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Abstract

Much ink has been spilled over the years on the portrayal of Africa and Africans in the second album on the adventures of Tintin, *Tintin au Congo*. Written by Hergé in the early 1930s, the book was revised many times in an effort to respond to critiques that it was an apology of colonialism.² *Tintin au Congo* tells the story of the encounter between a young, white European and Africa, as imagined by a Belgian artist living in Brussels in the inter-war period; as such, we can understand Tintin as a depiction by its author of a particular vision of Africa and of a certain understanding of Western presence on the continent.

Magic and Modernity in *Tintin au Congo* (1930) and the Sierra Leone Special Court

René Provost¹

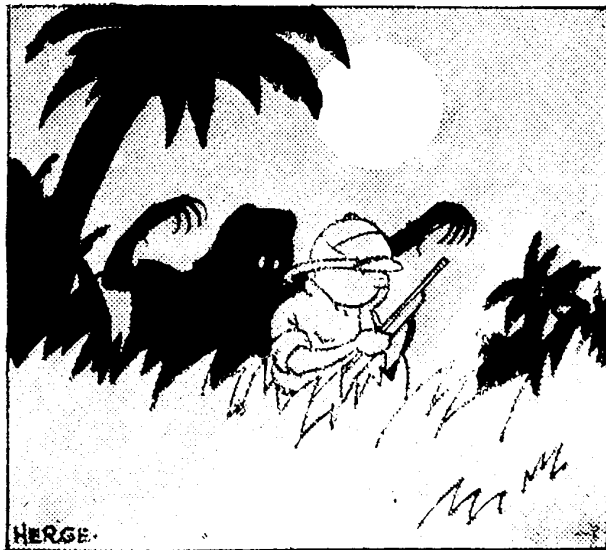


Figure 1: from *Tintin au Congo* (Hergé 1930)

Introduction

Much ink has been spilled over the years on the portrayal of Africa and Africans in the second album on the adventures of Tintin, *Tintin au Congo*. Written by Hergé in the early 1930s, the book was revised many times in an effort to respond to critiques that it was an apology of colonialism.² *Tintin au Congo* tells the story of the encounter between a young, white European and Africa, as imagined by a Belgian artist living in Brussels in the inter-war period; as such, we can understand *Tintin* as a depiction by its author of a particular vision of Africa and of a certain understanding of Western presence on the continent. There is also an encounter in the work of the Special Court for Sierra Leone (SCSL), this time between international criminal law and the grim realities of the Sierra Leonean civil war. The judgments of the SCSL constitute, in their own right, a depiction. The depiction this time portrays the realities of conflict in Sierra Leone and the court's understanding of its own role in that conflict. In these two narratives, despite their very different origins, modernity and primitivism intersect and interact; in both cases, the narrator uses magic to decode African society and make it comprehensible to the imagined reader. In so doing, the narrator constructs the image of his own identity: in one case Belgian, European and civilized, and in the other, universal and rational embodied in international criminal law.

1 Mysticism and Modernity in *Tintin au Congo*

Its portrayal of Africa as completely permeated by colonialism explains why *Tintin au Congo* has sometimes been condemned as racist. African people are variously depicted as unable to speak correctly ('me so tired'), convinced of the physical and intellectual superiority of Westerners ('Them say, in Europe all young white men is like Tintin'), unable to understand foreign objects (the Babaoro'm king who uses a rolling pin as a sceptre), and wanting nothing more than to conserve their subaltern colonial status (teaching school children: 'today, children, I will tell you about your country: Belgium!'). The purpose of this essay is not to revisit

these problematic depictions which, for the presumed amusement of the reader, seek to highlight the enormous cultural gap between Tintin and the Congolese. Moving beyond this discourse, Hergé also evokes, at various occasions, magic as a symbol of the backward nature of African society. We can identify three variants of this encounter between magic and modernity in three separate episodes of *Tintin au Congo*: magic is used as a lie used by local elites to control indigenous people, magic is used as a tool to further colonial domination, and magic is used as a barrier beyond which lays unattainable modernity. As we will see, the interaction between mysticism and modernity in *Tintin* is not without striking parallels to that in the jurisprudence of the SCSL.

The first evocation presents magic as a false belief and as a tool in the hands of elites that allows them to manipulate a gullible population. We see this with Tintin's arrival in the Babaoro'm tribe: Tintin is welcomed by the king, who disappears for the rest of the story and is replaced as an authority figure in the tribe by the witchdoctor, Muganga. This linking of power with mysticism is also present in twentieth century anthropological literature on African societies. As seen in classic texts by authors such as Max Gluckman (1955) and Edward Evans-Pritchard (1937), occult power intersects with and is necessary for political power; witchcraft constitutes an important, if not the most important, vector of social ordering.

In Hergé's story, the witchdoctor is displeased by Tintin's arrival in his tribe. Tintin managed, bare-handed, to tame a lion which had scared away all the warriors. This threatens the sorcerer's control of the tribe because Tintin's powers are not connected to the occult. Muganga, who has allied himself with Tom, an evil white man who wants to get rid of Tintin, decides to use his 'magic' to unjustly accuse Tintin of having defiled the tribe's fetish, leading to the latter's capture. This accusation effectively writes Tintin's death sentence. Hergé thus presents magic as trickery, diverted from its usual function in the tribe in order to serve the personal interests of the sorcerer and the evil white man, and used to manipulate the natives. Tintin nevertheless succeeds in escaping his captors and overhears a conversation between the witchdoctor and the

evil white man in which they boast of having planned everything: 'And I, witch-doctor of Babaoro'm, can keep they ignorant and stupid people in my power' (Hergé 2010: 25). Fortunately, Tintin had brought a video camera and a phonograph with him, allowing him to film everything and later show it to the Babaoro'm warriors. The warriors feel foolish for having been tricked by Muganga. The recording also makes it clear that the witchdoctor himself does not believe in the magic he claims to control: 'Ha! Ha! Ha! ... If they only knew... How I make fun of they and their stupid fetish!' (Hergé 2010: 26).

Modernity, as represented by the western scientific tools that permit objective access to the truth (the camera, the phonograph), defeats the supposed magic, an obscurantism hijacked by elites to enslave the ignorant population. Traditional authority, represented by the witchdoctor, consequently finds itself replaced by a new, white, and modern authority in the person of Tintin, whom the warriors proclaim the new Chief of the Babaoro'm. This modernity is translated as a source of wisdom (Tintin makes a Solomonic judgment to put end to a dispute by splitting a hat in half) and of quasi-miraculous scientific powers (Tintin used quinine to instantly heal and chase what the sick man's wife calls 'bad juju come to live inside him') (Hergé 2010: 28). We could also read this last vignette as a metaphor in which mystical beliefs are an illness for which science and knowledge are the remedy (Ndong 2005). In short, European reason defeats African obscurantism, to the betterment of all involved.

