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A Justice Facade

[T]he more menacing the power, the thicker the mask.

James C. Scott[1]

By taking as our inspiration a model outside time and place, we are certainly running a risk: we may be underestimating the reality of progress.

Claude Lévi-Strauss[2]

[W]e have a duty to investigate the dangers of coercive harmony, and to expose repression when it poses as consensus.

Laura Nader[3]

This is a book about a quarter-century of death, about fear and loathing in Central Africa. In 1994, a most efficient genocidal campaign tore through Rwanda. Until then the tiny country in the Great Lakes region had been little more than a footnote in the annals of history. But in April that year, by escalating a simmering civil war, Hutu hardliners in the higher echelons of the authoritarian regime bundled the infrastructural power of the state's governmental and nongovernmental organizations to exterminate, within the span of a hundred days, the country's Tutsi population and other imagined enemies they deemed worthy of absolute destruction. Around half a million Rwandans perished in 1994, perhaps more.[4] No twentieth-century genocide achieved annihilation at a faster pace. This book is about that genocide's aftermath. It is a book about transitional justice gone awry.

[1] James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990), p. 3.

[2] Claude Lévi-Strauss, *Tristes tropiques* (London: Penguin, [1955] 1973), p. 392.

[3] Laura Nader, "Harmony Coerced Is Freedom Denied," *Chronicle of Higher Education*, July 13, 2001.

[4] Omar McDoom, in the most convincing analysis to date, recently estimated that between 491,000 and 522,000 Tutsi were killed in the period from April 6 to July 19, 1994. In a rigorous and careful econometric analysis, Marijke Verpoorten has argued that the number of annihilated Tutsi lives lies

A DARING EXPERIMENT

When I traveled to Rwanda for the first time, in the summer of 2002, I was keen to find evidence for hope.[5] I hoped to be present at the creation of something extraordinary – transitional justice in the vernacular. I was not naïve, but I was still excited at the possibility of witnessing a country chart a path "between vengeance and forgiveness," as Martha Minow, a few years earlier, had summed up her vision of transitional justice.[6]

A daring new experiment in transitional justice was afoot in post-genocide Rwanda. It was making headlines around the world. In the offing, if one believed chatter in the rule-of-law community, was something bold, unprecedented – and autochthonous. I wanted to be there. I wanted to see justice in translation. The governmental project I chose to study certainly sounded indigenous: "*inkiko gacaca*" (pronounced *in-khi-ko ga-cha-cha*). The nomenclature was terribly effective because it was strikingly *affective*. By stimulating a sensuous response, the neologism caused countless international observers to suspend disbelief. The language of law inspired hope without any evidence to justify it, however. Often translated as "justice on the grass," the Kinyarwandan vernacular bestowed an air of authenticity – and of authority and legitimacy – that the extraordinary court system never possessed. For Rwanda's *gacaca* courts were high-modernist institutions – and, as I will show, violent ones at that. They functioned as technologies of rule. This function, however, was obscured by talk of "tradition." This facile blather caught on. Just as revered photographers from James Nachtwey to Gilles Peress, and celebrated journalists like Philip Gourevitch and Fergal Keane, tragically misunderstood – and misrepresented – the logic of violence in the 1994 genocide, an avoidable failing to which I return in the final chapter, the vast majority of international observers failed to notice the logic of violence in genocide's aftermath – especially the violence of law, as it manifested itself, for example, in Rwanda's *gacaca* courts.

The country's authoritarian government, which nominally began as a government of national unity, set up the first of what eventually became thousands of community courts in 2002 in an effort to come to terms with all but the most serious crimes committed in the course of the Hutu-led genocidal campaign. The planners of this parallel legal system staged their experiment in phases, beginning with a pilot phase. When the system finally became operational

somewhere between 562,000 and 662,000. See Omar Shahabudin McDoom, "Contesting Counting: Toward a Rigorous Estimate of the Death Toll in the Rwandan Genocide," *Journal of Genocide Research*, Vol. 22 (2020), pp. 83–93; Marijke Verpoorten, "How Many Died in Rwanda?", *Journal of Genocide Research*, Vol. 22 (2020), pp. 94–103. On the methodology and politics of casualty estimates in the case at hand, see Jens Meierhenrich, "How Many Victims Were There in the Rwandan Genocide? A Statistical Debate," *Journal of Genocide Research*, Vol. 22 (2020), pp. 72–82.

5 Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton: Princeton University Press, 2017).

6 Martha Minow, *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998).

nationwide, in 2005, it blanketed the entire country. Rwanda's unorthodox judicial institutions were everywhere to be seen, and, like pockmarks on a body politic, a sight to behold. The open-air courtrooms in which the post-genocide government staged them looked autochthonous, which is why the *inkiko gacaca* project inspired a great deal of cruelly optimistic commentary and scholarship – writings that mistook an institution of authoritarian high modernism for genuine folk justice.

The journalistic coverage was equally affective – and ill-informed – just as it had been during the genocide. Hundreds of journalists parachuted into the countryside to report on the country's experiment in transitional justice, almost all of them hopeful. One day, I crossed paths with a *Vogue* journalist in one of the rural communities I was studying. A photographer in tow, she had come to find subjects for a carthartic – and aesthetically pleasing – story about the restorative power of transitional justice. The desire to find evidence for hope in the least likely of circumstances has proved alluring to the steady stream of international visitors – from humanitarians to thanatourists – in the last thirty years.[7] Almost all of them arrive, as did I, with a Western gaze. This they eagerly shed – too eagerly, as it turns out.

When the millennium turned, essentialist readings of the genocide were on the wane. Paradoxically, essentialist readings of genocide's aftermath were on the rise. Arguments from "ancient hatreds" had been shown to be – and were widely accepted as – racist.[8] Yet it occurred to few that arguments from ancient justice are no less reductive – and equally orientalist. Many international observers in post-genocide Rwanda fetishized what they regarded – wrongly – as "justice without lawyers."[9] Lured to Central Africa by a chimera – the mythology of tradition – they became entranced by the "mythic modernities" of Rwanda's *gacaca* courts.[10]

It turns out that piercing "the magicalities of modernity," as Jean Comaroff and John Comaroff say we must, is no mean feat.[11] It takes time to reveal – layer by layer – the subterfuge frequently associated, in Rwanda and elsewhere, with the discourse of traditional justice. I learned that it takes time to marshal – piece by

[7] Steve Silva, "Genocide Tourism: Tragedy Becomes a Destination," *Chicago Tribune*, August 5, 2007; Tony Johnston, "The Geographies of Thanatourism," *Geography*, Vol. 100 (2015), pp. 20–28.

[8] For a striking example that I use in my teaching, see "Tribes Battle for Rwandan Capital," *New York Times*, April 16, 1994, reprinted, with commentary, in Jens Meierhenrich, ed., *Genocide: A Reader* (Oxford: Oxford University Press, 2014), pp. 265–266.

[9] See, for example, Phil Clark, *The Gacaca Courts, Post-genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge: Cambridge University Press, 2010).

[10] Jean Comaroff and John Comaroff, "Introduction," in *idem*, eds., *Modernity and Its Malcontents: Ritual and Power in Postcolonial Africa* (Chicago: University of Chicago Press, 1993), p. xi. See also Eric Hobsbawm, "Introduction: Inventing Traditions," in Eric Hobsbawm and Terence Ranger, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), pp. 1–14.

[11] Comaroff and Comaroff, "Introduction," p. xxx.

piece – evidence of transitional injustice.[12] And it takes time to trace – step by step – the violence of law. "Thinking is a struggle for order," C. Wright Mills remarked, "and at the same time for comprehensiveness."[13] For this reason, and a few others, mine is a very long book.

The case of Rwanda is not a case *sui generis*, mind you. I rely on it to advance a larger argument about the endtimes of transitional justice.[14] My critique of transitional justice is a call for the decolonization of transitional justice *tout court*.[15] Bemoaning the shortcomings of "distant justice" is not enough, I argue.[16] If localizing transitional justice is a worthy policy endeavor, localizing the violence of transitional justice at the grassroots is no less important, arguably more so. With critiques of the International Criminal Court (ICC) proliferating, the catechization of "local justice" has become the norm, its critique the exception. This is a book about the exception.

Truncated Empiricism

In the language of Kinyarwanda, the word *gacaca* connotes a patch of undergrowth.[17] It describes the setting of an ostensibly traditional mode of dispute resolution that the *gacaca* courts are said to have mimicked. I write "ostensibly" because no reliable primary sources exist to allow us to verify with any degree of certainty, let alone document in empirical detail, the existence and widespread use of what some have called "traditional *gacaca*."[18] Arguably, the ruling Rwandan Patriotic Front (RPF) named its invented legal tradition *inkiko gacaca* (meaning "*gacaca* courts") as a nod to the adversarial legalism that would become its defining feature.[19] In 2012,

[12] See also Jens Meierhenrich, *Transitional Injustice: Rwanda over the* Longue Durée (forthcoming), a companion volume in which I analyze longitudinally the long-run consequences of precolonial, colonial, and postcolonial uses of lawfare. This institutional prehistory of the *gacaca* experiment underlines the importance of taking Rwanda's extraordinary response to the 1994 genocide *out* of the context of transitional justice. For a global treatment, see Meierhenrich, *Lawfare*.

[13] C. Wright Mills, *The Sociological Imagination* (Oxford: Oxford University Press, [1959] 2000), p. 223.

[14] Jens Meierhenrich, "The Endtimes of Transitional Justice," in Jens Meierhenrich, Alexander Laban Hinton, and Lawrence Douglas, eds., *The Oxford Handbook of Transitional Justice* (Oxford: Oxford University Press, in press).

[15] Jens Meierhenrich, "Decolonizing Transitional Justice," in Meierhenrich, Hinton, and Douglas, *The Oxford Handbook of Transitional Justice*.

[16] Phil Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge: Cambridge University Press, 2018).

[17] The word *gacaca* is said to be derived from the name of a type of plant called *umucaca*. Because of its peculiar softness, Rwandans apparently liked to sit on it during communal meetings. The physical space in which these gatherings took place became known as *agacaca*, which, some surmise, subsequently inspired the shortened word form *gacaca*. For this etymology, see Bert Ingelaere, *Inside Rwanda's Gacaca Courts: Seeking Justice after Genocide* (Madison: University of Wisconsin Press, 2016), p. 19.

[18] For a more detailed analysis of what I call "varieties of *gacaca*," see Chapter 5.

