely what render the past a foreign country in the cultural sense. A slave trader of the nineteenth century still operated within a legal, economic and social world that regarded human chattel as ordinary commerce, and even received compensation when slavery was abolished in 1863. Today such a person would be prosecuted for crimes against humanity. And indeed, they are.

The laws have changed. But so too have the languages we use, the meanings we attach to words, and the very way we conceptualise justice, as a moral, political and legal category. Transitional justice is also transitional history. The past has its own frame of

reference. And yet it is through this fog of temporal dissonance that both historians and criminal investigators must work. We are, ultimately, interested in stories. Stories about the past, not to be confused with stories from the past. This is the subtle but crucial insight of oral history (Vansina 1985). It brings human narrative into the archive, and into the courtroom, but it is also inherently unstable. Memory is not designed for forensic accuracy. It is designed to cope, to protect, to reframe. Our brains work to forget so that life can go on (Draaisma 2015). Trauma from atrocity further fragments memory, reassembles it, obscures it.

Memory moves in all directions, including fantasy—dreams even. And there lies the paradox. Oral testimony is the best of human sources (for its narrative richness, or because it is the only source) and the worst, for its unreliability and its stubborn resistance to consistency. How many times have we recounted the same memory in different ways? It is shaped by culture, by social role, by audience, and by the needs of the present. Memory is reciprocal, deployed as social currency. What is remembered (or re-remembered, or forgotten) is shaped by how citizens and societies wish to (re)position themselves, in relation to themselves and to others, in atrocity's aftermath. In some post-conflict countries, certain memories are forbidden by law. Testimony is often guided by collective memory and historiographical dynamics, not merely by individual recall. In many cultures (arguably most of the world, the West included) truth is a communal good, not an exclusively private one. This complicates the search for "objective" accounts, because testimony, particularly in transitional-justice settings, responds to shared subjectivities.

New technologies further shape these dynamics. The transition from oral tradition to written record, from state archive to digital medium, from analogue private diary to online social platform, has fundamentally altered the landscape of historical investigation. A culture that documented its atrocities on paper left a different trail from one that recorded—and oftentimes edited—its history on *Facebook*, or *TikTok*. The very format of memory has changed, from state archive to mobile phone, from paper to cloud.

Even the words we use are unstable. The language of the Genocide Convention, for instance, differs slightly between its French and English versions (Schabas 2000). These divergences matter. They can shape prosecutions, verdicts and even our basic understanding of what constitutes genocide. Language evolves, and so do the concepts embedded within it. What once described a common practice may now denote a crime. Words that once signified order may now imply repression. Legal frameworks are in constant flux. Crimes such as crimes against humanity and genocide acquired a name and a legal codification only in the late nineteenth and early twentieth centuries. International law, once shaped by Grotius and his like, governed an illiberal international order that legitimised such atrocity in the Orient. Liberal international criminal law, outlawing it, is still relatively young. Yet we often apply these categories retroactively to earlier events, ill-informed about their epistemological histories, navigating, almost blindly, the tension between historical context and normative judgement. This retroactivity is ethically charged and legally delicate. We want to name and condemn atrocity, but we must take care not to overwrite the past with our present moral grammar, while remaining able to comment on that past from today's vantage.

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Thus, when we investigate mass atrocity, whether as historians, prosecutors or truth commissioners, we must do so with cultural caution towards other times. We must recognise the contingency of our frameworks, the temporality of our truths. We must acknowledge that they too are fleeting and will in time be outdated. The past, indeed, is a foreign country. But we can travel there, cautiously. We can learn its customs, its languages, its institutions, its moral geographies.

#### **4. Foreign countries are like the past**

Our investigative challenges extend further than time. While the past is a foreign country, foreign countries are like the past: they also do things differently there. When we step across borders, into another culture (whether geographically or historically, for different countries have passed through different times), we are engaging with difference. To travel is to be at once anthropologist and historian, to encounter new people and new stories. The temporal becomes spatial; the spatial, temporal. To work in investigation across cultures is to engage with this dual foreignness of time and space. It requires transposition. Historians and investigators are tasked not merely with gathering facts, but with understanding how those facts are lived, understood and framed. We cross borders as we travel time. All the while, culture governs every question and every answer. To investigate international crime is to make the case for cultural understanding, to reckon with the legal, linguistic and communicative cultures of another society as carefully as with its history. It ought to be our culture to be receptive to culture.