A second episode in *Tintin au Congo* invokes magic, but it does so in a very different way with Tintin as the one who take advantage of the Africans' risible beliefs in supernatural powers. In this case, modernity exploits mysticism to serve its own ends, identifying it as a source of power that can entrench Western authority in the tribe and supplant the power traditionally held by witchdoctors. Following their expulsion, the witchdoctor and Tom the evil white man use deception to trigger a war between the Babaoro'm and a neighbouring tribe, the 'M Hatuvu. The king of the 'M Hatuvu is confident that he will be able to easily defeat his enemy thanks to his army which has been 'trained and

equipped like a European army' (Hergé 2010: 29). European influence is visibly rendered by the warriors' bearskin hats and blunderbuss on wheels which they refer to as 'heavy artillery'. Tintin positions himself in the open so as to provoke the enemy. Although they shoot multiple arrows, the 'army' never manages to hit him because the arrows are all redirected toward a tree behind which Tintin has hidden a powerful electromagnet. Thus, it is the magic of modernity which provides the warrior Tintin with an invincibility against the weapons of the enemy. The warriors mistake modernity for magic because it is exercised in a manner that is invisible and incomprehensible to them.

Witchcraft is a recurring theme in the context of armed conflict in Africa and, as we will see, a theme that is also present in the jurisprudence of the SCSL. More generally, we find in colonialism the practice of appropriating mystical and far-fetched beliefs for the purpose of serving western interests. For example, 'white' tribunals made indigenous witnesses swear on potions that indigenous peoples believed had supernatural powers. In Sierra Leone at the beginning of the twentieth century, a British court prepared a mixture of salt, pepper, ashes and water every Monday; witnesses drank this potion while promising to tell the truth or risk sudden death by snake bite, drowning, or similar misfortune (Beatty 1915: 25-26).

In Hergé's story, faced with the impossibility of hitting Tintin with bow and arrow, the 'M Hatuvu attempt to shoot him with the help of their 'heavy artillery', the blunderbuss. Despite using a technique modeled in the European instructions (one positions the instrument at precisely a range of 43.5 metres), the blunderbuss explodes on the shooters instead of reaching Tintin. This failure completes the metaphor of modernity as not only incomprehensible to the indigenous people, but also beyond their reach. It also demonstrates that any attempt to appropriate modernity and use it against the colonial power is doomed to fail and ultimately harm the indigenous population. Once defeated by the magical powers of civilization, the 'M Hatuvu fall prostrate before Tintin, calling him a 'great juju man', and proclaiming him king of their tribe. They leave the scene singing, happy in their subjugation.

The third and final use of witchcraft in *Tintin au Congo* demonstrates the unattainable nature of modernity; the magical powers of the Africans are shown as no match for modernity, and in fact ultimately reinforce their inferiority. In the story, following the thwarting of their attempt to provoke a war between the two tribes, Muganga the witchdoctor and his white collaborator learn that Tintin plans to spend a night on the outskirts of the village, on the lookout for a leopard. The witchdoctor then reveals that he is a member of a secret society, the *Aniotas*. Assassins who dress as leopards in order to kill their victim, the *Aniotas* disguise themselves by attaching iron claws to their hands, covering their body in leopard skin and using a stick whose carved end leaves the paw-prints of the animal. As the story unfolds, the phenomenon of the leopard-men is reduced to another attempt by indigenous elites to exploit the naïve beliefs of the general population to ‘fight the white man’s civilising influence’ and also to solidify their hold on power (Hergé 1973: 236). Unsurprisingly, Tintin easily thwarts the plot hatched against him to unmask – figuratively and literally – the witchdoctor, and, in the process, actually saves the life of the witchdoctor who declares himself Tintin’s slave.

The story of the leopard-man has a basis in fact: leopard-men and, to a lesser extent, crocodile-men and monkey-men, terrorised a region of Africa at the end of the nineteenth and the beginning of the twentieth centuries. Often associated with the fear of cannibalism, this practice for decades camouflaged murders thought to be the work of wild animals. Colonial officials in the Belgian Congo, Sierra Leone and other colonies reacted to the rise of these assassins at the beginning of the previous century by a campaign to eradicate the leopard-men, whose activities destabilized the territory and thereby threatened colonial authority (Kalous 1974, Beatty 1915, Joset 1995).

It is important to highlight the extent to which, during the last century and a half, the fear of leopard-men occupied a central place in African mysticism. Beyond the brotherhood of assassins wearing leopard skin, as evoked by Hergé, we also see a widespread belief that some witchdoctors were able to project their spirit into the body of a real

leopard in order to control it and use it to kill people. The victims were not only leaders who had been won over by the cause of colonialism, but also anyone whom the sorcerers wanted to get rid of or whose death would undermine or increase the authority of a local chief. The ritual of murder by the leopard-man would bring power and riches to its sponsor. Anthropological studies have linked these beliefs to the disappearance of the Atlantic slave trade, which indigenous people widely associated with a Western cannibalism in which the captives were taken overseas to be eaten (Shaw 1996: 48).

Many have suggested that murder by the leopard-men constituted another form of consumption, because the word 'to eat' in many dialects evokes more generally the ritualistic appropriation of the power contained in the body of another person (Shaw 2001: 59). Mystical beliefs were used as evidence of the primitive nature of African society at the time, serving to justify colonial expansion. Colonialism was thus aimed at civilizing the population and also at liberating Africa from the yoke of false beliefs. In *Tintin au Congo*, colonialism is needed as the new truth, symbolized by the last image in the book where a warrior comes to kneel before fetishes in the image of Tintin and Milou, who have replaced the magic fetish that the tribe had venerated before.

The encounter between mysticism and modernity in *Tintin au Congo* marks a well-defined line between these two universes. This line affirms ontological distinctions between fact and non-fact, truth and fantasy, civilization and barbarism. One could say that the famous 'clear line' developed by Hergé to structure his illustrations is meaningful not only formally but also conceptually. The line dividing witchcraft and modernity is equally clear; the two cannot co-exist. One effect of modernity's rational discourse is to make any consultation of the occult illegitimate; relying on the occult is like relying on a lie and evidences gullibility, if not madness. We would expect therefore that the juridical discourse at the heart of international criminal law would subscribe to this dominance of rational thinking. Instead, as we see in the judgments of the SCSL in the case of *Fofana et Kondewa*, it is not always as easy as Hergé makes it seem in *Tintin au Congo* to draw

a fine line between mysticism and modernity.

2 The Limits of Rational Discourse in *Fofana and Kondewa*

Allieu Kondewa was one of the defendants in the trial of the leaders of the Civil Defence Forces (CDF) before the SCSL. He was accused of eight counts of war crimes, crimes against humanity and other serious violations of international humanitarian law (*Prosecutor v Moinina Fofana and Allieu Kondewa Trial Chamber* - hereafter *CDF Trial*). The charges against Kondewa are unique because he never personally committed any of the crimes of which he is accused. Attributing international criminal responsibility on the basis of the responsibility of superiors or commanders, or through application of the doctrine of aiding and abetting, is not uncommon; in this case, however, Kondewa did not hold a political or military role of the type that normally attracts responsibility for the act of another. Kondewa was instead the witchdoctor for the CDF, officiating initiation ceremonies for new fighters in the secret society of Kamajors and administering lotions and potions to make fighters invisible and invincible to bullets. The SCSL was therefore called to pronounce upon the legal implications of occult magical rituals in international criminal law. This exercise provoked a lively debate amongst the judges regarding the place of magic in the law. This debate reflects the ambiguous character of the interaction of legal discourse, an emblem of modernity, and certain mystical beliefs that remain present in Africa. We see here one of the themes that inspired Hergé in *Tintin au Congo*, the encounter between the universalizing West and black Africa. Contrary to *Tintin*, which was a monologue by Hergé, the judgments of the SCSL in the *CDF Trial* are a dialogue between authors with contrasting perspectives. Thus, the jurisprudence of the SCSL offers a real site of encounter, where differing visions of the nature of law and its conjugation in different cultures are articulated. After briefly presenting the foundations of the jurisdiction of the SCSL, we will highlight how the Trial Chamber and the majority of the Appeals Chamber reduce facts through law.