[19] The use of "*inkiko*" derives from *urukiko*, meaning "court" or "tribunal" in Kinyarwanda.

after ten years of lay adjudication, the high-modernist project was shuttered. By closing time, its lay judges had processed, if official figures are to be believed, nearly 2 million cases of alleged low-ranking, mid-ranking, and – in the final years – even high-ranking *génocidaires*.[20]

In one sense, the invention of the *gacaca* courts was an innovative attempt to respond to the legacies of the genocide, and to foster "Rwandanness" or "Rwandanicity," as the government propaganda has it. It began as an unprecedented experiment in transitional justice. Consider the following statistics: the project involved nearly 170,000 judges and some 8 million ordinary Rwandans who together formed over 11,000 courts, almost all of them in the countryside. For the first time ever in history was an entire population involved in the adjudication of genocide. What is more, the decade-long sequestering of a parallel judiciary the size of a nation came on the cheap, at least by international standards. Whatever we think of its merits, Rwanda's *inkiko gacaca* project was one of the most cost-effective responses to atrocity ever attempted. According to official figures, the administration of the courts cost US$49.5 million in total, or US$25 per case.[21]

The enormity of the institutional design comes into even sharper relief if we compare it to another daring experiment in transitional justice – the Truth and Reconciliation Commission (TRC) of South Africa – which pales in size when considered alongside the *gacaca* project. South Africa's TRC was operational for only three years (1995–1998), divided its work among three committees, employed seventeen commissioners, convened fifty hearings, and disposed of 21,298 cases.[22] The TRC's caseload was equivalent to approximately 1 percent of that processed by Rwanda's *gacaca* courts.

Just like the TRC, the *gacaca* system was initially constrained – and later perverted – by its "excessive legalism."[23] Rwanda's *gacaca* project, like the genocidal project to which it responded, was exceedingly modern – and considerably more so than some international observers care to admit. On my argument, it was an attempt by Kigali's authoritarian rulers to ride the latest (what some count as the fifth) wave of "juridification."[24] Far from being a case of lawyerless justice, as Philip Gourevitch

[20] On June 18, 2012, the RPF-led government released a 282-page official report summarizing (and vigorously defending) the work of its *gacaca* courts. It claimed that during the ten years of their operation, they had adjudicated a total of 1,958,634 cases, the vast majority centering on property crimes. See Republic of Rwanda, *Gacaca Courts in Rwanda* (Kigali: National Service of Gacaca Jurisdictions, 2012).

[21] See http://inkiko-gacaca.gov.rw/English/?page_id=464.

[22] Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-apartheid State* (Cambridge: Cambridge University Press, 2001), pp. 21, 23.

[23] For the argument that "excessive legalism" interfered with the TRC's contribution to transitional justice in South Africa, see Wilson, *The Politics of Truth and Reconciliation in South Africa*, p. xix.

[24] For the argument that current transitional-justice programs are related to what Gerhard Anders has called "the fifth wave of juridification," see his "Juridification, Transitional Justice and Reaching out to the Public in Sierra Leone," in Julia Eckert, Brian Donahoe, Christian Strümpell, and Zerrin Özlem Biner, eds., *Law against the State: Ethnographic Forays into Law's Transformations* (Cambridge: Cambridge University Press, 2012), esp. pp. 97–99. On the judicialization of politics generally,

of the *New Yorker* wants us to believe it was, the project was a cruel manifestation of authoritarian high modernism and – crucially, as it turns out – not the first such endeavor in the history of Rwanda.[25] Lawyers and bureaucrats were turning the wheels of transitional justice – not the rural poor. *Inkiko gacaca* was not an institution of folk justice.

Unfortunately, many mistook the *gacaca* facade for its interior, law's surface for its substance. These erroneous interpretations are the result of what David Newbury and Catharine Newbury, in an influential assessment of the historiography of Rwanda, a while ago called "truncated empiricism."[26] This approach to history, perfunctory as it is, sees authors present supposed facts "without placing them in context," without considering "alternative data," without providing "internal critique," and without reference to "the contentions of historical process."[27] The approach is commonplace in accounts of genocide's aftermath in Rwanda.

The practice of *gacaca*, it is often said, refers to an informal method of dispute resolution that has been used for aeons to settle civil disputes over property rights, family matters, and other community affairs. Be that as it may, in the wake of the genocide, the interim government turned this informal institution into a full-blown mechanism of accountability. It invented a novel technology of transitional justice. Ringing endorsements came hard and fast, if mostly from abroad. Scores of international observers were elated, and relieved, that "a model of restorative justice" had been found in post-genocide Rwanda. This institutional choice, they hoped, would counterbalance international law's purported failure in Arusha, Tanzania, where the justice machinery of the International Criminal Tribunal for Rwanda (ICTR)

see, among others, John Ferejohn, "Judicializing Politics, Politicizing Law," *Law & Contemporary Problems*, Vol. 65, No. 3 (Summer 2002), pp. 41–68. On the judicialization of *authoritarian* politics, see Robert Barros, *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution* (Cambridge: Cambridge University Press, 2002); Tamir Moustafa, *The Struggle for Constitutional Power: Law, Politics, and Economic Reform in Egypt* (Cambridge: Cambridge University Press, 2007); Lisa Hilbink, *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile* (Cambridge: Cambridge University Press, 2007); Jens Meierhenrich, *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652–2000* (Cambridge: Cambridge University Press, 2008); and Tom Ginsburg and Tamir Moustafa, eds., *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge: Cambridge University Press, 2008).

[25] Clark, *The Gacaca Courts, Post-genocide Justice and Reconciliation in Rwanda*, pp. 132–168. On the occasion of the twenty-fifth anniversary of the 1994 genocide, Philip Gourevitch repeated the myth when he claimed, on National Public Radio, that the post-genocide government had "set up a system of community courts – without lawyers – to sort of repurpose a system that really had only been used for small claims mitigation in traditional Rwanda, called *gacaca*, and have open, communal – what we might call a town hall – format for trials." Transcript, "After the Genocide: Author Witnessed How Rwandans Defined Forgiveness," *National Public Radio*, April 9, 2019, available at www.npr.org/2019/04/09/711314421/after-the-genocide-author-witnessed-how-rwandans-defined-forgiveness.

[26] David Newbury and Catharine Newbury, "Bringing the Peasants Back In: Agrarian Themes in the Construction and Corrosion of Statist Historiography in Rwanda," *American Historical Review*, Vol. 105 (2000), p. 849.

[27] Newbury and Newbury, "Bringing the Peasants Back In," p. 849.

had begun to sputter.[28] Here is a representative account of the high hopes many international observers had for Rwanda's *gacaca* courts:

> As a mode of communal justice, *gacaca* operates on three crucial levels: (1) as a traditional mode of dispute resolution, its operation entails a high degree of social authority and legitimacy; (2) its dialogic function generates an open discursive space through which the community itself can create a collective memory of the genocide; (3) on a psychological and emotional level, the process allows the victims, the aggressors and the community to reach a level of mutual understanding and recognition which may facilitate the process of social reintegration and coexistence.[29]

We now know that Rwanda's *gacaca* courts possessed a high degree *neither* of "social authority" *nor* of "legitimacy." A significant number of perpetrators and survivors had been apprehensive from the start about the state-led project – and most have remained so.[30] The country's experiment in transitional justice was an abject failure. *Inkiko gacaca* exacerbated fear and loathing in the countryside. The "discursive space" that, in theory, is associated with community courts opened up in only very few of Rwanda's *gacaca* courts. Although one can find evidence of "social integration and coexistence" in some rural and urban communities, the claim that the *gacaca* courts helped to create "a level of mutual understanding and recognition" that played a causal role in these outcomes is spurious. In reality, they fostered transitional injustice – on a scale never seen before, as I will show.[31]

[28] The international justice machinery had been badly damaged in the ICTR's Barayagwiza crisis, when, in November 1999, the RPF-led government responded furiously to the ICTR Appeals Chamber's judicial order to release Jean-Bosco Barayagwiza – a defendant in the so-called Media Trial – from UN detention. The order was a judicial remedy for the Office of the Prosecutor's due-process failings in the international trial. On the controversy and its fallout, see Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for Cooperation* (Cambridge: Cambridge University Press, 2008), pp. 177–185. For a more recent, ethnographic study of the ICTR that puts the Barayagwiza crisis in organizational context, see Nigel Eltringham, *Genocide Never Sleeps: Living Law at the International Criminal Tribunal for Rwanda* (Cambridge: Cambridge University Press, 2019). An overarching, tentative assessment of the ICTR's effectiveness is available in Sara Kendall and Sarah M. H. Nouwen, "Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda," *American Journal of International Law*, Vol. 110 (2016), pp. 212–232.

[29] Jason Benjamin Frank, "Deontological Retributivism and the Legal Practice of International Jurisprudence: The Case of the International Criminal Tribunal for Rwanda," *Journal of African Law*, Vol. 49 (2005), p. 129.

[30] But cf. Phil Clark, "Hybridity, Holism, and 'Traditional' Justice: The Case of the Gacaca Courts in Post-genocide Rwanda," *George Washington International Law Review*, Vol. 39 (2007), pp. 765–837.

[31] For the first, carefully researched arguments to this effect, see Lars Waldorf, "Mass Justice for Mass Atrocity: Rethinking Mass Justice as Transitional Justice," *Temple Law Review*, Vol. 79 (2006), pp. 1–88; Jennie E. Burnet, "The Injustice of Local Justice: Truth, Reconciliation, and Revenge in Rwanda," *Genocide Studies and Prevention*, Vol. 3 (2008), pp. 173–193; and Bert Ingelaere, "'Does the Truth Pass across the Fire without Burning?' Locating the Short Circuit in Rwanda's Gacaca Courts," *Journal of Modern African Studies*, Vol. 47 (2009), pp. 507–528. Over the last decade, the number of critical perspectives on the *gacaca* project has grown. However, some, like Nick Johnson, formerly rector of the Institute of Legal Practice and Development in Rwanda, continue to ignore this

THE GACACA FACADE

In testimony to the U.S. Congress, Sarah Margon, Washington director of Human Rights Watch, on May 20, 2015, gave a clear-eyed portrayal of "developments in Rwanda," as the subcommittee of the House of Representative's Committee on Foreign Affairs had titled its hearing that day:

> Rwanda is a country of double realities. Visitors are impressed with the facade, the apparent security. But it is a smokescreen, because many Rwandans live in fear and not just because of the legacy of genocide but because the current government – the only once since the end of the genocide in 1994 – runs the country with a tight grip on power. Indeed, the ruling party, the Rwandan Patriotic Front, dominates all aspects of political and public life.[32]

In this book I examine the facade of which Margon speaks. I inspect its architecture, step behind the artifice.