But the challenge does not stop at the border. It is embedded in the assumptions we carry within our disciplines, and into the field. Legal cultures vary widely across the globe. In some places law is a moral constellation; in others it is an instrument of repression. What one legal system sees as a confession, another may see as coercion. Even within the supposedly universal framework of international criminal law, fractures appear. Many countries exercise universal jurisdiction, but almost all have furnished it according to their own standards, desires and possibilities (Clarke 2009). Different histories tell us how things were done differently across the world. One general once remarked to me that child-soldiering had been the norm in Central Africa for nearly a century (introduced, he said, by the Belgian colonisers); local attitudes to the phenomenon shifted only in the 1990s. Faced with such context, prosecutorial investigators, no less than defence counsel, require historical and cultural literacy. Was there, given the circumstances of time and place, criminal intent at play? For what seems reprehensible to one observer now may have been normative to another, elsewhere. This is the key challenge of globalised justice and investigation. But it is not the only one.

International investigations also confront vastly differing relationships to authority. In many parts of the world the police are not neutral enforcers of justice but feared instruments of tyranny. A Syrian witness may hesitate to speak to international investigators because, in their experience, investigators are not allies: they come, they take your information, and they lock you away. Even Luis Moreno-Ocampo, the ICC's first chief prosecutor, famously distrusted the police, preferring to work with lawyers and NGO veterans. He understood (instinctively, perhaps) that in certain contexts the very presence of a uniform can produce silence rather than speech.

In many cultures truth is not individual but a collective good. The Western investigator, trained in linear narrative and personal confession, as is typical of “I-cultures”, may be baffled when no one speaks plainly, or when hearsay is experienced as something witnessed oneself. Plain speech can be perilous, as it is in many corners of the world. In “We-cultures”, truth is mediated socially, diffused through ritual, understood reciprocally. It is encoded in social conventions that emphasise shared responsibility, both to disclose and to keep secret. To make truth personal may, in some cases, be to assault the group. To speak too directly may be not merely rude but damaging. What looks like obfuscation may be diplomacy. What sounds like contradiction may be an act of care. Hierarchy, too, is an obstacle to truth-telling. In Rwanda, for instance, truth must protect as well as reveal. This epistemological divide, between “I-cultures” and “We-cultures”, is a great challenge in international investigation. It touches everything: testimony, documentation, legal interpretation. And it demands cultural sympathy (compare De Bruïne *et al.* 2023). Rapport, too, is culturally calibrated. What builds trust in a low-context setting may corrode elsewhere. A singled misjudged question can quietly dissolve the very relationship on which disclosure depends (Hope *et al.* 2026).

Truth comes wrapped in words, and words do not simply refer. They construct. The building of narrative differs from place to place. The difference exists already between the Dutch and the Flemish. Both speak Dutch, but they speak it very differently. It matters who speaks, where and in what context. One tongue is not the other. What appears to some as silence may in fact be a carefully coded form of speech—or we assumed that it was, but then it turned out to be something different: something we assumed other cultures did (Drenk *et al.* 2026). Not every language has a direct equivalent for rape, or for ethnic cleansing. Investigators must navigate not only dialects and idioms but conceptual frameworks. Here meaning is often improvised, negotiated. Even fluency cannot guarantee understanding. A Chadian witness may speak French, but not necessarily the same French as the Guadeloupean investigator. A young Afghan may speak fluent American English, but what is lost in that very fluency? What tales are truncated, reshaped or withheld, simply because they do not fit the borrowed tongue?

For example, the Dutch, direct to a fault, often begin with “but”, challenging, interrupting, seeking the counterargument as an acceptable way of conversing. In Rwanda this lands like a slap. There, truth emerges not through confrontation but through careful navigation; it must be earned. And time, in many societies, is a currency. In Sierra Leone, after the war of the 1990s, people preferred to look forward, not as evasion but as ethic. Why dwell on an awful past when the present is already hard enough? Many were retraumatised by Fambul Tok, a transitional-justice effort to talk collectively about the dirt of war. In the DRC, as in many African countries, Western NGOs are viewed as neo-colonial intrusions: they do not listen, people say; they extract and exploit. In Afghanistan, forty years of intervention and war have instilled a deep scepticism towards foreigners. Trust is rare. Stories are withheld. Even when shared, they are filtered, shaped for the outsider’s ear. Such observations are not trivial. To collect testimony without cultural understanding is to collect noise. It is to listen to evidence in a loop that traps itself. To read documents without knowing their institutional context is to read fiction. And to impose one’s own framework upon the complex realities of mass violence is deformation.