We will then contrast this with the sensational dissent by the Sierra Leonean president of the Appeals Chamber, for whom the law must separate itself entirely from a discourse based on false beliefs.

2A General Context

The civil war that raged in Sierra Leone during the 1990s implicated, on both sides of the conflict, diverse armed groups which committed large-scale abuses of all kinds. The rebel groups Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC) are generally blamed for the worst abuses, including countless civilian executions, sexual violence and slavery, amputations, kidnappings, forced marriages, theft, and destruction of property. That said, groups allied with the government of Sierra Leone, like the Civil Defence Forces (CDF), also committed grave violations such as the recruitment and use of child-soldiers and torture. Even the force sent by the regional economic organisation, ECOWAS, has faced serious accusations of having committed extrajudicial executions of suspects (Horvitz & Catherwood 2006: 136-137). In the media and in reports of international observers the conflict was generally portrayed as marked by extreme, unrestrained, even irrational violence in the hands of children and irregular fighters all of whom were acting under the influence of diverse drugs. More specifically, this media representation revealed a Western fascination for the profoundly bizarre superposition of modern warfare with ancestral practices and beliefs: the image of a cannibal warrior covered in talismans, fighting with an AK-47, evokes an ahistorical primitivism that is incompatible with modernity (Shaw 2002: 82, Anders 2011: 940).

After many failed attempts to end the conflict, the Government and the insurgents signed a peace agreement in Lomé in 1999, the terms of which required the insurgents to turn over their weapons in exchange for a role in the Government and an amnesty for all crimes committed during the civil war. The agreement called for the creation of a Truth and Reconciliation Commission, which required the presence of a large contingent of international peacekeepers. It became rapidly

clear to representatives of the international community that the amnesty declared by the Lomé Agreement was an obstacle preventing them from addressing the root causes of the conflict in Sierra Leone, thereby threatening the peace that had been so difficult to achieve. Following negotiations between the Government of Sierra Leone and the United Nations, as well as resolution 1315 of the Security Council, the Special Court for Sierra Leone was created in order to try the leaders who were most responsible for the crimes committed during the civil war in the country after November 30, 1996 (*Resolution 1315* 2000). According to the governing statute of the SCSL, these crimes could be violations of international norms prohibiting crimes against humanity, war crimes or other violations of international humanitarian law, or other acts criminal under Sierra-Leonean laws on abuse against girls and wanton destruction of property (*Statute of the Special Court for Sierra Leone* 2002). In practice, the SCSL functions essentially as an international criminal tribunal, and its analysis is almost exclusively situated in jurisprudence and texts relevant to international law (Jalloh 2010). Although the SCSL is a hybrid institution with a mixed jurisdiction, it produces international law lacking much reference to the local legal context. The *CDF Trial* and the issue of Allieu Kondewa's responsibility as a superior highlight the necessary vernacularisation of international justice in the jurisprudence of the SCSL and challenge the normative possibility of isolating international criminal law from the context in which it is applied (Merry 2009).

The Civil Defence Forces are a paramilitary group created in 1997 to protect the elected Government of Sierra Leone against other groups who had usurped power in the country (Hoffman 2007). Kamajors, members of a traditional hunting society that ensured the security of villages against all threats, both physical and metaphysical, constituted the nucleus of the CDF. Historically, the main task of the Kamajors ('hunters' in the Mende language) was to gather meat for the village. After the coup d'état and the outbreak of a new civil war in Sierra Leone, the Government decided to co-opt the Kamajors in order to make them the spearhead of the effort to regain power. The fallen president of Sierra Leone named the man who would become

the guiding spirit of the CDF, Samuel Hinga Norman, as its 'national coordinator'. Hinga was also one of the three original co-accused in the trial of the CDF. Hinga directed the CDF along with Moinina Fofana, 'Director of War,' and Allieu Kondewa, 'High Priest'. An expert at the Trial Chamber of the SCSL described these three men as the Holy Trinity of the CDF: Norman, Father God; Fofana, the Son; Kondewa, the Holy Ghost (*CDF Trial*: par 337).

Each member of the triumvirate exercised functions distinct from those of the others, but no important decision was reached without the agreement of all three. As to Kondewa, his role as High Priest meant that he presided over all initiation ceremonies for new members to the Kamajors society, using potions and ceremonies he had created. He prepared a mix of magical herbs that fighters would rub on themselves in order to become invincible to bullets. For each new battle, the Kamajors would line up before Kondewa to receive his benediction, and Kondewa would read their fortunes and decide who was fated to fight on that particular day. No Kamajor would dare participate in a battle without the blessing of their High Priest (*CDF Trial*: par 344-347). Kondewa never personally went to the battle sites and, most importantly, never gave orders of an operational or strategic nature. With one exception, he was not charged with having directly committed a single international crime.³ As mentioned above, Kondewa is indicted with crimes based on his criminal responsibility for the act others.

In terms of the legal issues in the case, the Appeals Chamber and the Trial Chamber of the SCSL adopted a very standard approach to the issue of imputing responsibility to Kondewa for the actions of others. In fact, the prosecutor and the defence agreed on the major tenets of the doctrine of superior responsibility and on the doctrine of aiding and abetting, the two modes of participation by which the Prosecutor sought to link Kondewa to the actual facts and actions that were direct violations of international criminal law. Importantly, as we have already seen, Kondewa was not charged with having personally committed any reprehensible act. With respect to his responsibility as a superior, the facts implicate Kondewa through short speeches and benedictions

given during parades prior to the start of missions during which others committed acts that violate international law. Kondewa's responsibility is also based on the fact that he presided over initiation ceremonies for child soldiers and rituals that were meant to make fighters invincible (bullet-proofing). With respect to aiding and abetting, Kondewa's role as one of the three directors of the CDF, who had to approve all operations undertaken by the group, was invoked. Application of the doctrine of aiding and abetting in the judgments again turns on the legal effect of some allocutions delivered by Kondewa as well as his position in the CDF structure.

The articulation of the doctrine of superior responsibility is now well recognized in international criminal law, primarily due to the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and for Rwanda. As agreed by all sides in the *CDF Trial*, a defendant can be held responsible for the act of another if he exercised, at the time of the event, 'effective control' over this other person or group. In order for this to be the case, the existence of a relationship of authority between the accused and the direct author of the crime must be proven in a manner that would permit the former to issue orders to the latter, to prevent the committing of international crimes, or to punish the commission of the crimes (*Prosecutor v Moinina Fofana and Allieu Kondewa Appeal Chamber* - hereinafter *CDF Appeal*: par 161). This relationship could be one of authority *de jure*, based on the position of the accused in the hierarchy of a group, taking into consideration the nature of the group and its rules and structure. It could also be one of *de facto* authority, perhaps through some dominion exercised by an individual over others in particular circumstances, even if this dynamic is not recognized on an institutional level.