In the thirty years since an estimated 200,000 *génocidaires* tore into and asunder communities in Rwanda, the suffering there continues.[33] The lot of the vast proportion of survivors in whose name President Paul Kagame, the longtime RPF leader, purports to govern has hardly improved. In fact, a considerable number of the peasants who miraculously made it through the carnage alive are worse off now than they were under the yoke of the oppressive developmental state that governed the Second Republic.[34] Yet, despite this destitution, their grief and fear remain the

evidence base: "No one claims that *gacaca* justice was perfect but very few here doubt that it saved Rwanda." As quoted in "We're Just One Happy Family Now, Aren't We?", *The Economist*, March 30, 2019. For a scholarly version of this argument, see Clark, *The Gacaca Courts, Post-genocide Justice and Reconciliation in Rwanda*. According to Clark, the *gacaca* courts were "a remarkable success" despite the fact that, as he concedes, they also "created major problems in many communities that will require systemic remedies long after [the government's] *gacaca* [project] has completed its work." Ibid., p. 28. Clark's conclusion begs the question, however: can one *really* count a transitional-justice mechanism a "remarkable success" if "many communities" are facing "major problems" as a result of its operation?

[32] Statement of Ms. Sarah Margon, Washington director, Human Rights Watch, *Hearing before the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations of the Committee on Foreign Affairs, House of Representatives, May 20, 2015, Serial No. 114–133* (Washington, D.C.: U.S. Government Publishing Office, 2016), p. 44.

[33] The figure of 200,000 estimated *génocidaires* derives from Scott Straus, "How Many Perpetrators Were There in the Rwandan Genocide? An Estimate," *Journal of Genocide Research*, Vol. 6 (2004), p. 95. It stands in marked contrast to the RPF-led government's insistence that 3 million perpetrators were involved in the destruction. The latter high-end estimate was reported, uncritically, by, among others, Philip Gourevitch, whose *New Yorker* articles and best-selling book *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda* (New York: Farrar Straus and Giroux, 1998) has done its share to obscure the nature not only of the 1994 genocide, but also of the authoritarian regime that the RPF created in its wake.

[34] Take poverty as an example. Although the RPF-led government purports to have reduced the country's poverty rate in the period from 1994 to 2019, critics have called this claim – and the underlying data – into question. Filip Reyntjens, "Lies, Damned Lies and Statistics: Poverty Reduction Rwandan-Style and How the Aid Community Loves It," *African Arguments*, November 3, 2015, available at

social capital being spent by an authoritarian regime that has proved more adept at repressing the nation than at reconciling it. "'Enemy, enemy, enemy' – that's what they call anyone who thinks differently," says Charles Kabanda, RPF chairman from 1987 to 1989, who found himself in his former organization's crosshairs when he became secretary-general of Rwanda's Green Party.[35] Like Margon, Kabanda thinks that the front which the authoritarian regime has been presenting to the world is facadist: "This government's record is dreadful. It's only you, the international community, who is showering them with flowering praise."[36]

Hecatomb

I use the metaphor of the facade deliberately to frame what is to come. It is a fitting image for several reasons. For one, it alludes to law's performativity; that is, to the central role that legal performances play whenever a dictatorship, such as Rwanda's, takes up the question of transitional justice.[37] By foregrounding the performative nature of much of what has gone on in post-genocide Rwanda – and the inherent ambiguity that has always pervaded social life there – one becomes more attuned to the violence of law, including the myriad ways in which the legalization of everyday life has hurt the country's recovering body politic since 1994.

In concealing its violent practices under the guise of law, the post-genocide government is not unique in the annals of state-building. The RPF's strategy of keeping "all in awe," which Thomas Hobbes, famously, believed only a mighty leviathan could, has been a tried and tested, if rarely benevolent, recipe for social order. In *Leviathan*, the state of law is presented

https://africanarguments.org/2015/11/03/lies-damned-lies-and-statistics-poverty-reduction-rwandan-style-and-how-the-aid-community-loves-it; Sam Desiere, "The Evidence Mounts: Poverty, Inflation and Rwanda," *Review of African Political Economy* blog, June 26, 2017, available at http://roape.net/2017/06/28/evidence-mounts-poverty-inflation-rwanda. For a rebuttal of these findings, see Freeha Fatima and Nobuo Yoshida, *Revisiting the Poverty Trend in Rwanda: 2010/11 to 2013/14*, Policy Research Working Paper 8585 (Washington, D.C.: World Bank, 2018). For rebuttals of this rebuttal, see further entries on the *Review of African Political Economy* blog.

35 As quoted in Jeffrey Gettleman, "Rwanda Pursues Dissenters and the Homeless," *New York Times*, April 30, 2010.

36 As quoted in Gettleman, "Rwanda Pursues Dissenters and the Homeless."

37 For a recent call to advance interdisciplinary scholarship on legal performance, see Julie Stone Peters, "Legal Performance Good and Bad," *Law, Culture and the Humanities*, Vol. 4 (2008), pp. 179–200. See also Jens Meierhenrich and Catherine Cole, "In the Theater of the Rule of Law: Performing the Rivonia Trial in South Africa, 1963–1964," in Jens Meierhenrich and Devin O. Pendas, eds., *Political Trials in Theory and History* (Cambridge: Cambridge University Press, 2016), pp. 229–262. For other thick descriptions of law's performativity, see Catherine M. Cole, *Performing South Africa's Truth Commission: Stages of Transition* (Bloomington: Indiana University Press, 2010); Henning Grunwald, *Courtroom to Revolutionary Stage: Performance and Ideology in Weimar Political Trials* (Oxford: Oxford University Press, 2012); and Ananda Breed, *Performing the Nation: Genocide, Justice, Reconciliation* (London: Seagull Books, 2014), the last of which is a valuable study of post-genocide Rwanda.

> as a way of taming violence by producing, through social organization, an economy of violence. It is Leviathan's awesome force, not its moral commitments, that in this account makes it socially valuable. Violence lurks just below the surface, a violence so great and overwhelming as to produce a frozen acquiescence. Should the need arise, however, Leviathan can be counted on to spill blood willingly to prevent an even more gruesome bloodbath.[38]

A similar logic of violence, I contend, was at play in Rwanda's administration of transitional justice. From the outset, the violent entrepreneurs at the authoritarian regime's helm were after "frozen acquiescence." At first only "overwhelming" violence would do. In the dying days and in the immediate aftermath of the 1994 genocide, the Rwandan Patriotic Army (RPA), the RPF's omnipotent military arm, repeatedly engaged – and has been shown to have engaged – in indiscriminate bush clearing with the goal of uprooting "the" Hutu enemy and its fellow travelers.[39] One violent specialist, the late Abdul Joshua Ruzibiza, absconded in 2001. He lived just long enough to tell the violent tale. In his account, the RPA's directory of military intelligence (DMI), on direct orders from Paul Kagame, the president of Rwanda, who was still a major general at the time, dispatched a death squad (*un peloton de tueurs*) to carry out mass executions in Ndera and Masaka.[40] In the period from August to December 1994, this

[38] Austin Sarat and Jennifer L. Culbert, "Introduction: Interpreting the Violent State," in *idem*, eds., *States of Violence: War, Capital Punishment, and Letting Die* (Cambridge: Cambridge University Press, 2009), p. 3.

[39] The RPA's strategy of "liberation," its ostensibly "humanitarian" intervention in the 1994 genocide, reminds of the "mere gook rule" and the American way of war in Vietnam. During the Vietnam War, the late Lee Ann Fujii pointed out, the rule "referred to the practice of including all Vietnamese dead," whether combatant or civilian, in a given day's "body count" so as "to please commanders." According to Fujii, the RPA "applied its own version of this rule" when it went after the genocidal regime. "Everyone whom the RPF killed was 'made' guilty by the very fact that they had been killed by the RPF. The logic was conveniently circular: whoever died at the hands of the RPF must have been guilty of committing genocide, fighting for the Rwandan government, or a similar crime; otherwise they would not have been killed." Lee Ann Fujii, *Show Time: The Logic of Violent Display* (Ithaca: Cornell University Press, 2021), p. 144. See also Nick Turse, *Kill Anything That Moves: The Real American War in Vietnam* (New York: Metropolitan Books, 2013).

[40] Abdul Joshua Ruzibiza, *Rwanda: L'histoire secrète* (Paris: Éditions du Panama, 2005), p. 343. Note that Ruzibiza, who gave evidence at the ICTR as well as in France, in November 2008 recanted the pathbreaking revelations in his book and the judicial testimony he gave. The volte-face took place shortly after German authorities, on November 9, 2008, arrested Rose Kabuye, the former mayor of Kigali and at the time the chief of protocol in the Office of the President of Rwanda, for her alleged involvement in the assassination of former President Habyarimana on April 6, 1994. Ruzibiza, who died in 2010, reportedly of cancer, later retracted his recantation, explaining that the latter had been "linked to my personal security and that of other witnesses." As quoted in Reyntjens, *Political Governance in Post-genocide Rwanda*, p. 240. Although Judi Rever is circumspect about Ruzibiza's trustworthiness, chiding him for having "lied about his role in operations linked to the killing of Habyarimana," seasoned Rwanda hands like Claudine Vidal and André Guichaoua (in a preface and postface to *Rwanda: L'histoire secrète* respectively) as well as René Lemarchand and Reyntjens (in separate book reviews) carefully parsed Ruzibiza's eyewitness account from within the Kagame-led

PHOTOGRAPH 1.1 RPA soldier at Kibeho Refugee Camp, April 27, 1995 (photograph by Pascal Guyot)

"hecatomb," if we believe the late Ruzibiza, led to the deliberate and purposive execution of 50,000 Rwandans.[41] There also is the Kibeho massacre of April 22, 1995 (see Photograph 1.1).

In the course of that particular bloodletting, the most infamous on public record, RPA forces killed at least 2,000 Hutu in a UN camp for internally displaced persons. It is yet another early example of how the country's rebel rulers did not shy away from resorting, not even at home, to warfare as a strategy of conflict. In later years, as we shall see, Rwanda's new authoritarians were more careful to hide such violence from view, at least at home, favoring disappearances, torture, and unlawful military

dictatorship and found it to be "an extraordinarily detailed, sometimes day-by-day personal account of the author's participation in the RPF's military operations since the 1990 invasion," one that is positively and convincingly "out of joint with the commonly accepted Gourevitchian vision." See René Lemarchand, "Review Essay: Controversy within the Cataclysm," *African Studies Review*, Vol. 50 (2007), pp. 140–141.