Internationalised legal frameworks carry many cultural assumptions that demand immersion in specific cultural settings. The terms “genocide” and “crimes against humanity”, for example, presume a kind of universality: acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such; or acts targeting civilians on political, cultural, gender or other impermissible grounds. But how these acts are seen, remembered and explained depends on local historical tradition, historical languages and historical worldviews. The Genocide Convention’s social categories largely reflect the colonial order of the 1940s. Who, then, in the decolonised world of the 1990s, is the group? What is the group? How did it come about? Who decides who belongs to which group, on what conditions, and is that decision generally shared? International law, a handful of judgements aside, does not even define nationality, ethnicity, religion or race; the last, in many parts of the world, is held to be a racist and therefore illegal social category. One cannot properly investigate the genocide against the Tutsi in Rwanda without knowing its (pre-)colonial history (the meaning of “Hutu” and “Tutsi”), its linguistic nuances, its communal modes of memory, and the lived experience of belonging to one or the other (Mamdani 2001). These are not decorative details, *couleur locale*. They are essential epistemic tools. They tell us how people (witnesses, in fact) understand truth.

If investigating abroad is fraught with cultural peril, investigating at home is no less complex. And this works vice versa. Familiarity, paradoxically, breeds obvious blindness. We believe we know a culture because we belong to it. But belonging is not knowledge; it is merely proximity. Documents (even when we understand the language in which they were written) are, like testimonies, not about the past but from the past, from another world. They carry its biases, its omissions, its evasions. In the historical and the contemporary world alike, every institution has its own culture. Ministries operate in silos: what one deems crucial, another disregards. The military has its codes, rituals and taboos, and these differ massively from country to country. Intelligence services live in the shadows; their job is to obscure. NGOs, often idealised as independent (or framed as a cultural entity in themselves, “civil society”), are themselves shaped by external funding, internal politics and performative reporting. These layered institutional cultures mirror the wider cultural terrain we must canvass.

Globalisation tempts us with the illusion of sameness. Americanised English is everywhere, smartphones proliferate, legal templates are standardised. But this is a veneer. Cultural differences persist, and in today’s neo-nationalist North America and Western Europe, often more stubbornly than before. At the micro-level, these differences shape every interaction. Historians and investigators, of all people, must resist the flattening impulse, the urge to delocalise. To neglect the cultural substrate of meaning is to exclude. We must take care not to replace context with coherence, not to impose neat timelines where there are none, not to favour narrative closure while the story is forever ongoing.

If we are to learn anything from our work, whether in Guatemala or Gaza, it must be that truth exists only in its context, even as it always transcends it. We must know how it was understood then, how it is remembered now, and how we, as outsiders, might be reshaping it anew. Culture, then, is not an obstacle to knowledge. It is its condition. Without it, no testimony is legible. Whether we wear the robes of the judge or wield the

pen of the historian, we must proceed with care, not only for the facts, but for the worlds in which those facts were born.

## 5. Towards international multiculturalism?

Atrocity investigations carry temporalities and traditions as distinct as their languages, and as divergent as their landscapes. To work across legal cultures is to travel in time. Not only across eras and nations, but across legal imaginaries. The adversarial system of the common law and the inquisitorial system of the civil law are themselves epistemologies, modes of inquiry, worldviews. To traverse them (as legal investigator, as historian, or as a hybrid in between) is to step into seemingly competing models of what is expected of truth: how it is sought, how it is found, and what counts as truth at all. How, then, are we to investigate towards international criminal trials in a world where law is not one but several? Where the systems that claim to uncover “what happened” do so in different ways, at times even with different objectives? Where the methods of fact-finding, from deduction to induction, are shaped by legal tradition and societal demand? As we move into a future of trials concerning crimes in ever longer pasts, in places seemingly closer yet still far away, these questions become ever more pressing.