A relationship of authority calling for criminal responsibility can exist as much in a military framework as in a civilian context. In the case at hand, with respect to applying this doctrine to Kondewa, all judges agreed that any differences between the positions of the prosecution and that of the defence were factual and not substantive (*CDF Appeal*: par 171). Despite this, it was precisely a factual issue that

revealed a fracture between the four judges constituting the majority of the Appeals Chamber and the dissenter, Judge John Gelaga King. This divide reflects diverging visions of the nature of international criminal law and, more generally, of the identity of the legal discourse of a tribunal like the SCSL.

2B The Trial Chamber and the majority of the Appeals Chamber

For the majority of judges in the *CDF Trial*, both at the trial and appeal levels, Kondewa's legal responsibility as a superior comes from the fact that the fighters believed that Kondewa had effective control over them. Thus, the factual analysis turns on whether this belief actually existed, not on whether the powers claimed by Kondewa are real. We can divide this question posed by the majority into two parts. First, did this belief exist in the minds of the fighters who committed international crimes? Second, was this belief of a nature to confer on Kondewa the level of control required in order for him to be charged with these crimes, in the name of superior responsibility?

In the Trial Chamber of the SCSL, the judges described how the fighters perceived Kondewa in the following terms:

The Kamajors believed in mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them "bullet-proof". The Kamajors looked up to Kondewa and admired the man with such powers. They believed that he was capable of transferring his powers to them to protect them. By virtue of these powers Kondewa had command over the Kamajors in the country. He never went to the war front himself, but whenever a Kamajor was going to war, Kondewa would give his advice and blessings, as well as the medicine which the Kamajors believed would protect them against bullets. No Kamajor would go to war without Kondewa's blessings (par 721).

In this lengthy trial level judgment, we find multiple references to Kondewa's mystical status in the eyes of the fighters. These passages have the same vague formulation as the above quote (*CDF Trial*: par

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765).⁴ For the Court, Kondewa's role as High Priest gave him a *de jure* status within the CDF, an official role that completes the operational and strategic command roles held by the two other accused. That said, despite its repeated emphasis on Kondewa's influence over the fighters, the Trial Chamber concluded that it was not proven beyond a reasonable doubt that this power was of a nature to prevent or punish violations of international law. Without this type of effective control, the simple role of High Priest is insufficient to charge Kondewa with command responsibility (*CDF Trial*: par 853).⁵ Similarly, the mere fact that in 1998 Kondewa reviewed the fighters, blessing them and giving them potions to make them bullet-proof, was not sufficient for the SCSL to find him to have aided and abetted in the commission of the crimes by the fighters (*CDF Trial*: par 765, 800).

Despite this finding, the judges at trial did not find that the Kamajors' belief in Kondewa's mystical powers was without any effect. Thus, in another troop review in 1997, Kondewa was found to have aided and abetted in the crimes of Samuel Norman because he had encouraged the Kamajors to follow Norman's exhortation to take no prisoner. The Trial Chamber explained the impact of Kondewa's speeches and blessings by referring to the belief of the Kamajors in the High Priest's mystical powers (par 735-739). Similarly, the court concluded that in one particular district, Kondewa had a special relationship with the local commander that went beyond his relationship with the Kamajors in the rest of the country. In the district of Bonthe, for reasons that are not clear from the facts, the operational commander of the Kamajors battalion, a Mr. Kamara, considered himself under Kondewa's authority. Kondewa's effective control allowed him to prevent or punish crimes committed by fighters, issue written and oral orders, and threaten to punish anyone who lied to him with 'a terrible death' (par 869). The Trial Chamber treated the exact foundation of this authority with a degree of vagueness:

By virtue of his *de jure* status as High Priest Kondewa [sic] and his *de facto* status as a superior to these Kamajors in that District, Kondewa exercised effective control over them. Kondewa had the legal and

material ability to issue orders to Kamara, both by reason of his leadership role at Base Zero, being part of the CDF High Command, and the authority he enjoyed in his position as High Priest in Sierra Leone and particularly so in Bonthe District (par 868).⁶

It is significant that in this passage Kondewa is described by the SCSL as a High Priest of Sierra Leone in general and of the Bonthe district in particular: the narrative moves beyond the distinct belief in the minds of those who committed the violations to evoke instead Kondewa's objective status within the country as a whole. Despite what might be the reassuring use of the legal categories of *de jure* and *de facto* to classify the nature of Kondewa's authority, it seems futile to try to disentangle what, in this particular context, would belong to one category as opposed to the other. It is clear that Kondewa's magical powers are inseparable from the other sources of his authority, and contribute simultaneously to his *de jure* and *de facto* statuses. The taxonomic inclination of law, which longs to define, identify, interpret and classify facts and norms, finds itself challenged by the multivalent nature of mysticism, which is difficult to reconcile with known legal categories.

It is often noted that that the ontological distinction between fact and law reflects a peculiarly Western evolution in legal thinking (Glenn 2010: 149). As in the case at hand, separating facts from the law evokes a violent, often arbitrary, dislocation of reality as it is perceived by the actors involved. In a context involving the activities of a witchdoctor within a secret society that is part of an armed conflict in Africa, the discourse of international criminal law struggles to make that separation. The Trial Chamber thus approaches the legal classification of Kondewa's magical powers with some caution, recognizing that they could have a real impact on the application of international criminal law, but the Court does not clearly articulate the precise nature of those implications.

If the decision of the Trial Chamber is marked by caution bordering on vagueness, the majority of the Appeals Chamber opted for an evasive manoeuvre to marginalize mysticism. With respect to the question of

whether the Trial Chamber committed an error of fact on the issue of Kondewa's involvement in 1997 Passing Out parade, the defence and prosecution agreed that the applicable standard was that of 'substantial effect' (*CDF Appeal*: par 70-75). The majority on appeal limited itself to essentially describing the reasoning of the Trial Chamber, without adding to it. Similarly, the Appeals Chamber adopted the conclusion of the trial court that the mere fact that Kondewa had given medicine to the Kamajors in order to make them bulletproof during another passing out parade in 1998 did not constitute aiding and abetting in the acts committed at the hands of the fighters (par 89, 110). Conversely, on the issue of Kondewa's responsibility as a superior, a difference of opinion appeared between the Trial and Appeals chambers with respect to the legal significance of Kondewa's mystical role in the CDF. Here, again, the parties agreed that the applicable test in order to determine the existence of a superior/subordinate relationship is whether there was 'effective control' (*CDF Appeal*: par 174).⁷ The defence stressed the inconsistency, even the incoherence, of the analysis of the Trial Chamber which, on the one hand, denied that Kondewa's role as High Priest and his mystical powers could by themselves give him effective control over the Kamajors but, on the other hand, found that those same mystical powers and role contributed to his effective control in the Bonthe district. The majority of the Appeals Chamber recognized that this presented a tension, and concluded that Kondewa's role as High Priest and his mystical powers were not relevant. Effective control could be found despite these facts by concentrating solely on the factual authority of Kondewa over the Kamajor commanders in the Bonthe district (par 179) (Combs 2010: 212-214). Using the same logic, the majority at appeal overturned a conviction for looting in the Moyamba district, because a declaration that the role and mystical powers of Kondewa are irrelevant did not leave a sufficient base to find effective control in that region (par 212-215).