[41] Ruzibiza, *Rwanda*, p. 343. Although Ruzibiza's testimony about the shooting down of Habyarimana's plane has been called into doubt, his claims about the incoming regime's post-genocide massacres appear to have withstood all scrutiny. See also André Guichaoua, *From War to Genocide: Criminal Politics in Rwanda, 1990–1994*, translated by Don E. Webster (Madison: University of Wisconsin Press, 2015); Médecins sans frontières, *The Violence of the New Rwandan Regime 1994–1995* (Paris: Médecins sans frontières, 2014); and, most recently, Michela Wrong, *Do Not Disturb: The Story of a Political Murder and an African Regime Gone Bad* (London: Fourth Estate, 2021).

detention over public and indiscriminate mass murder to broadcast power and to get their heavy-handed messages across.[42]

In the case of high-profile dissenters such as Colonel Patrick Karegeya, a former Kagame loyalist who was found murdered in his hotel room in Johannesburg, South Africa, on January 1, 2014, the post-genocide government could nonetheless be counted on to "spill blood," to reveal its iron hand.[43] Several intelligence services have confirmed the RPF leadership's penchant for revenge killings. In 2011, Scotland Yard warned two defectors, Rene Mugenzi and Jonathan Musonera, that a Rwandan assassin had been "sent to kill dissidents in [the] UK."[44] Metropolitan Police officers shared with them "reliable intelligence" that Rwanda's post-genocide government posed "an imminent threat" to Mugenzi and Musonera.[45] The U.S. government, for many years an ardent supporter of Kagame's authoritarian high modernism, has also documented state-led reprisals beyond borders.[46] In its 2018 human rights report, the U.S. Department of State painted a sobering picture of just how much violence the RPF-led leadership had countenanced in a single year at home:

> Human rights issues included reports of unlawful or arbitrary killings by state security forces; forced disappearance by state security forces; torture by state security forces including asphyxiation, electric shocks, mock executions; arbitrary detention by state security forces; political prisoners; arbitrary interference with privacy; threats to and violence against journalists, censorship, website blocking, and criminal libel; substantial interference with the rights of peaceful assembly and freedom

[42] For an extended analysis of the Kibeho massacre, see Chapter 12. Formed in July 1994 as the RPF's military wing, the RPA in 2002 was renamed the RDF, or Rwanda Defence Force, and turned into the country's national army. On the regime's use of disappearances, torture, and unlawful military detention, see, for example, the 113-page Human Rights Watch report "*We Will Force You to Confess*": *Torture and Unlawful Military Detention in Rwanda* (New York: Human Rights Watch, 2017). Its documentation of 104 cases of overt violence between 2010 and 2016 led HRW to make a formal submission to the United Nations Committee against Torture for consideration at its 62nd session, November 6–December 6, 2017.

[43] In January 2019, a formal inquest into the assassination of Karegeya got underway in South Africa, led by Randburg magistrate Jeremiah Matopa, but was instantly halted. For detailed background on the diplomatically highly sensitive case, see Jane Flanagan, "Inquest Will Expose Dark Side of Rwandan Regime," *The Times* (London), January 14, 2019; Michela Wrong, "Rwanda's Khashoggi: Who Killed the Exiled Spy Chief?", *The Guardian* (London), January 15, 2019; *idem*, "Suspects in Rwandan Spy Chief's Death 'Linked to Government'," *The Guardian* (London), January 21, 2019. For an inquiry into other attacks and assassinations on foreign soil, see Human Rights Watch, "Repression across Borders: Attacks and Threats against Rwandan Opponents and Critics Abroad," January 28, 2014.

[44] Cahal Milmo, "Rwandan Assassin 'Sent to Kill Dissidents in UK'," *The Independent* (London), May 20, 2011.

[45] A few weeks earlier, MI5 had warned the Rwandan High Commissioner to London, Ernest Rwamucyo, to cease his government's intimidation campaign against U.K.-based critics of the post-genocide regime. Cahal Milmo, "Rwandan Wedding Guest Told to Stop Harassing Dissidents in UK," *The Independent* (London), April 29, 2011.

[46] Lucy Bannerman, "Rwandan Exile Warned He Could Be Assassinated," *The Times* (London), March 14, 2018.

> of association, such as overly restrictive nongovernmental organization (NGO) laws; and restrictions on political participation.[47]

To dispel the notion that these acts of violence could have been the work of rogue operatives, the report's American authors added that in post-genocide Rwanda, "Civilian authorities maintained effective control over state security forces."[48] We will see that, depending on its calculus of coercion, the RPF-led government in the period under investigation deployed violence both overtly *and* covertly.[49] The law, as I will show, was deeply implicated in the latter.

It was never a secret that the regime in Kigali had a violent streak, although few international actors were willing to say so. Here is how Robert Gribbin, a former U.S. ambassador to Rwanda, recalled, early on, the darkening atmosphere in genocide's aftermath:

> Rwanda, in December 1998, was a very different place from what it had been three years previously. Outwardly, it was a functioning third world nation, going busily about the painful process of development, of conquering poverty, of battling corruption, of budget balancing, of increasing agricultural production, of building schools, immunizing children, and combating AIDS. This facade of normality was deceptive, however, because underneath it lay the Rwandans' festering suspicion of one another and of their government, growing ethnic separateness, and a sense of powerlessness against fate. While these attitudes could be found in many African states, in Rwanda, because of the genocide, they were most intensely felt.[50]

Violence has been all around since the genocide. Why should any of this matter for understanding Rwanda's *gacaca* courts? The fact that permutations of violence were felt by all – and continuously – matters because it provides the "context," both temporal and political, that is necessary for assessing accurately the country's misunderstood experiment in transitional justice. This contextual information is essential for the "internal critique" that David Newbury and Catharine Newbury think indispensable for mapping "the contentions of historical process" in Rwanda, including the contentious politics of transitional justice.[51]

[47] U.S. Department of State, *Rwanda 2018 Human Rights Report* (Washington, D.C.: U.S. Department of State, 2019), p. 1.

[48] U.S. Department of State, *Rwanda 2018 Human Rights Report*, p. 1.

[49] What I call the "calculus of coercion," in a nod to James M. Buchanan and Gordon Tullock's game-theoretic classic *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), refers to the two basic challenges of governance in any dictatorship: (1) how to obtain (and sustain) co-operation from regime-supporting segments of society; and (2) how to neutralize opposition or resistance from dissidents. For a formal model of three equilibria that are logically conceivable under dictatorship, namely a "co-operation equilibrium," a "co-optation equilibrium," and a "turmoil equilibrium," see Jennifer Gandhi, *Political Institutions under Dictatorship* (Cambridge: Cambridge University Press, 2008), pp. 87–106.

[50] Robert E. Gribbin, *In the Aftermath of Genocide: The U.S. Role in Rwanda* (New York: iUniverse, 2005), p. 291.

[51] Newbury and Newbury, "Bringing the Peasants Back In," p. 849.

When violence is everywhere – when violence is the rule – what, if anything, can be accomplished in the name of transitional justice? Can – in such forbidding circumstances – a quest for justice *ever* be more than a facade?

The Interior of Justice

In its basic sense, a facade is simply a structure. When viewed from the outside, its exterior shields an invisible interior. Inside and outside may match – or they may not. There may be a mismatch between exterior and interior. All may not be as it seems. Russia's Potemkin villages are a prime, though possibly apocryphal, example of facadist architecture:

> Legendarily, Potemkin villages were the structures erected in honor of the Russian ruler Catherine the Great when she toured her domains in the late 18th century. Anxious to spare the empress from the grim realities of the Crimean countryside, the nobleman Grigory Aleksandrovich Potemkin reputedly ordered that whole towns be constructed out of prettily painted wood – just like the real thing.[52]

As architectural landscapes, Potemkin villages present an impressive facade to hide squalor. But institutional landscapes, too, can be "clones, impostors or frauds."[53] Whether they are designed to or not, they can con us into thinking, say, that a transitional justice institution is performing better than it really is, that it is genuinely participatory. Facadist institutions may even persuade us that an authoritarian government, like the Rwandan, conducted its experiment in transitional justice reasonably well given all it was up against in genocide's wake.

It was Alexander Laban Hinton who introduced the concept of "the justice facade." He has used it to challenge standard accounts of the Extraordinary Chambers in the Courts of Cambodia, a hybrid model of international criminal justice that, not unlike Rwanda's *gacaca* courts, was greeted with fanfare in the international community.[54] Here is how Hinton summarized his argument:

> If the transitional justice imaginary refers to a progressive aspiration (the teleological transformation from authoritarianism to democracy) and its imagined realization in particular localities, the justice facade is a metaphor highlighting this exteriorization and the imagined fulfillment – an image, or *imago* to use the Latin root, which connotes simulation – of the imaginary's universalist dream, imperative, and desire. By suggesting that the transitional justice imaginary is facadist, I mean to highlight that, while offering a limited set of benefits and possibilities, transitional justice may not necessarily penetrate far below the surface in places like Cambodia – even if the transitional justice imaginary asserts that it does. Instead of

[52] Andrew Dickson, "A World Tour of Fake Places That Fool the Eye," *New York Times*, July 12, 2018.
[53] I borrow the phrase from Dickson, "A World Tour of Fake Places That Fool the Eye."
[54] Alexander Laban Hinton, *The Justice Facade: Trials of Transition in Cambodia* (Oxford: Oxford University Press, 2018).

FIGURE 1.1 The *gacaca* facade

taking for granted arguments about some sort of global "justice cascade," then, we would do well to examine the "justice facade."[55]

According to Hinton, the metaphor can help illuminate two easily overlooked dimensions of any transitional justice project: (1) what he calls "a surface-level exteriorization of the transitional justice imaginary," and (2) the possible "masking effect" of transitional justice institutions. Both dimensions are relevant to understanding Rwanda's *gacaca* courts. The metaphor of the justice facade draws our attention to the incongruity between the courts' neo-traditional exterior and their very modern interior.

For starters, take a look at the official logo of *inkiko gacaca* (Figure 1.1). Crafted sometime in 2001, the logo's visual language is noteworthy, its intent facadist. The designers who invented it borrowed heavily from the global transitional justice discourse *en vogue* at the time.