Legal systems, like historical writing, are steeped in the aura of objectivity. Their rituals, their vocabulary, their very architecture are designed to suggest neutrality and precision: a “culture of formalism”, a faith in procedure and technical expertise that can at once discipline power and disguise it (Koskenniemi 2001). But these are not neutrality terrains. Both are constructed domains, ultimately shaped by ideology, culture and power. And they answer to varying societal demands: justice as spectacle, or justice as inquiry. Law, like history, does not merely find the past; it constructs it. It selects, organises, narrates. It chooses what story is told, and whose, and how, and where, and to whom, and when it is to be told, and when not. This is nowhere more evident than in the design of the courtroom. The courtroom is a theatre of thought, an arena of competing narratives; a jury chooses between the stories it finds most believable. In the prosecutorial system everything centres on the accusation: the arguments in favour, on the one hand, and the raising of doubt, on the other. Prosecutor and defence are the principal actors. The judge is a silent observer, the arbiter of procedure; the bench acts as jury. At the ICC, the legal representatives of victims, an extended arm of the prosecution, bring in emotion. Truth is not so much sought as performed. Witnesses are cross-examined not for context but for contradiction. The past is divided into admissible and inadmissible fragments, contested or agreed fact. It is a model that privileges winning over understanding, and political narrative, the fight against impunity, over nuance. The Court’s everyday practices have themselves become an object of ethnographic study (see for example Meierhenrich 2013).

At the ICC, adversarialism towers over the trials. Indeed, the Court is trapped in a structure that may be ill-suited to its mission, and contrary to what it might meaningfully do. That is to complement national investigations and trials in situations where these are unavailable or unwanted. Because of the Court’s design and established practice, its services always come as a full package, not just truth-finding through investigation, nor just trials, but always both. Investigations serve prosecutions, not the truth. This is because the Court has no independent investigations department of its own, one that

could, for instance, gather potential evidence for future national cases, after war or after regime change. Everything is vested, and thus congested, in the Office of the Prosecutor (OTP). Consequently, the prosecutor wears a variety of hats, each with a different brim: human rights advocate, watchdog, diplomat, arbiter, prosecutor, and investigator of both incriminating and exonerating evidence. The same body that embodies the fight against impunity is required to scandalise suspects, to charge, to prosecute, to construct the case, to frame the case theory, to argue it, and, at the same time, to prove it and to disprove it. To summarise it thus is to expose the problem. Delegating so many responsibilities to a single organ creates insoluble tensions and a structural leaning towards problematic practice. Evidence is gathered to confirm charges, allegations and suspicions, not to explore possibilities, not to investigate from crime scene to suspect. The cases of Laurent Gbagbo and William Ruto, both of which I attended, lay bare the cracks in this systemic flaw. Charged before proper investigation, on hasty cases built from NGO reports, media articles and elusive witnesses, both prosecutions crumbled like soft biscuits under judicial scrutiny. The evidence was so confused, and the case theory so thin, that neither man had even to put on a defence. In both cases the prosecutor's contradictory functions clashed. The result was nothing. No conviction. But also no investigative record of what had actually happened, to whom, during the political violence in Kenya and Côte d'Ivoire.

For historians called to testify in these settings, this can be a deeply uncomfortable position. In many cases at the ICC, including Gbagbo, context experts (historians, journalists, anthropologists) have declined OTP requests to testify on its behalf. Some who accepted then complained, on the stand, of being used as proxy investigators and litigators (also see Wilson 2016). Many colleagues at universities and research institutes are, indeed, forbidden to testify on behalf of prosecution or defence, because we risk being invited only to substantiate a particular theory or insight. In the adversarial setting, our craft, grounded in synthesis and structure, is mutilated by a system that demands polarity: guilt or innocence, fact or fiction (Evans 2002). And so the adversarial system, practised in "common-law" cultures, in its very design dismembers the complexity that historical investigators seek to preserve.

There are solutions, of course. The bench may call on expertise of its own, or (as happened once, when anthropologist Alex de Waal testified at the ICC as a "joint expert") the parties may agree to call an expert jointly. These moves signal a leaning towards the inquisitorial system, practised in "civil-law" cultures, which offers something different (again, not perfect, but more familiar to the historical investigator). Here the prosecutor does not control the investigation towards a prosecution. Here, one awaits the judicial investigation. Here the judge is not a passive referee but an active investigator, collecting evidence holistically, *à charge* and *à décharge*. The judge does not wait for the parties' evidence to arrive; the judge seeks it. Interviews are conducted, records examined, sites of violence visited. The courtroom is less a battlefield than a laboratory of inquiry. In the Netherlands a judicial investigation—like in the case of N.—is called a "pre-investigation", and the trial itself an "investigation in court". There are still charges, still defences, but the goal of the trial (beyond the defence's pursuit of an acquittal and the prosecution's pursuit of a fair conviction) is not victory *per se*. It is a collective process of reviewing evidence and forming judgement. Throughout the investigation, and during trial, the judge, as trier of fact, oversees the process of truth-

finding and truth-ascertainment. Many specialists are involved in the pre-investigation, often history professionals. In countries with inquisitorial systems, such as the Netherlands, this collaboration has become institutionalised.