In the judgment of the Trial Chamber, magic was treated with caution and discussed elliptically, making its legal implications ambiguous. The decision of the majority of the Appeals Chamber marks an even greater disengagement from the issue of magic, demonstrated

by its willingness to reject the relevance of Kondewa's mystical role.⁸ This makes Judge King's thunderous dissent in the appeal decision even more startling.

The judgments of the SCSL in the *CDF Case* constitute a narrative where rational, Western, civilized modernity is confronted with mysticism, a symbol of pre-colonial African primitivism. How can we understand the dynamic of the interaction between these two discourses? In the interaction between modernity and mysticism in the judgements at first instance and on appeal, we find the same three dynamics that we identified earlier in *Tintin au Congo*. Seen in this light, the narrative of the majority in the CDF Appeals Judgment can be viewed as furthering the myth of savagery evoked by Hergé in his story of the adventures of Tintin in the Congo.

First, like the manipulation of the Babaoro'm by the witchdoctor Muganga in *Tintin au Congo*, we can understand that magic is used by Kondewa as a tool that permits him to control the Kamajors by exploiting their gullibility and ignorance. By leveraging the desperate desire of young fighters to survive a vicious war, the accused manipulated a system of traditional beliefs to serve their own ends. There are, not only in the judgments but also in the examination of witnesses and final arguments, allusions by the lawyers to the fact that such beliefs seem absurd (*CDF Trial Transcripts* 2006: 36). By highlighting the absurdity of believing that smearing oneself in herbs and lotions could make one bulletproof, the lawyers signalled to the judges their membership in the rational world of law. This is a world distinct from mysticism, for which mysticism is in fact an 'other' whose rejection shapes law's identity.

Unlike Tintin, who demonstrated to the Congolese the falsity of their beliefs through objects of modernity such as video and sound recorders, the defence invited the judges to abstain from pronouncing on the values and beliefs of the Kamajors: 'The Kamajors should not be patronized or judged more harshly for using means that seem less advanced or more ... or more unbelievable to others' (*CDF Trial Transcripts* 2006: 37). It is this invitation to abstain from

imposing an external perspective on beliefs that, as we saw, the Trial Chamber and the majority at appeal for the most part heeded. This charitable suspension of incredulousness corresponds to the 'rituals of distanciation', an expression used to describe and criticize the attitude of English historians with respect to witchcraft: by reducing mystical belief to an abnormality or pathology, it becomes justifiable to explain nothing but the causes of the belief and ignore its structure and content (Purkiss 1996: 61 as cited in Geschiere 1998: 1275). With respect to the legal discourse, this 'ritual of distanciation' leads the judges away from examining the merits or content of supernatural beliefs. Instead, the judges reduce these beliefs to facts the legal implications of which must be determined.

In *Tintin au Congo*, a second interaction between modernity and mysticism appears in the form of modernity's appropriation of mysticism: Tintin uses an electro-magnet to redirect arrows away from him and also convinces the tribesmen that he possesses magic powers that make him invincible. In the analysis of the SCSL there is also a hijacking of mystical beliefs by the legal discourse to serve its own ends, in this case the administration of international criminal responsibility. Even though the Trial Chamber was not interested in the content of the Kamajors' belief that Kondewa possessed the power to project his spirit to make them brave and to prepare medicine to render them bulletproof, the court still attached consequences to this belief. The fact as interpreted by the law is thus emptied of its content; the system of beliefs and traditional practices is reduced to a category defined entirely by international law. The customary cosmology of Sierra Leone is kidnapped by the cosmology of international law, which consumes it, saving only the parts that serve its own purposes. It is a conjuring which operates thanks to the magic of international law. Starting with a factual setting, law can create a narrative that depicts a reality very different from that perceived by its principal participants. As highlighted by Clifford Geertz, legal representation of fact is normative from the start (1983: 174). The image of the process by which facts are construed or even created by the SCSL suggests a disengagement of international criminal law from the process of vernacularizing

justice, despite the stated ambition to contribute to the post-conflict reconstruction of society in Sierra Leone. Far from vernacularizing, the legal narrative thus created affirms its own modernity by distancing itself from a mythical other (Fitzpatrick 1992: 21).

The final example of the interaction between modernity and mysticism suggests that Tintin, as a symbol of Western civilization, cannot be undermined by the baleful power of the African leopard-man. There is a similar parallel with the impact that engagement with magic, of the kind we see in the CDF case, would have on the jurisprudence of the SCSL, particularly on its credibility. If the tribunal were to recognise the existence of Kondewa's magical powers would distort the logic of international criminal law due to the dyspeptic nature of such irrational thinking, thinking that is incompatible with legal reasoning. But, as we have seen, the approach of the SCSL eludes this pitfall by completely emptying the belief of its content, such that the only content left is that required for Kondewa to have the necessary control to find him guilty on the grounds of superior responsibility.

The defence, however, made an effort to use the content of the belief for its own purposes, arguing that during the magical initiations and ceremonies over which Kondewa presided, he transferred not only his spirit to the fighters to give them courage and invincibility, but he also gave them 'the law'. The defence relied on witnesses from both the defence and the prosecution to the effect that Kamajors had an obligation to respect the elderly, not to steal the property of civilians, not to kill innocents, and not to harass civilians. In fact, according to the defence, the Kamajors had an obligation to protect these people (*CDF Trial Transcripts* 2006: 33-34). Further, Kondewa said that any violation of these laws would have the effect of canceling out the invincibility that had been conferred, leading to the fighter's death in battle: 'What more deterrent against atrocities on civilians can anybody ask for?' asked Kondewa's lawyer (*CDF Trial Transcripts* 2006: 37). The defence thus sought to bring the SCSL to the conclusions of its own logic and to force it to recognize the effects of giving Kondewa's magical powers legal meaning in the context of criminal responsibility.

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We could in the same sense imagine a defence resting on the exception of duress, recognized *inter alia* in article 31(1)(d) of the *Statute of the International Criminal Court*, if the accused committed a crime under the threat of a curse pronounced by a witchdoctor. The court would then be asked to determine if the belief of the accused in danger was 'real,' or, in other words, whether the existence of this danger should be evaluated in an objective manner ('would a reasonable person have believed in the threat?') or in a subjective manner ('did the accused honestly feel threatened?'). In African legal systems, it is required in general that the belief be a reasonable one in order for an effect to stem from it, whereas under the ICC Statute the threat must be 'real' (Yeo 2009: 95-96). However, legal effect has occasionally been given to such beliefs. Thus, in a South African case where the accused killed a child with an axe under the belief that it was an evil bat, Judge Richard Goldstone commented:

Objectively speaking, the reasonable man so often postulated in our law does not believe in witchcraft. However, a subjective belief in witchcraft may be a factor which may, depending on the circumstances, have a material bearing upon the accused's blameworthiness. As such it may be a relevant mitigating factor to be taken into account in the determination of an appropriate sentence (*The State v Netshiovha*).⁹

In a general sense, the rationality at the heart of the international criminal law – and of Western law – necessarily reduces the causes and consequences of an illegal act to a fact that is empirically verifiable; a divergent cultural belief is reduced to a factual error or to a lack of reason (Comaroff & Comaroff 2004: 193). In the *CDF Case*, Kondewa's argument regarding his positive influence against the commission of war crimes and crimes against humanity was reduced to nothing: the SCSL ignored it altogether.