Relying on sentimental, universal tropes of peasant life, the depicted scene oozes tranquility. Heeding international calls for localizing transitional justice, it conjures a simpler time in which small-scale communities came together to dispense

[55] Hinton, *The Justice Facade*, p. 21.

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"harmony justice," to restore an unbalanced equilibrium.[56] The outline of Rwanda's famous rolling hills in the background (which unfortunately is not visible in the reproduction on the previous page) tells us that we are in the countryside. Here a homegrown, African solution to the problem of radical evil has been found. In the shade of an iconic *umunyinya*, a type of acacia tree, with its distinctive leaflets, a calm reckoning is afoot. The drawing portrays a comforting scene of sensible folk justice. The judges' table in the center may be a nod to adversarial legalism. Or one could read it as a subtle reminder that an invisible, uncrossable line is built into the *gacaca* system – a *limes* in Latin – that forever separates "the other," the Hutu population that stands accused of genocidal transgressions, from the Tutsi-led authoritarian regime that now sits in judgment over them, and with the full force of the law at its disposal.

At the same time, the state is conspicuous for its absence in this idyllic picture of law. What we have is an idealized depiction of transitional justice in the vernacular, an affective rendering of *inkiko gacaca* that borrowed from, and speaks to, the transitional justice imagery of our time. The artist(s) took an accurate measure of the "structure of feeling" that celebrated observers like the photographers James Nachtwey and Gilles Peress and the journalists Fergal Keane and Philip Gourevitch helped build, in 1994 and thereafter, and which has since become deeply embedded in the juridical unconscious of a caring world.[57]

The perspectival positioning of the *inyangamugayo* (supposed persons of integrity elected to serve as *gacaca* judges who not infrequently turned out to have less integrity than expected) under the protective shade of the indigenous tree – yet very noticeably *above* the ordinary community members – is suggestive of the hierarchical nature of justice that the *gacaca* courts eventually dispensed. The fourteen community members seated on the grass, on the other hand, were presumably meant to render the invention of law harmless. The method is the message. By modernizing *gacaca*, the post-genocide government wanted its citizens to believe that it was going back to the roots, both literally and figuratively. This government wanted them to believe that it was localizing reckoning in Rwanda, that it was administering *ubutabera bwunga*, the "justice that bridges gaps," as the banner in the drawing's top half audaciously announced.

The brightly colored green laurel wreath which in the official drawing framed the sentimental scene adds solemnity to the undertaking and gives it the official imprimatur of state. In ancient Rome, the laurel wreath was the symbol of martial victory, of course. Its symbolic effect here is heightened by the draped banner at the bottom of the image from which the wreath emanates. Rendered in blue, yellow,

[56] Laura Nader, *Harmony Ideology: Justice and Control in a Zapotec Mountain Village* (Stanford: Stanford University Press, 1991).

[57] Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), p. 134; Shoshona Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002). As already mentioned, I delve more deeply into the affects of the genocide, with particular reference to Nachtwey, Peress, Keane, and Gourevitch, in Chapter 12.

and green, the colors of Rwanda's national flag, which the RPF-led government redesigned in October 2001, the banner was a shrewd way of bringing the state back in, of reminding everyone involved that *inkiko gacaca* is a figment of the new government's imagination, and thus owed unquestioning obedience. The version of *gacaca* that the logo communicates may appear traditional, but it comes across, even here, as a manifestation of authoritarian high modernism – as a justice facade.

It has been suggested that we think of the justice facade "as an 'exterior' surface," as one that aligns

> with the transitional justice imaginary's aspiration of teleological transformation. Facadist architecture foregrounds interior/exterior relation, a "front" – often one preserving the semblance of "tradition" or "heritage" even as it is completely modernized within – that is seen from the outside. Accordingly, facadism asserts a relation between the visible and the masked, surface and depth, modernity and "tradition."[58]

In Rwanda, the *gacaca* facade masked – among other violent outcomes to be discussed – an impunity reversal. After many years of careful ethnographic research, having witnessed hundreds of proceedings in all corners of the country, the late Bert Ingelaere concluded, "Impunity for violence against Tutsi [had] been replaced by an impunity for violence against Hutu."[59] On his reading, Rwanda's *gacaca* courts "did not eradicate, but reconfigured, a culture of impunity."[60] Ingelaere's interpretation squares with mine, though my analytical concern is different from his, and from that of other leading scholars of the *gacaca* courts: Anuradha Chakravarty, Timothy Longman, Susan Thomson, and Lars Waldorf. I am indebted to their painstaking, illuminating field research, and will draw heavily on it, but I approach the interior of justice from a vantage point once removed. I come at it from what Robert Bates and colleagues think of as the "complex middle ground between ideographic and nomothetic reasoning."[61]

From this vantage point, I seek to understand the continuum of violence in Rwanda.[62] To do so requires us to take seriously the violence of law. In Rwanda, as in most authoritarian regimes, coercive institutions have operated in the most unlikely of places over the centuries. My goal is to bring this historic violence into view, to understand its long-run consequences for the formation and deformation of the *gacaca* courts. This book, together with *Transitional Injustice*, its companion study, is not only more theoretically driven than the existing literature,

[58] Hinton, *The Justice Facade*, p. 21.

[59] Bert Ingelaere, "The Gacaca Courts in Rwanda: Contradictory Hybridity," *E-International Relations*, May 4, 2014.

[60] Ingelaere, "The Gacaca Courts in Rwanda."

[61] Robert H. Bates, Avner Greif, Margaret Levi, Jean-Laurent Rosenthal, and Barry R. Weingast, "Introduction," in *idem*, *Analytic Narratives* (Princeton: Princeton University Press, 1998), p. 12.

[62] Susan Thomson, *Whispering Truth to Power: Everyday Forms of Resistance to Reconciliation in Postgenocide Rwanda* (Madison: University of Wisconsin Press, 2013), pp. 76–106. Thomson speaks of a continuum of violence between 1990 and 2000.

but also more historically situated. The two volumes go farther back in time. In conjunction, they provide a perspective from the *longue durée*. Although this project is a study of transitional justice, it is also a study of violence in time.[63] Violence, as a generative force, perverted the course of transitional justice in Rwanda – and became imbricated in it.

LEGAL ORIENTALISM

To see Rwanda's justice facade for what it is, an excursus on the fetishization of the local is in order. The obsession with indigenous institutions seized the imagination of international organizations in the late 1990s. Recognizing this obsession is key to tearing down the *gacaca* facade. I present it here as the latest manifestation of legal orientalism, this "set of interlocking narratives about what is and is not law, and who are and are not its proper subjects."[64] I want to draw attention to global discursive formations about abstract rule-of-law templates and the legal transplants they inform. For this "expert rule," as David Kennedy calls it, has powerful effects:

> Power is everywhere legitimated by knowledge practices that rationalize, explain, interpret and associate exercises of power, powerful people and powerful institutions with myths, ideologies, and other large ideas about values and interests. At the same time, ideals and values are rendered persuasive, enforced and trained into people through the institutional machinery of power and the mechanics of force. Foreground decision makers and background workers are engaged in a parallel and reciprocal interpretive process about what the context requires, what past decisions mean, how they ought to decide, and what should follow in consequence. Precisely because it is a two-way street – my ideas legitimate your power, your power enforces my ideas – the exercise of power, even as brute force, occurs within a discursive world of meaning.[65]

The discursive world of meaning that is transitional justice operates in the larger rule-of-law universe.[66] The tendency toward prescription and the mantra of "best practices" has ensured that the slow move from universality to particularity in rule-of-law promotion – this local turn – has created yet another universal way of

[63] Institutionalist scholars will recognize my formulation as a paraphrase of the title of Paul Pierson's pathbreaking contribution to the study of historical institutionalism, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004).

[64] Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, MA: Harvard University Press, 2013), p. 5.

[65] David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton: Princeton University Press, 2016), pp. 7, 8.

[66] For a measure of that universe, see the contributions in Jens Meierhenrich and Martin Loughlin, eds., *The Cambridge Companion to the Rule of Law* (Cambridge: Cambridge University Press, 2021). For a critique of said universe, see Stephen Humphreys, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (Cambridge: Cambridge University Press, 2010).

seeing, a totalizing social imaginary that routinely pays lip service – but rarely careful attention – to the presentation of law in everyday life.[67]

The local turn with which I am concerned started out in the least likely of places: at the World Bank and the International Monetary Fund (IMF). Not long after both international financial institutions had learned from the New Institutional Economics how important "institutions" were for making development work, they also discovered law – and tried to factor it into their models:

> Toward the end of the 1990s, a group of economists, specializing in finance and building upon the emerging emphasis on institutions, conducted econometric research to determine what legal rules best contributed to strength in the financial sector and thereby to economic growth … Their seminal work led to an explosion of research by other economists and by lawyers into the role of legal institutions in economic development.[68]

When the supply of ready-made legal transplants was outstripping demand in the real world, where bespoke models were needed, the imperative to take "context" seriously in institutional reform seized the Bretton Woods institutions.[69] Especially the World Bank recognized the benefit of scaling down, as far as the grassroots, to tighten the law–growth nexus.[70] In 2012, when the World Bank's new thinking about building the rule of law became increasingly focused on "fragile and conflict-affected states (FCS)," the Legal Vice Presidency let it be known that it was "making [its] justice strategies more fragility-focused by grounding them in political economy and local context analysis, and [in] understanding the complexities of coordinating among all the relevant state and nonstate justice institutions."[71] It announced that

[67] For an important critique, based on careful research in Sierra Leone, see Rosalind Shaw, "The Production of 'Forgiveness': God, Justice, and State Failure in Post-war Sierra Leone," in Kamari Maxine Clarke and Mark Goodale, eds., *Mirrors of Justice: Law and Power in the Post-Cold War Era* (Cambridge: Cambridge University Press, 2010), pp. 208–226.

[68] Kenneth W. Dam, *The Law–Growth Nexus: The Rule of Law and Economic Development* (Washington, D.C.: Brookings Institution Press, 2006), p. 5. See also Lawrence Tshuma, "The Political Economy of the World Bank's Legal Framework for Economic Development," *Social & Legal Studies*, Vol. 8 (1999), pp. 75–96.

