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In the hot seat

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Nuon Chea during the trial hearing in Case 002 on 12 March 2012. Photo: ECCC/ Wikimedia

Alexander Laban Hinton

Anthropological Witness: Lessons from the Khmer Rouge Tribunal
Cornell University Press: 2022

It should have been no surprise when Alexander Laban Hinton, a distinguished professor of anthropology at Rutgers University and an expert on genocide and on Cambodia, was called to testify before the Extraordinary Chambers in the Courts of Cambodia (ECCC). Yet Hinton was torn by the summons to the Khmer Rouge tribunal. He asked himself what was the value and appropriateness of his appearing as a witness. What were the professional, philosophical, theoretical and ethical implications? He got to 'yes', deciding that as a 'public anthropologist', his testimony would reflect 'my commitment to contribute to the politics of justice and explain the origins and dynamics of genocide in a very public forum'.

That introspection, more professional than personal, sets the tone for Hinton's revealing book *Anthropological Witness: Lessons from the Khmer Rouge Tribunal*. His hesitation becomes a leitmotif throughout his often dense examination of three and a half days of testifying as an expert witness. He alternates between feeling impressed by the court with its robed jurists and bulletproof-glass enclosure and wondering what good will come of it all.

Hinton took the stand in March 2016 and immediately dubbed the witness chair his 'hot seat'. Rightfully so. This was a trial about genocide. He would be questioned by judges sitting before him on an elevated bench, by the prosecution to his left, the lawyer for the civil parties (victims) next to the prosecution and the defence to his right. The two defendants—the last surviving senior Khmer Rouge leaders—were seated with their lawyers.

Hinton was alert, prepared for the trick questions and mindful that as an expert witness, his every word and characterisation of years of research and writing could either lead to justice or obscure the crimes.

Nil Nonn, the president of the court, asked Hinton to explain his expertise as an anthropologist. The exchange was lively—Hinton explained the difference between a historian and cultural anthropologist who researches lived experience. In his case, his subject was the lived experience of Cambodians during the genocide, as detailed in his well-regarded book *Why Did They Kill? Cambodia in the Shadow of Genocide*, which amplifies how and why the Khmer Rouge rule led to crimes against humanity.

He had prepared for attacks on his profession; anthropologists are rare experts at genocide trials. 'Historians, I explain to the court, are predominantly concerned with the study of the past, whereas anthropology involves the study of what it means to be human both in the past and the present and across time and space.'

His unwavering point of view as an anthropologist gives this book bite.

He writes that he knew he would become a target and counseled himself to expect the lawyers to 'draw out the epistemological assumptions that undergird my anthropological research, an issue that the prosecution and defence questioning will no doubt also explore as they examine ... my anthropological making of sources, facts, narratives and ethnography'.

That's a mouthful as well as Hinton's comfort zone. His is a serious examination of all the aspects of the trial and of the Khmer Rouge history that are being debated in academia. He liberally quotes the authorities who shaped his studies, describes their theories, and fits them broadly into his book.

Just as tellingly, he regularly reminds himself of the stakes of this trial. He carried mementos of Cambodians to court to have with him on the witness stand. He recalled the stories people told him about their suffering, remembering the first time a Cambodian family opened up over an evening meal during a blackout. 'I just heard [the father's] voice as he told me about his family members who had died or been killed and how he had suffered after his identity was revealed. He was interrogated and sent to a reeducation camp where many people perished.'

Cambodian people and their culture drew him into his study of the country's genocide.

What pulls Hinton's story forward are the frequent bouts of sparring between William Smith, the friendly prosecutor, and Victor Koppe, an acerbic defence attorney. Whether Hinton was testifying about the cultural role of Buddhism or the definition of genocide, Koppe would rise with objections. When Koppe challenged Hinton's 'far-reaching conclusions' that went beyond his expertise as an anthropologist, Smith stepped in and praised Hinton as an expert on mass violence who has studied 'propaganda in genocides around the world'. The back and forth was continuous.

Nevertheless, the lawyers managed to question Hinton about major aspects of the case against the Khmer Rouge, providing form and context to a story that may be unfamiliar to most readers.