Since 2003 the Netherlands has quietly developed a busy and professional practice of universal jurisdiction, rooted in multidisciplinary inquiry. It has opened investigations in more than a dozen countries and conducted over two dozen trials, spanning Indonesia in the 1940s; Ethiopia in the 1970s; Afghanistan, Iraq and Suriname in the 1980s; Liberia, Guinea, Congo, Rwanda, Bosnia and Sri Lanka in the 1990s; Georgia and Ukraine in the 2000s; and Eritrea, Libya, Syria, Iraq and the global Islamic State in recent years (Bouwknegt 2019b). Headquartered in The Hague, the international crimes chambers of the district and appeals courts have jurisdiction over genocide, crimes against humanity, war crimes, aggression, torture, enforced disappearance, piracy, international terrorism and related transnational crimes. While trial judges examine the evidence in court and discuss it in detail with the defendant, and at times with victim-parties, the actual pre-trial investigation is conducted by the cabinet of the investigative judge. The cabinet, in turn, oversees the targeted investigations carried out by the specialised public prosecutor for international crimes, on the one hand, and by the defence, on the other. Both parties relay their tactical and technical requests to a professional unit of the national police, the international crimes team, who trace witnesses, conduct first interviews and collect evidence. As the investigation progresses, the investigative judge conducts the formal hearing of witnesses (often in situ, always in the presence of prosecution and defence, sometimes joined by a psychologist) and prepares the dossier for trial. The investigative judge does not judge; the judge collects all the available evidence, both incriminating and exculpatory.

Over the years, the cabinet and the trial chambers have developed specific processes for reviewing foreign and trauma-affected testimony. Such cultural awareness runs throughout the Dutch system. Scientists play crucial roles at the prosecutor's office, and the police unit, the *recherche*, is composed largely of trained historians, anthropologists, linguists, area specialists, former journalists and ex-military personnel. While in the service of the judiciary, the prosecution and the defence, the team can also act independently, following existing leads, pursuing criminal complaints, cross-checking NGO reports and media. Whatever the trigger, the process is deeply interdisciplinary.

The Dutch approach to universal jurisdiction (which has yielded more investigations, more trials and more convictions than its international sister, the ICC) is also more inquisitorial and more interdisciplinary. While increasingly influenced by the adversarialism of its international counterparts, it echoes the methods of truth commissions. This was especially so in the large MH17 trial which, in the absence of the accused, was about sharing facts with the victims. A trial can, in this way, become a vehicle of truth as much as of verdict, as, in their very different registers, did Argentina's 1985 'truth trial' of the juntas and the Ethiopian Special Prosecutor's Office proceedings against the Dergue, each of which set down a public record of the past even as it judged it (Bouwknegt and Metekia 2022). In such settings testimony is not cross-examined but heard from different perspectives. The investigative goal is not conviction per se, but truth-finding and the exposure of fact. Truth is built not only from conflict but from

accumulation, bringing together different versions. It is messy, yes. It is complex. But it is, in many ways, more human.

None of this is a panacea, and it would be naïve to pretend otherwise. Take the wave of Syrian cases now before European courts: at Koblenz in Germany, in Paris, and in The Hague, where Dutch judges have convicted men such as Mustafa A. of the pro-Assad Liwa al-Quds and, more recently, the former interrogator Rafiq al Q. of crimes against humanity. These prosecutions rest, as they must, on the testimony of survivors recounting torture across barriers of language, trauma, class and time. The cultural and evidentiary problems rehearsed in this essay do not dissolve because the system is inquisitorial. And yet the architecture matters. Where the judge leads the investigation and gathers evidence *à charge* and *à décharge*; where a specialist *recherche* of historians, linguists and area experts prepare the witnesses and the context; where foreign and trauma-affected testimony is weighed against developed protocols rather than merely won or broken in cross-examination—there, at least, the machinery is built to take culture and history seriously, rather than to treat them as obstacles to a verdict. The difference is not decisive. It is a difference of orientation.