[69] Matt Andrews, *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions* (Cambridge: Cambridge University Press, 2013). For an account of early World Bank deliberations about making international development projects more inclusive, see Bhuvan Bhatnagar and Aubrey C. Williams, *Participatory Development and the World Bank* (Washington, D.C.: World Bank, 1992). These ideas eventually trickled down to the World Bank Institute, where much of the governance work was done.

[70] On the broader issue at stake, namely organizational learning and the intellectual foundations of international organizations, see Martha Finnemore, "Redefining Development at the World Bank," in Frederick Cooper and Randall Packard, eds., *International Development and the Social Sciences: Essays on the History and Politics of Knowledge* (Berkeley: University of California Press, 1997), pp. 203–227; and, more recently, Galit Sarfaty, "Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank," *American Journal of International Law*, Vol. 103 (2009), pp. 647–683.

[71] Legal Vice Presidency, *New Directions in Justice Reform: A Companion Piece to the Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption* (Washington, D.C.: World Bank, 2012), p. 14.

it would in future be "promoting 'best-fit' – rather than best-practice – justice initiatives that earn the trust of the population because of their greater compatibility with the local context."[72] The idea of participatory developmentalism, first floated in the 1990s, had grown an offshoot: participatory legalism.

After working exclusively for several years with a purely formal conception of the rule of law, the World Bank became more open to substantive conceptions of law's rule.[73] In its *World Development Report 2017*, dedicated as it was to the relationship between governance and law, the World Bank for the first time asked how legitimacy was "ultimately" built, thus tempering what it called its "functional approach" to governance.[74] To their "lessons for reformers from the 'rules game,'" by which they meant anyone who viewed the world through a game-theoretical lens, the report's authors added a word of caution: "Even if a government delivers on its commitments and is able to coerce people into complying, there may be 'legitimacy defecits' if the process is perceived as unfair and people may not be willing to cooperate and would rather opt out of the social contract."[75] This, incidentally, is precisely the situation in which the RPF-led government finds itself three decades after the genocide – a situation that the World Bank and IMF had indirectly helped to bring about by fetishizing first legalism, and then localism.

For the intellectual transformation at the World Bank paved the way for a fetishization of the local by practitioners and scholars of transitional justice. Arguments for devolving justice in times of transition became the order of the day in the wake of South Africa's much-admired (and still poorly understood) TRC. The rush to embrace localized forms of transitional justice reminds one of Blaise Pascal, who, in his *Pensées*, warned, "Justice, like finery, is dictated by fashion."[76]

[72] Legal Vice Presidency, *New Directions in Justice Reform*, p. 14.

[73] Cf., for example, the differences among World Bank, *The World Bank and Legal Technical Assistance: Initial Lessons*, Policy Research Working Paper No. 1414 (Washington, D.C.: World Bank, 1995); Legal Vice Presidency, *Legal and Judicial Reform: Strategic Directions* (Washington, D.C.: World Bank, 2003); World Bank, *World Development Report 2011: Conflict, Security, and Development* (Washington, D.C.: World Bank, 2011); Legal Vice Presidency, *New Directions in Justice Reform*; and World Bank, *World Development Report 2017: Governance and the Law* (Washington, D.C.: World Bank, 2017). Related, see also Deval Desai, "In Search of 'Hire' Knowledge: Donor Hiring Practices and the Organization of the Rule of Law Reform Field," in David Marshall, ed., *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Cambridge, MA: Harvard Law School, 2014), pp. 43–83. For a harder-hitting critique, see Humphreys, *Theatre of the Rule of Law*. Most recently, see Dimitri van den Meersche, *The World Bank's Lawyers: The Life of International Law as Institutional Practice* (Oxford: Oxford University Press, 2022); and Deval Desai, *Expert Ignorance: The Law and Politics of Rule of Law Reform* (Cambridge: Cambridge University Press, 2023).

[74] World Bank, *World Development Report 2017*, p. 31.

[75] World Bank, *World Development Report 2017*, p. 31. For a discussion of how this "gradual reconceptualisation of the rule of law enterprise" came about, see also Laura Grenfell, *Promoting the Rule of Law in Post-conflict Societies* (Cambridge: Cambridge University Press, 2013). The cited formulation appears on p. 7. Another valuable study is Lisbeth Zimmermann, *Global Norms with a Local Face: Rule-of-Law Promotion and Norm Translation* (Cambridge: Cambridge University Press, 2017).

[76] Blaise Pascal, *Pensées and Other Writings*, edited with an Introduction by Antony Levi, translated by Honor Levi (Oxford: Oxford University Press, 1995), p. 25, Fragment 95. For a comparative assessment of localized forms of transitional justice, see Anuradha Chakravarty, "Transitional Justice of the Grassroots," in Meierhenrich, Hinton, and Douglas, *The Oxford Handbook of Transitional Justice*.

From the moment the *gacaca* system became operational, the vast majority of writings on Rwanda's "local" courts were tinged with an analytical glibness, an unwillingness to accept the imponderability of perverse outcomes. This "cruel optimism," as the late Lauren Berlant termed it, was a direct consequence of the affective practices I hinted at above and to which I will return in Chapter 12.[77] In 2005, the year in which *gacaca* courts convicted and sentenced the first crop of low-level *génocidaires*, many scholars were confident that the system represented "a risky but necessary circuit-breaker to the fear, distrust, and violence of the past, a rare chance for the population to confront the legacies of the genocide."[78] As recently as 2018, two scholars – in the pages of the *Development Policy Review*, the peer-reviewed journal of the London-based Overseas Development Institute – likewise insisted that the *gacaca* system "succeeded where the constrained formal judicial system failed, increasing access to justice and gathering information about genocide crimes."[79] Its courts, "through broad community involvement," this study found, improved "the general public perception [of] and satisfaction" with transitional justice in post-genocide Rwanda.[80] The authors concluded their assessment without reservation. The *gacaca* courts, they wrote, "facilitated the process of reconciliation and contributed to rebuilding trust between Rwandans."[81] What they published was nonsense on stilts. And yet, idealized portrayals of the *gacaca* system like theirs persist – despite a mountain of data that contradicts such cruelly optimistic conclusions – because of a continued fetishizing of the local.

Fetishizing the Local

The fetishization of the local has fed off the structure of feeling that the 1994 genocide created – and reinforced it. For thirty years and counting, Kagame and his RPF-led government have whetted the world's appetite – and satisfied its sentimental cravings – for stories of death and redemption. By so doing, they managed to generate a surplus of affective power on which this ambitious twenty-first-century dictatorship has been drawing ever since. To appreciate the symbolic capital that Kagame himself has accumulated, consider this hagiographic portrait, by a well-known *New York Times* journalist: "Kagame is the man of the hour in modern Africa. The eyes of all who hope for a better Africa are upon him. No other leader has made so much out of so little, and none offers such encouraging hope for the

[77] Lauren Berlant, *Cruel Optimism* (Durham, NC: Duke University Press, 2011). On affective practices, see also Margaret Wetherell, *Affect and Emotion: A New Social Science Understanding* (London: Sage, 2012).

[78] Phil Clark, "When the Killers Go Home: Local Justice in Rwanda," *Dissent*, Vol. 52 (2015), p. 21.

[79] Colin O'Reilly and Yi Zhang, "Post-genocide Justice: The Gacaca Courts," *Development Policy Review*, Vol. 36 (2018), p. 562.

[80] O'Reilly and Zhang, "Post-genocide Justice," p. 571.

[81] O'Reilly and Zhang, "Post-genocide Justice," p. 562.

continent's future."[82] The register of the "inspirational feel-good account" is not unproblematic, however, and far from inconsequential.[83] We must ask, in Rwanda and elsewhere, what it means for the theory and practice of post-conflict reconstruction "when feeling *good* becomes evidence of justice's triumph."[84]

Feel-good talk about "customary," "indigenous," "participatory," and "traditional" justice is not pernicious per se. But it is capable, when not handled with care, of obscuring where the levers of justice in a given society are *actually* located, who moves them, and to what end. As one scholar noted, "the enthusiasm for grassroots transitional justice processes runs well ahead of evidence that they are effective."[85] The mere participation of ordinary men and women in a given legal system, whether transitional or not, is not reason enough to declare this system – with its rules and institutions – to be an appropriate technology for resolving conflict.[86] Brian Tamanaha's warning is apt:

> local tribunals must not be overly idealized. The norms they enforce may be objectionable, their processes may be skewed, and decision makers may have warped motivations or be self-interested or corrupt. They may fail to meet due process standards like neutrality, opportunity to be heard, and equal application of the rules without regard to the identity or status of the parties. The fact they are *of* the community does not necessarily mean they are *for* the entire community, nor is it always the case that everyone in the community respects them.[87]

The valorization of folk law is no less fetishistic than the valorization of modern law. Often it is simply the continuation of orientalism by other means.

Kanishka Jayasuriya has convincingly shown that not all prescriptions for legal pluralism achieve legitimacy. "Legal pluralism as deployed in these rule of law projects is the mirror image of state-centered law," which is why, he cautions, "projects associated with programs such as developing indigenous legal systems should be understood as political enterprises," by which he means, as I do, projects "that enable new

[82] Stephen Kinzer, *A Thousand Hills: Rwanda's Rebirth and the Man Who Dreamed It* (New York: Wiley, 2008), p. 337.

[83] Will Jones, "Rwanda: The Way Forward," *Round Table*, Vol. 103 (2014), p. 347.

[84] Lauren Berlant, "The Subject of True Feeling: Pain, Privacy, and Politics," in Wendy Brown and Janet Halley, eds., *Left Legalism/Left Critique* (Durham, NC: Duke University Press, 2002), p. 112. Emphasis added.

[85] Ingelaere, *Inside Rwanda's* Gacaca *Courts*, p. 3.

[86] For a valuable perspective on what might qualify an institution as just, see Bo Rothstein, *Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State* (Cambridge: Cambridge University Press, 1998).