We can close this analysis of the discourse of the Trial Chamber and of the majority of the Appeals Chamber by asking who is the audience constructed by this discourse. From what we have discussed, we can see that the SCSL projects first and foremost a dialogue with the international community, more precisely with the segment of

that community engaged in prosecuting war crimes, crimes against humanity, and genocide. The narrative is entirely internal to law, it produces its own truth as required by the imperatives of justice, and it corresponds to a culture of legality that is self-sufficient and all encompassing. This narrative is offered as universal and capable of transcending all cultural differences in beliefs, practices, values, and norms.¹⁰ The majority attempts to stay neutral or agnostic vis-à-vis mystical beliefs held by Kamajor fighters, essentially by remaining as silent as it could while still carrying out the required legal analysis. For this dissenter, however, no such neutrality is possible and the majority's silence throws shadows linking this narrative to colonial discourse.

3 Judge Gelaga King's Dissent in the Appeals Chamber

The partial dissent of Judge John Gelaga King, native of Sierra Leone, takes an entirely different colour. From the outset, Judge Gelaga King gives a determinative importance to the fact that the Civil Defence Forces were fighting for the return to power of Sierra Leone's democratically elected government, against groups which had taken power through a coup d'état. Conversely, the majority of the Appeals Chamber concluded that this factor was irrelevant in determining the international criminal responsibility of those accused of war crimes and crimes against humanity. This highlights the importance of the political context for the dissenting judge.

Judge Gelaga King attacks in an exceptionally virulent manner the application of the doctrine of superior responsibility by the majority of the Appeals Chamber and the Trial Chamber. He emphatically rejects the title of 'High Priest' given to Kondewa. Citing the *Oxford English Dictionary*, the judge denies that the accused is a member of the clergy or a religious minister of any type: not being a priest, he can hardly be given the designation of 'High Priest!' In the eyes of the dissenter, Kondewa was more 'a "juju man" or "medicine man" or in local parlance "meresin man"; he was a "masked dancer" or in local parlance "deble dancer,"

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a “gorboi” dancer’ (*CDF Appeal* Judge King’s Dissent: par 68). Even though the defence had compared Kondewa to a military chaplain, as military chaplains are not usually blamed for the crimes committed by the soldiers they bless, Judge Gelaga King rejects this analogy, denying that Kondewa had any official role whatsoever (*CDF Trial Transcripts* 2006: 38). From there, with striking passion, he sharply criticizes the majority for having seen in Kondewa’s powers sufficient authority to underpin the application of command responsibility:

It boggles the imagination to think that on the basis of purporting to have occult powers, on the basis of his fanciful mystical prowess, Kondewa could be said to qualify as a ‘commander’ in a superior/subordinate relationship. Without remarking on the novelty of its finding, the Appeals Chamber Majority Opinion, for the first time in the history of international criminal law has concluded that a civilian Sierra Leonean juju man or witch doctor, who practised fetish, had never been a soldier, had never before been engaged in combat, but was a farmer and a so-called herbalist, who had never before smelt military service (‘he never went to the war front himself’) can be held to be a commander of subordinates in a bush and guerrilla conflict in Sierra Leone, ‘by virtue’ of his reputed superstitious, mystical, supernatural and suchlike fictional and fantasy powers! (*CDF Appeal* Judge King’s Dissent: par 69).

We see in this passage multiple words that evoke the unreal and the irrational such as occult, fanciful, mystical (which is used twice), fetish, superstitious, supernatural, fictional and fantasy. The dissent highlights as well the incompatibility of these elements with the legal reasoning that an international court, based on rationality and a symbol of modernity, is supposed to use. To make his point even more clearly, and without the kind of restraint that defines the very legal tradition he claims to defend, Judge Gelaga King highlights:

In my opinion, the roles found to have been performed by Kondewa as ‘High Priest’, are so ridiculous, preposterous and unreal as to be laughable and not worthy of serious consideration by right-thinking persons in civilised society. If the Kamajors believe in the mystical power of Kondewa as an initiator, his imaginary immunisation powers

(as if it was scientific), do the Chambers of the Special Court also believe that Kondewa could make Kamajors 'bullet-proof' and that Kondewa's 'blessings' would make them impervious to machine-gun bullets? And on that basis find him to be a commander? Obviously not (*CDF Appeal* Judge King's Dissent: par 70).

The intellectual framework for the dissent could not be more clear: the rational thinking of civilization. This logic leads to rejection of the idea that magic could be a real fact that can be recognized by a court. On the contrary, it stands as a system of thought with which legal discourse cannot interact. Anthropologists conducting research on the occult in Africa have highlighted that terminology itself poses problems: the word '*sorcellerie*' in French or 'witchcraft' in English reflects a very particular, Western historical construction, which marks those words as baleful and diabolical (Geschiere 1998: 1253). The words used in African languages refer to a more diverse and nuanced set of ideas. Magic can be both good and bad, depending on who uses it under what circumstances, and there is a vast vocabulary that reflects this diversity (Rosny 2005: 172-173). But, far from seeking to introduce a more nuanced reading of magic into the reasoning of the SCSL, one that is more faithful to reality as perceived by the Kamajors, Judge Gelaga King links magic to the ridiculous, the absurd, and the untrue, all of which are the opposite of civilized rationality (*CDF Appeal* Judge King's Dissent: par 73).¹¹ According to this vision, no engagement is possible between legal discourse and mystical belief; we should resist any dissolution of the border between magic and modernity as incompatible with secular law's rejection of transcendence (Fitzpatrick 1992: 10, Shaw 2002: 92).

Judge Gelaga King's approach in his dissent identifies the SCSL as a site where a discourse of African modernity can be elaborated. To better understand the context and scope of his position, one must understand the paradoxical role of witchcraft in many African countries today. On one level, governments and elites often condemn mystical beliefs as absurd and primitive. Magic is construed as a fabrication to which an educated person would never subscribe, a relic of a pre-colonial past which contemporary African states, in the wake of colonial authorities,

should try to eliminate. This vision is inspired by liberal philosophy and is anchored in legality, relying on an individualistic humanism 'formulated in a grammar of rights and legal privileges' (Taylor 1989: 11-12).¹² Legal discourse, which emanates from and affirms the sovereignty of the state, is at the heart of this vision. At the same time, we find in these same African societies popular belief that embraces mysticism daily and without pause. Thus, a governmental commission of inquiry into the phenomenon of violence linked to witchcraft in South Africa reported that in 1996 there were 10,000 healers in Johannesburg and that 85% of black households in the city used their services from time to time (Ralushai 1996: 47). More dramatically, the non-negligible number of murders of people suspected of being witches highlights both the prevalence and gravity of mystical beliefs. Anthropological literature suggests that the widespread prevalence of witchcraft reflects an ancestral heritage that colonialism never succeeded in eliminating, as well as a common disenchantment in Africa with the discourse of development, whose promises are now widely seen as empty (Geschiere 2008: 313). For communities in the grip of poverty, illness and insecurity, witchcraft brings real and immediate responses, whereas the long-term solutions of modernity rarely seem concrete (Niehaus 2001: 200).