His last day provided a denouement of sorts. Nuon Chea, the defendant who had been second only to Pol Pot in the party and government, appeared in court, breaking his irregular boycott of the courtroom. He wanted to question Hinton directly.

'There is also energy in the court. Anticipation,' Hinton writes. 'It's expressed in whispered conversations and fidgeting, as if we have reached the climax of a drama three and a half days long.'

There were no fireworks in the roughly fifteen-minute exchange between Nuon and Hinton. Nuon told Hinton he was wrong to accuse Nuon of using the Khmer word ‘youn’ in a derogatory fashion against the Vietnamese and then asked if Hinton believed Vietnam had abandoned its goal of absorbing Cambodia.

Hinton’s answer dismissed the question itself saying it ‘ignores historical and temporal and spatial variation. It reduces a complex historical and political situation in a reductive manner.’

Nuon asked Hinton whether the American bombing of Cambodia was a war crime and genocide. Hinton was careful and said the US ‘might have violated international law’ but did not commit genocide.

Nuon Chea left the courtroom. Hinton was dismissed.

Hinton’s singular contribution is translating his first-hand experience on the witness stand to enrich our understanding of the court not just from the point of view of an anthropologist but also as an expert on why the Khmer Rouge killed. His lessons are striking for their simplicity. He understands how his scholarly research is vastly different than the factual presentations required to link evidence to crimes in a trial. That ‘legal truth is different than explanatory truth’. Hinton also comes to terms with his underlying hesitation. He does not regret his own testimony; he is proud of it. He quotes Smith, the prosecutor: ‘All of Dr. Hinton’s prior hard work paid off and he was able to make his contribution to the accountability and reconciliation process in Cambodia in one of the most salient possible ways.’

Hinton comes away with a low opinion of the court, however. Immediately after the guilty verdict of Nuon and his co-defendant, Khieu Samphan, Hinton says, ‘The court delivered... I expect the Cambodian people will accept the court, warts and all.’

Later, after the verdict was affirmed on appeal, he writes: ‘I had low expectations of the court, and they were met.’

How he came to these conclusions is not obvious from his book. He details the charges of manipulation of the court by the corrupt Cambodian government, and notes the long delay between the crimes (1975–1979) and the trials, which began in 2005, but mentions other trials that were delayed. He does not elaborate on all the restrictions that hamstrung the trial. He quotes a Stanford University report that the judgment from the first Khmer Rouge trial was ‘a poorly-organized, ill-documented and meandering narrative in lieu of clearly structured legal writing’.

Hinton is not alone in this poor judgement of the court. It is more common than not. One of the biggest complaints is the cost of hundreds of millions of dollars to try only a handful of defendants. I side with the argument that in this case, it makes sense to calculate costs based on the nearly two million victims rather than number of convictions.

I can’t help but feel that Hinton, as an anthropologist, missed an opportunity to look beyond the courtroom procedures and describe the importance of the trial to Cambodia. I say this because I, too, testified as an expert witness for three days at the same trial, exactly one year before Hinton. On my last day, Nuon Chea also made a rare appearance to question me about American bombing. But I came away with a strong appreciation of the tribunal.

I testified as an author and a journalist who covered the war in Cambodia, including the 1973 American saturation bombing, interviewed Pol Pot in Cambodia weeks before he was overthrown by the Vietnamese and reported on the decades-long refusal of the US, China and others to hold Khmer Rouge accountable.

Cambodians had to wait thirty years for the first trial of the Khmer Rouge. Despite the delay, the court changed the political and cultural landscape of Cambodia. It finally broke the official silence about the Khmer Rouge. Until the ECCC, the Cambodian government refused to acknowledge much less examine the crimes of the Khmer Rouge. Through their exhaustive procedures, the court established a historical record of the Khmer Rouge. It is housed in Cambodia and available online. Cambodian school books now cover the genocide. Khmer Rouge history apps are free. The story of the Khmer Rouge is seeping

into society and the arts. The tribunal has helped trigger more aid for the victims as well as treatment of their trauma. In a word, the courts have opened the essential and crucial dialogue in Cambodia about the era and what is justice. Indeed, the court gave Cambodia a taste of justice.



Elizabeth Becker is the author of *You Don't Belong Here: How Three Women Rewrote the Story of War*