[87] Brian Z. Tamanaha, "The Rule of Law and Legal Pluralism in Development," in Brian Z. Tamanaha, Caroline Sage, and Michael Woolcock, eds., *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge: Cambridge University Press, 2012), p. 39. Emphasis added. For perspectives from the vantage point of "critical transitional justice," see Shaw and Waldorf, *Localizing Transitional Justice*; Alexander Laban Hinton, ed., *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence* (Newark: Rutgers University Press, 2011); and, most recently, Meierhenrich, Hinton, and Douglas, *The Oxford Handbook of Transitional Justice*.

forms of political rule to be exercised in various constituted spaces of governance."[88] Likewise, scholars of *bashingantahe* councils in Burundi, Rwanda's neighbor to the south, have found evidence of what I also saw: that the reconfiguration of supposed institutions of traditional justice for the purpose of transitional justice, instead of advancing the latter, can easily undermine it.[89] Like many similar cases, "the Burundian case reveals that the turn in the global transitional justice paradigm toward decentralized, localized or place-based initiatives or processes should be accompanied by more attention to something that has been a blind spot until now."[90] The authors also remind us that very few studies stressing "the importance of localizing transitional justice by focusing on spontaneous and informal initiatives or 'indigenous' mechanisms have also attempted to map their underlying principles *systematically*. As with the *bushingantahe* in Burundi, these essential forms of social imaginary should be taken into account as sources and outcomes of (transitional) justice."[91]

This book is an effort to do just that. My goal is to free the study of the *gacaca* courts from the intellectual corset of the transitional justice imaginary in which it has been trapped. My analysis of the *gacaca* system reveals in post-genocide Rwanda "a problematic return to notions of tradition and custom that were influential within the colonial state."[92] As Mahmood Mamdani has shown, a dominant type of the modernizing colonial state co-opted informal institutions of traditional justice to advance its indirect rule.[93] Or, as Jayasuriya puts it, "it ruled through the use of traditional mechanisms and instruments of governance, relying on reified notions of culture and tradition."[94] But even if this were true, why should we care?

We should care because there is "a danger that the recent embrace of legal pluralism in various rule of law regulatory projects carries with it a risk for authoritarian possibilities associated with systems of indirect rule."[95] This danger materialized right away in post-genocide Rwanda, where, in the hands of violent specialists and international humanitarian amateurs, legal pluralism – and the institutional hybrid it spawned in the form of the *gacaca* courts – was fashioned into a technology of rule. Aloys Habimana, the former director of the Africa Division of Human Rights

[88] Kanishka Jayasuriya, "Institutional Hybrids and the Rule of Law as a Regulatory Project," in Tamanaha, Sage, and Woolcock, *Legal Pluralism and Development*, p. 155.

[89] For an insightful collection, see Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: IDEA, 2008).

[90] Bert Ingelaere and Dominik Kohlhagen, "Situating Social Imaginaries in Transitional Justice: The Bushingantahe in Burundi," *International Journal of Transitional Justice*, Vol. 6 (2012), p. 59.

[91] Ingelaere and Kohlhagen, "Situating Social Imaginaries in Transitional Justice," p. 59. Emphasis added.

[92] Jayasuriya, "Institutional Hybrids and the Rule of Law as a Regulatory Project," p. 158.

[93] Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996).

[94] Jayasuriya, "Institutional Hybrids and the Rule of Law as a Regulatory Project," p. 158.

[95] Jayasuriya, "Institutional Hybrids and the Rule of Law as a Regulatory Project," p. 158.

Watch – who prior to his flight from Rwanda led the Ligue rwandaise pour la promotion et la défense des droits de l'homme (LIPRODHOR) – had reservations about the *gacaca* project from the beginning. When I first met him in Kigali, in 2002, he was very cautious about the government's fledgling experiment. At the time, LIPRODHOR was one of the few independent human rights organizations remaining in Rwanda. Not long afterward, its figureheads were chased out of the country, or assassinated, or both. No public space for contention was left in Rwanda. And none has opened up in the intervening twenty years. Anyone who dared to speak truth to power after the genocide – however tactfully or constructively – has come to regret it. During the *gacaca* years, "whispering truth to power" was the only strategy of which Rwandans who wanted to register discontent could avail themselves.[96] Because this was so, charting transitional justice necessitated a cartography of silence.[97]

Over the life cycle of the *gacaca* courts, Habimana's view of their potential for delivering transitional justice grew ever dimmer. Although *inkiko gacaca* "gained some currency early on as an alternative to failed conventional justice efforts," according to Habimana, "the government eventually hijacked the process and used it as just another tool of repression. For a country whose recovery hinged on delivering fair and equitable justice to both victims and perpetrators of genocide, the move could not have been more destructive."[98] This book is an effort to prove Habimana right.

EXTREMIST INSTITUTIONALISM

I regard the final institutional design of *inkiko gacaca* as an instantiation of "extremist institutionalism," which I defined elsewhere as "a normative belief in the necessity of radical or exclusionary solutions to the problem of political order."[99] To bring this belief and its associated legal practices into view, I take the *gacaca* experiment *out of* the transitional justice context. What follows is a theoretically sophisticated and empirically rigorous effort to historicize their invention, from their antecedents to their manifold manifestations.[100]

In theoretical terms, I call into question key assumptions in the rule-of-law field, an international practice of humanity with which the theory and practice of

[96] Thomson, *Whispering Truth to Power*.

[97] On the uses – and ruses – of silence in Rwanda's *gacaca* courts, see Chapter 11.

[98] Aloys Habimana, "The Dancing Is Still the Same," in Scott Straus and Lars Waldorf, eds., *Remaking Rwanda: State Building and Human Rights after Mass Violence* (Madison: University of Wisconsin Press, 2011), p. 355.

[99] Jens Meierhenrich, "Fearing the Disorder of Things: The Development of Carl Schmitt's Institutional Theory, 1919–1942," in Jens Meierhenrich and Oliver Simons, eds., *The Oxford Handbook of Carl Schmitt* (Oxford: Oxford University Press, 2016), p. 196.

[100] In *Transitional Injustice*, this book's companion volume, I take the reader from twenty-first-century Rwanda to early modern Rwanda – from postmodernity to premodernity – and back, thereby completing the first, to my knowledge, truly longitudinal account of transitional justice.

transitional justice has become enmeshed.[101] As the then UN secretary-general Ban Ki-moon declared in the 2010 "Guidance Note" about his international organization's approach to this cascading international practice, "Transitional justice processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law."[102] Or, as Ruti Teitel has put it, the international practice of trying to come to terms with violent pasts by way of accountability mechanisms was moving "from the exception to the norm, to become a paradigm of the rule of law."[103] I want to present this paradigm – the transitional justice imaginary – in a new light. I seek to accomplish this goal by bringing to bear insights from two very different, unrelated literatures on the debate about transitional justice: the burgeoning literature on institutional development in political science, and the less copious literature on law's violence in law and the humanities.[104]

Despite the fact that scholarship on the various new institutionalisms in law and the social sciences is vast, James Mahoney and Kathleen Thelen are concerned that

> gradual institutional change has not been a central focus of explanation in the social sciences. Instead, most institutional analysts have considered change during moments of abrupt, wholesale transformation. Yet it is not clear that such episodes of institutional upheaval capture the most common ways through which political institutions change over time. A growing body of work suggests that important changes often take place incrementally and through seemingly small adjustments that can, however, cumulate into significant institutional transformation.

[101] On international practices of humanity, see Michael Barnett, "Human Rights, Humanitarianism, and the Practices of Humanity," *International Theory*, Vol. 10 (2018), pp. 314–349. On the distinctly paternalistic inflection of rule-of-law promotion, see, for example, David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton: Princeton University Press, 2004). More generally but related, see Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (Berkeley: University of California Press, 2012); and Jens Meierhenrich, "The Humanitarian Condition," paper presented at the Humanitarianism and Human Rights: Borders, Connections, Conflicts workshop, Remarque Institute, New York University, March 9–10, 2012; and *idem*, "Technologies of the Rule of Law: Legal Interventionism in the International System, 1945–present," paper presented at the International Paternalism: A Reconsideration workshop, George Washington University, October 4–5, 2013.

[102] United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (New York: United Nations, 2010), p. 2. On the cascading effect, see Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: Norton, 2011). For an updated treatment, see Kathryn Sikkink and Hun Joon Kim, "The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations," *Annual Review of Law and Social Science*, Vol. 9 (2013), pp. 269–285.

[103] Ruti G. Teitel, "Human Rights in Transition: Transitional Justice Genealogy," in *idem*, *Globalizing Transitional Justice: Contemporary Essays* (Oxford: Oxford University Press, [2003] 2014), p. 51.

[104] See, most important, Robert Cover, "Violence and the Word," *Yale Law Journal*, Vol. 95 (1986), pp. 1601–1629; Robert Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: University of Michigan Press, 1995); Austin Sarat and Thomas R. Kearns, eds., *Law's Violence* (Ann Arbor: University of Michigan Press, 1993); and Austin Sarat, ed., *Law, Violence and the Possibility of Justice* (Princeton: Princeton University Press, 2001).

> These forms of gradual institutional change call for more attention than they have received so far.[105]

By focusing on the question of legal development in post-genocide Rwanda, I pay such attention in this book. By reconstructing the making of extremist institutionalism in the evolution of the *gacaca* system, I tell a complex – and I hope compelling – story of how legal institutions change, sometimes for the worse, in response to endogenous processes and exogenous shocks. I view the question of legal development in post-genocide Rwanda through a temporal lens for good reason:

> There is often a strong case to be made for shifting from snapshot to moving pictures. Placing politics in time – systematically situating particular moments (including the present) in a temporal sequence of events and processes – can greatly enrich our understanding of complex social dynamics.[106]

Unlike the literature on institutional development, the second body of literature from which I borrow is *not* part of the intellectual mainstream. Its focus on law's violence, however, affords an important complementary perspective on the political dimensions – and social meanings – of the *gacaca* project.[107] And a perspective that illuminates the dark side of institutions is as relevant for understanding the violence of transitional justice. As Austin Sarat reminds us,

> Despite its undeniable significance, law's violence has played little role, and occupied little space, in legal theory and jurisprudence … By failing to confront law's lethal character and the masking of its interpretive violence, legal theory tacitly encourages officials to ignore the bloody consequences of their authoritative acts and the pain that those acts produce.[108]

"AN IRREGULAR SYSTEM OF WARFARE"

By focusing on the invention of Rwanda's *gacaca* courts, I analyze the making of lawfare, what Jeremy Bentham called "an irregular system of warfare."[109] My focus is on the rule of law – and specifically transitional justice – as a political weapon. What is interesting about the case of Rwanda is that in the period from 1994 to 2019 the behavior of its violent agents often conformed with the tenets of the rule of law, formally understood. As the late Joseph Raz famously put it, "'The rule of law' means literally what it says: the rule of the law. Taken in its broadest

[105] James Mahoney and Kathleen Thelen, "Preface," in *idem*, eds., *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2010), p. xi.
[106] Paul Pierson, "Not Just What, but When: Timing and Sequence in Political Processes," *Studies in American Political Development*, Vol. 14 (2000), p. 72.
[107] Cover, "Violence and the Word," p. 1601.
[108] Austin Sarat, "Situating Law between the Realities of Violence and the Claims of Justice: An Introduction," in *idem*, *Law, Violence and the Possibility of Justice*, pp. 3–4.
[109] Jeremy Bentham, *Of Laws in General*, ed. H. L. A. Hart (London: Athlone Press, 1970), pp. 245–246.

sense this means that people should obey the law and be ruled by it."[110] In post-genocide Rwanda, violent legalism was so pervasive, however, that I eventually came to regard it as a strategy of conflict: as the RPF's continuation of warfare by other means. The arena of transitional justice was one theater in this war. The technologies of *inkiko gacaca* were, as the Kinyarwanda proverb has it, akin to crooked arrows that could kill.