The paradox of witchcraft in Africa today goes even further. Indeed, mystical beliefs and practices are not the preserve of undereducated populations who are denied access to the benefits of modernity. On the contrary, the same elites who publicly reject witchcraft as irrational and unreal often use it themselves in private. It is important to understand that there exists a very strong association in the popular imagination between power and witchcraft: if a person is powerful, she must enjoy considerable magical power. In a country like Sierra Leone, it is expected that a 'Big Man' – a government minister, a business man, a judge – will discretely consult his witchdoctor from time to time to maintain or increase his status (Shaw 1996: 35-41; Geschiere 1998: 1273, Geschiere, 1997: 97-130). There exists as well a certain postcolonial current that seeks to openly recover witchcraft as a symbol of an Afro-modernity that does not disown its ancestral

traditions. By rejecting the civilizing, colonial categorization of magic as anti-modern, one affirms that magic can, to the contrary, permit the understanding and anchoring of a modernity that belongs to the African continent (Niehaus 2001: 185). The intersecting discourses of witchcraft and modernity in Africa are thus contested terrains of identity. It is with these tensions in mind that we should read Judge Gelaga King's dissent in the CDF case.

If we ask of Judge Gelaga King's dissent the same question that we raised for the majority decisions (namely, who is its intended audience), we can recognize the ambiguity of his position. On one level, the audience imagined by Judge Gelaga King is the same as that of the majority, but with a separate objective. He addresses not only the community of international criminal institutions – of which the SCSL is a part – but more generally he also addresses the international community as a whole. In his more general address, King's dissent is a protest against the depiction of Sierra Leone as a land of savages who still believe in magic. In the language of the post-colonialists, the subaltern speaks to resist the image of Africa as drowning in superstition, an image that for a long time has served to justify colonial policies and the Western civilizing mission (Shaw 2001: 50). To do this, the dissenting judge links the mystical beliefs of the Kamajors to the factual conclusion made by the majority, suggesting that the reasoning of the majority can only stand if the judges of the SCSL themselves believe in Kondewa's magical powers. According to this evident distortion of the majority's logic, if one is false, then the other must be as well. By denying that these beliefs could really exist in a manner that justifies their legal recognition as fact, Judge Gelaga King responds to the media's representation of the conflict in Sierra Leone, which portrayed the bulletproofing and invisibility rituals as symbols of an ahistorical primitivism that is irreconcilable with modernity (Shaw 2002: 82). Judge Gelaga King responds to Hergé to reject the image of Africans as uncultivated and irrational.

On another level, the dissent belongs to a different dialogue, one of African modernity. The audience for this discourse are African elites,

marked, as we saw, by ambiguous and contradictory positions regarding mysticism. Law occupies a central place in the dialogue surrounding afro-modernity, as it does for modernity in general. The end of colonialism in countries like Sierra Leone did not mark the return to a *status quo ante*, to a pre-colonial reality excluding all changes stemming from colonialism. On the contrary, after the rupture of colonialism came the rupture of decolonization, producing a fragmented society the governance of which required a new force capable of maintaining cohesion. This force was, more often than not, legal discourse, a sort of new fetish whose neutral rationality was presented as capable of overcoming societal divides (Comaroff & Comaroff 2004: 192).¹³ The connection with power is furthermore maintained because the law in question is uniquely that of that state, reflecting a positivist reading of legal normativity. Conversely, magic is considered subversive, fuelling threats to state sovereignty and delaying economic development. Interestingly, ethnographic studies of Cameroon have found that witchcraft is often portrayed as subversive in the official discourse of state representatives, often in the mouths of judges presiding over trials dealing with occult practices; that said, witchcraft is broadly not seen as subversive by the individuals directly involved in those practices (Geschiere 2006: 277). On the contrary, interviews with villagers suggest that, for them, magic remains an essentially local and social issue (Geschiere 1998: 1266). In Sierra Leone, this subversive reading of magic was highlighted in the repression of an attempted coup d'État in 1992: seventeen people were accused of having used black magic, and on that basis executed (Shaw 1996: 33).

In many African countries, accusing someone of witchcraft and practicing witchcraft are both punishable offenses. Accusations of witchcraft can provoke lynching whereas practicing witchcraft can be punished 'if it is susceptible of breaching public peace, or harming individuals or property'.¹⁴ Far from being a relic of an obsolete colonial past, cases involving witchcraft can comprise a significant part of judicial activity in a given jurisdiction, leading to possible imprisonment and non-negligible financial sanctions (Rosny 2005).¹⁵ By offering law as a response to witchcraft, and by using legal institutions in order

to eliminate mysticism and impose rational thinking, law and magic are forced to interact in a way that transforms them both. How is it possible to condemn a person for a crime the reality of which we seek first and foremost to deny? Witchcraft thus remains a crime without statutory or jurisprudential definition, a normative obscurity cleverly maintained by legal actors. Furthermore, in witchcraft cases, law invites magic to invade its own territory. As remarked by a judge from the Central African Republic, 'one must be a witch in order to know who is a witch!' (Rosny 2005: 175). Refusing to characterise themselves as witchdoctors – the contradiction would be too extreme – judges have developed a widespread practice of inviting witchdoctors to testify as experts. This testimony could include the identity of an accused as a witch, the occult nature of certain practices, or the evil effects of certain objects. Far from denying the reality of magic, legal discourse ends up instead proclaiming its merits. This legal legitimization of the powers of witchdoctors has a modernizing effect on magic; in general, these 'expert' testimonies are given by a new generation of witchdoctors who mix ancient customs with the symbols of western modernity, for example by using the title 'doctor' or by suggesting European medical training (Fisiy & Geschiere 1990: 146-147; Geschiere 2008: 327).

The image of mysticism that emerges from the interaction of justice and witchcraft in multiple African countries is one which rejects the caricature of witchcraft as an absurd and obsolete belief, as represented by Judge Gelaga King in his dissent in the *CDF Case*. Furthermore, magic is not open to being reduced to a simple fact construed entirely according to the logic of law and emptied of all content, as suggested by the majority's analysis in the Appeals Chamber in the same case. The combination of mysticism and modernity undermines a more complex, uniquely African modernity.