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Could international criminal law, as part of the wider realm of transitional justice, learn from this? And if so, what? The answer may lie in how we define its purpose. Is it to name and shame, to punish the guilty, or also to understand the nature of mass violence, and so address its causes? Is it to deliver verdicts and set moral boundaries, or also to deliver meaning? If the former, the adversarial model suffices. If the latter, something else is needed: a cultural jurisprudence. One that does not flatten difference but listens across it. As international crimes become more remote in time and place, these questions sharpen. Investigators must be trained not only in law but in history, memory and culture. They must know how to speak with trauma survivors, how to interpret silences, how to distinguish forgetting from repression. Good interviews are acts of empathy as much as of inquiry; the conditions and orientations under which they take place therefore matter. What may be needed is less a catalogue of culture-specific rules than a change of disposition, a “cultural humility”—a posture of openness, self-scrutiny and respect that travels across cultures better than any checklist (Vredeveltdt and Ferra 2026).

The deeper the need is for continuous rethinking, not only of practice, but of philosophy and of human relations. The future of international investigation may lie in professionalisation and standardisation, yes, but its power is vested also in diversification, in adapting to the unique circumstances of each inquiry (Vredeveltdt *et al.* 2024).<sup>3</sup> Crimes today are increasingly digital. Evidence is posted, not remembered. It is produced by artificial intelligence and manipulated—digitally fantasised—in myriad ways. ICC judges themselves voice unease about the weight, provenance and potential bias of such user-generated material, and about adjudicating in an age of synthetic media (McDermott *et al.* 2026). Investigators must adapt. And yet the migration from the witness to the document and the data point does not retire the problem of culture.

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<sup>3</sup> *Training programme: cross-cultural communication in investigative interviewing contexts. Beyond WEIRD Witnesses: Eyewitness Memory in Cross-Cultural Contexts.* Paper presented at: *Opening the Black Box of International Criminal Investigations: Challenges of Culture and Practice.* Oñati International Institute for the Sociology of Law, June 2024.

Cultural competence remains a precondition of accurate and legitimate verdicts, whatever the medium of proof (Combs 2026). An independent, impartial and permanent investigative institution (in the image of the investigative bodies for ISIL, Syria, Myanmar and Ukraine) could offer one way forward. Such an institution, broken away from the highly politicised criminal-justice jurisdictions like the ICC, could better guarantee the integrity of inquiry. It would recognise the partiality of every legal system and the variety of situations it confronts, and blend the best of each, always led by the evidence. It would separate the search for facts and the analysis of evidence from the strictly prosecutorial will to convict and punish, allowing inquisitorial methods and, with them, a more nuanced approach to context, so that mass atrocity might be seen not only as individual crime but as structural failure, as cultural trauma, as collective rupture. Such a system would not erase law but enrich it; it would, ultimately, contribute a multidimensional and multicultural jurisprudence of the past to our broader knowledge of mass violence, in the service of various societies, not only the “international community”, and of local scholarship.

Such reflections might lead us to see international criminal law, and its encompassing culture of international investigation, not as a universal science but as a cultural practice in its own right, and therefore as something to be reflected upon. This requires us to learn and to listen—not only to witnesses, not only to scholars, but to legal systems themselves, and to the time and space in which they operate. From the International Military Tribunal for the Far East to the Extraordinary Chambers in the Courts of Cambodia (ECCC), we must hear the adversarial and the inquisitorial. We must hear the cultures that shape them, the histories they carry. And we must let those voices shape our investigations, our trials, our judgements. None of these crafts holds the whole truth. The lawyer, the historian, the anthropologist, the psychologist, the police investigator, the survivor who testifies, each knows something about atrocity that the others do not, and each is the poorer for working alone. If there is a single plea in these pages, it is that we lean on one another. It is that truth-finding and the ascertainment of fact are collective labours. That is served best when our disciplines are guests in one another’s houses rather than rivals for the same ground. The past is a foreign country. So is international criminal justice, and the investigations it brings with it. But if we learn the languages, if we respect the customs, if we walk the terrain with humility and care, then perhaps justice might be not a performance but a reckoning grounded in cultural epistemology.

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