Conclusion

It is reported that, in an effort to make prisoners responsible, SCSL Registrar, Robin Vincent wanted them to clean their own cells. He therefore ordered that brooms be distributed to the prisoners so they

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could clean. This provoked a strong reaction from the guards in charge of watching the prisoners, all of whom were local employees of the Court. The guards objected that brooms are well known magical objects, and that the prisoners would use them to escape from the prison. The project therefore had to be abandoned.¹⁶ This anecdote illustrates the difficulty modernity faces in constructing reality for its own ends. Even if law, as in the approach of the majority in the *CDF Case*, seeks to instrumentalise the factual context in order to reduce the culture to a coherent whole that can be inserted into the rational reasoning of legal discourse, culture escapes all attempts at subjugation and continues to operate on its own terms. It is here that the magic of *Tintin au Congo* truly appears: in Hergé's own world, the author has unlimited power to imagine a reality in which rational modernity triumphs entirely over African mysticism. It is tempting to see in the majority opinion in the CDF Appeals Judgment a belief in a similar magical power for law.

What divides the majority and the dissent is not necessarily or not merely conflicting views about the existence and meaning of magic in African societies, but a wider construction of what it means to be modern. In the majority opinion, we see reflected an idea of modernity that represents the progressive construction of the individual as a purely rational autonomous self, buffered from the external world by his or her rational powers (Taylor 2011: 39-40). The mystical is discarded as a way of experiencing the world. Seen in this light, the post-Enlightenment disenchanted self can make sense of believing in things like magical bullet-proofing as a psychological reflex of young men afraid to die in combat. Likewise, leaders like Kondewa reasonably turn to mystical practices if it can solidify their authority on fighters in their group. The great subterfuge performed by law is that it imposes this perspective as the only legitimate, sensible one. For the dissenter, however, modernity does not necessarily correspond to this disenchanted self produced by several centuries of intellectual evolution in the West. In Judge Gelaga King's reasons, we can discern a different modernity that reconciles a rational self with acceptance that there is no firm boundary between self and the cosmos, between inner and outer, between the rational and

the spiritual. We can read the dissenter's anger as a reaction against an imposition by the majority of a certain idea of modernity as the only one that can be truly modern, all alternatives falling into the primitive. In daily life, between the vernaculisation of norms and the globalization of culture, legal discourse and mystical beliefs are two among many sites for the elaboration of modernity, with none able to claim primacy over the other. What is at play in the construction of practices such as bulletproofing is not the establishment of truth but more accurately the articulation of relations to truth: who can tell the truth, for whom, and for what purpose. Mysticism and modernity, each in its own way, attempts to give us a paradigm that explains why things are the way they are. The challenge which is posed by the dissent is whether modernity and in its wake law need be monolithic, or whether we can imagine a plural idea of modernity and law that can reconcile rational thinking with other forms of beliefs.

Notes

- 1 I wish to thank my research assistant, Caylee Hong, for her enormous help in the preparation of this essay. I also benefited from the sharp reading and insightful comments of the anonymous reviewers for this journal. The essay was originally written in French and presented at a conference at the *Université libre de Bruxelles*. The translation was done by Neesha Rao, whom I thank as well. This is part of a broader team project titled "Centaur Jurisprudence", exploring the intersection of law and culture, funded by the Canadian Social Sciences and Humanities Research Council.
- 2 References to *Tintin au Congo* throughout the article come from the original edition of the story, published in 1930 in the newspaper 'Le Petit XXe'. This version was reproduced in *Archives Hergé vol 1* (Casterman 1973: 185-293), presented with no irony as the 'version primitive, en noir et en blanc'. Quotations in English are taken from the translation by Leslie Lonsdale-Cooper and Michael Turner, *Tintin in the Congo* (2010). See also Jean-Louis Donnadieu (2011: 32-37).
- 3 The sole exception related to an extrajudicial execution, which the SCSL deemed not proven beyond reasonable doubt.

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- 4 For example, 'Kondewa gave his blessing and the medicines which would make the fighters fearless if they did not spoil the law. He also said that all of his power had been transferred to them to protect them, so that no cutlass would strike them and that they should not be afraid' (*CDF Trial*: par 765).
- 5 'Although he possessed command over all the Kamajors from every part of the country, this was, however, limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive, however, to establish beyond reasonable doubt that Kondewa had effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts. The Chamber noted that Kondewa's *de jure* status as High Priest of the CDF gave him the authority over all the initiators in the country as well as put him in charge of all the initiations. This authority did not give him the power to decide who should be deployed to go to the war front. He also never went to the war front himself. The evidence adduced, therefore, has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with the Kamajors who operated in Bo District' (*CDF Trial*: par 853). The same passage, word for word, is reproduced at paragraphs 806 and 916.
- 6 'Base Zero' was the CDF base camp, where the three accused were normally found (*CDF Trial*: par. 868).
- 7 The Appeals Chamber rejects a Defence argument that the standard is different according to whether the superior is a civilian or a military commander: (*CDF Appeal* par 174, 175).
- 8 This is clearly articulated by Judge Winter in her partial dissent, which is otherwise not relevant to the issues under consideration in this essay: 'Not being a domestic court, it cannot also accept any cultural consideration as excuses for criminal conduct. The principle of individual criminal responsibility requires that an accused be held responsible for his acts or omissions, whatever his status. In the case where concrete acts or omissions of an accused have an impact on the commission of the crime in question, it is irrelevant, for instance, if this accused believes that he has supernatural powers or if he uses the cultural superstitions of people involved.' (*CDF Appeal* Justice Winter Dissent: par 4).
- 9 In that case, in consideration of these beliefs, the Court reduced the sentence from ten to four years' imprisonment.

- 10 Despite exceptional efforts to plant the work of the SCSL within Sierra Leone, including visits to the most reclusive visits in order to explain the role of the court, it appears that the court remains largely viewed as a Western imposition (Ford, 2012; Nkansah, 2011).
- 11 Thus, Judge Gelaga King calls the reasoning of the Trial Chamber an error of fact: (*CDF Trial* Judge Gelaga King Dissent: par 73).
- 12 As cited in Comaroff & Comaroff 2004: 192.
- 13 'But why this fetishism of the law? In policultural nation-states, the language of legality affords an ostensibly neutral medium for people of difference to make claims on each other and on the state, to transact unlike values, to enter into contractual relations, and to deal with their conflicts. In so doing, it produces an impression of consonance amidst contrast: of the existence of universal standards that, like money, facilitate the negotiation of incommensurables across otherwise intransitive boundaries' (Comaroff & Comaroff 2004: 192).
- 14 Article 251, Code pénal du Cameroun ("*si elle est susceptible de troubler l'ordre ou la tranquillité publics, ou de porter atteinte aux personnes, aux biens ou à la fortune d'autrui.*"). There are variations of this provision in the criminal law of many French-speaking African countries. In English-speaking Africa, there are many statutes inspired by the 1899 *Witchcraft Suppression Act* (e.g. in Zimbabwe, http://www.parlzim.gov.zw/attachments/article/95/WITCHCRAFT_SUPPRESSION_ACT_9_19.pdf) (Mbousi, 2004).
- 15 It is reported that between 1970 and 1980, forty percent of trials in the criminal court of Bangui, the capital of the Central African Republic, related to witchcraft (See Rosny 2005: 174).
- 16 Author's interview with Luc Côté, former Chief Prosecutor of the SCSL, November 2011.

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