What I call lawfare is not new to war making and state making.[111] It was a widely used instrument in the colonial toolbox, from Lord Lugard – the inventor of indirect rule – onward.[112] Think of the Tswana-speaking peoples in nineteenth-century South Africa, who spoke of legalism as "the English mode of warfare."[113] As mentioned, Bentham was the first to recognize the institution of lawfare, though he did not use the word. He was wont to refer to a certain form of legalism as an "irregular system of warfare":

> Legislation is a state of warfare: political mischief is the enemy: the legislator is the commander: the moral and religious sanctions his allies: punishments and rewards (raised some of them out of his own resources, others borrowed from those allies) the forces he has under his command: punishments his regular standing force, rewards an occasional subsidiary force too weak to act alone: the mechanical branch of legislation … the art of tactics: direct legislation a formal attack made with the main body of his forces in the open field: indirect legislation a secret plan of connected and long-concerted operations to be executed in the way of stratagem or *petite guerre*.[114]

Bentham observed that this irregular system of warfare "stands in much higher favour with men in general than that which is carried on by open force."[115] He found the reason for this appeal in the "economy with which it may be used and the ingenuity which it is thought to require."[116] In the transition from the precolonial to the colonial world, lawfare often came to be deployed because it appealed, on the part of Europe's colonizers, to the values of the Enlightenment, to the supremacy of (racialized) reason.[117] In the colonial world, lawfare also often provided, and for the

[110] Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), p. 212.

[111] For a global history, see Jens Meierhenrich, *Lawfare: A Genealogy* (Cambridge: Cambridge University Press, forthcoming); Charles Tilly, "War Making and State Making as Organized Crime," in Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985), pp. 169–191.

[112] F. D. Lugard, *The Dual Mandate in British Tropical Africa* (Edinburgh: Blackwood and Sons, 1922).

[113] John Mackenzie, *Austral Africa: Losing It or Ruling It* (London: Sampson Law, Marston, Searle, and Rivington, 1887), pp. 77–78.

[114] Bentham, *Of Laws in General*, pp. 245–246.

[115] Bentham, *Of Laws in General*, p. 246.

[116] Bentham, *Of Laws in General*, p. 246.

[117] Meierhenrich, *Lawfare*. See also, among many other valuable studies, Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton: Princeton University Press, 2010).

same reason, a cloak of legitimacy. In the postcolonial world, lawfare's rise continued – gradually supplanting the ubiquity of warfare. As a consequence of structural and normative changes in the international system, we have witnessed

> an explosion of law-oriented nongovernmental organizations in the postcolonial world: lawyers for human rights, both within and without frontiers; legal resource centers and aid clinics; voluntary associations dedicated to litigating against historical injury, for social and jural recognition, for human dignity, and for material entitlements of one kind or another. Situated at the intersection of the public and the private, nongovernmental organizations of this sort are now commonly regarded as the civilizing missions of the twenty-first century … The upshot, it seems, is that people, even those who break the law, appear to be ever more litigious, sometimes with unforeseen consequences for states and ruling regimes.[118]

For many rulers – authoritarian and otherwise – engaging in lawfare is far less conspicuous a strategy than waging warfare. For lawfare, as we shall see, is more cost-effective than warfare. Aside from the fact that it requires neither modern weapons systems nor a standing or rebel army, the international donor community has come to willingly underwrite – often unwittingly – lawfare's costs because funds with which to build the weapons of lawfare can be hidden in projects dedicated to establishing the rule of law – with the result of undermining them.

Lawfare's economy and its ingenuity were at the forefront of my research on the formation and deformation of Rwanda's *gacaca* system. I witnessed both during the system's creation and maintenance. While an abundance of legal and journalistic commentary has assessed what are believed to be the strengths and weaknesses of the *gacaca* courts, no comprehensive analysis of their institutional development is yet available. Existing accounts are perfunctory and frequently distort both past and present of the institutional choice and the institutional designs associated with it. They fail to appreciate the dynamic relationship between strategic exigencies and institutional innovation in the period from 1994 to 2019. Given this intellectual lacuna, I take the institutional development of the *gacaca* project *itself* as the object of explanation.

The principal argument can be summarized as follows. I argue that the *gacaca* project evolved into an irregular system of warfare. I demonstrate that this institutional deformation was the result of subtle intertwinings of rational action based on expectations of consequences (a logic of instrumental choice) and rational action seeking to fulfill identities based on expectations of appropriateness (a logic of expressive choice). Lest I be misunderstood, I do *not* propose that this outcome was preordained. Alternative pathways existed. There is no evidence to suggest that the country's *gacaca* courts were destined to become vectors of violence. My argument is not deterministic, nor is it essentialist. It sheds light, rather, on the political economy of lawfare.

[118] John L. Comaroff and Jean Comaroff, "Law and Disorder in the Postcolony: An Introduction," in Jean Comaroff and John L. Comaroff, eds., *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006), p. 25. More recently, see Egor Lazarev, *State-Building as Lawfare: Custom, Sharia, and State Law in Postwar Chechnya* (Cambridge: Cambridge University Press, 2023).

Rather, I demonstrate that at key junctures in the making and operation of the *gacaca* system, the authoritarian regime's governance imperative gradually began to trump all other pursuits, including that of transitional justice, liberally understood. This imperative – which in Rwanda for centuries has revolved around the creation and maintenance of sovereign power – was informed, aside from already existing material exigencies, by what Mahmood Mamdani has called the RPF's three fundamental assumptions about post-genocide power: (1) an overwhelming sense of responsibility for the survival of all remaining Tutsi, in Rwanda and elsewhere; (2) a conviction that undiluted Tutsi power was a *sine qua non* of Tutsi survival; and (3) a belief that the only peace possible between Hutu and Tutsi was one ensured by military force.[119] By basing its policies on these assumptions, the Kagame-led dictatorship slowly gravitated toward lawfare. As a consequence, its agents, whether they fully intended to or not, gradually turned Rwanda's daring experiment in transitional justice into a violent experience of transitional injustice.

ANALYTIC ETHNOGRAPHY

This book is grounded in analytic ethnography, a research method that unites key tenets of analytical sociology and of ethnography. Diane Vaughan, who perfected this methodology – most importantly in her pathbreaking work on NASA's *Challenger* accident and investigation – described its essence thus:

> By analytic ethnography, I mean an approach to field observations and interpretation of individual interaction that involves careful collection of data and evidence-backed arguments. It relies on systematic methods and standards, assumes that causes and explanations can be found, proceeds intuitively to formulate explanations of outcomes, and holds theory and theoretical explanation as core objectives. The analysis developed is conceptually elaborated, based on interrogating the relationship between concepts, theory, and data, and aims for generic explanations of events, activities, and social processes.[120]

Because my project is an evidence-based, theory-building enterprise, with a particular interest in the causal mechanisms that govern the strategy of lawfare, analytic ethnography was the most appropriate methodological choice. Its strength, as Vaughan writes, lies in

> revealing the complexity of actors, actions, and interactions – the mechanisms *behind* the mechanisms that contribute to the macro-level change and stability that

[119] Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001), pp. 270–271.

[120] Diane Vaughan, "Analytic Ethnography," in Peter Hedström and Peter Bearman, eds., *The Oxford Handbook of Analytical Sociology* (Oxford: Oxford University Press, 2009), pp. 690–691. See also her award-winning *The Challenger Launch Decision: Risky Technology, Culture, and Deviance at NASA* (Chicago: University of Chicago Press, 1996).

> are the focus of analytical sociology. Theorists have long argued that the social is explained by the intersection of micro- and macro-level factors. Mechanisms are the linchpin of that relationship.[121]

The identification and especially the tracing of causal mechanisms is critical for sustaining progress in the study of institutional development. For as Douglass North, John Wallis, and Barry Weingast observed a few years ago, "we are still some distance from a deeper comprehension of the interaction of formal rules, informal norms, and enforcement characteristics that together determine the performance of the overall institutional framework."[122] Analytic ethnography is a powerful tool for revealing the interaction effects about which North and his collaborators wanted to learn more. In the spirit of analytic eclecticism, I also bolted to my methodological framework what North and his coauthors dubbed "a new approach to the social sciences," namely "an explicit consideration of the role violence plays in shaping social orders, institutions, organizations and their development over time."[123] Cognizant "that a deep understanding of change must go beyond broad generalizations to a specific understanding of the cultural heritage of that particular society," my empirical argument about the rise of lawfare also illuminates the long-run consequences of violence more generally – from precolonial times to the present.[124]

Inside Rwanda

I have conducted less field research in post-genocide Rwanda than the best country experts. I count among them An Ansoms, Jennie Burnet, Anuradha Chakravarty, Kristin Doughty, the late Bert Ingelaere, Timothy Longman, Andrea Purdeková, Susan Thomson, and Lars Waldorf. I do not consider myself a Rwanda scholar, properly understood – not like they are. Neither am I, nor do I aspire to be, a country expert, though all of the aforementioned scholars undoubtedly are. Their intellectual trajectories are deeply intertwined with the Great Lakes region. Rwanda has been their vocation, just as it has been for the previous generation of area specialists to which belong the likes of André Guichaoua, Danielle de Lame, Alison Des Forges, René Lemarchand, Catharine Newbury, David Newbury, Johan Pottier, Filip Reyntjens, and the late Jan Vansina. I came to Rwanda via a different path. I had field research in other "extremely violent societies" under my belt and thus bring an atypical perspective to the study of *inkiko gacaca*, a bag of different lenses.[125]

[121] Vaughan, "Analytic Ethnography," p. 708.

[122] Douglass C. North, John Joseph Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009), p. 271.

[123] The quote is from North, Wallis, and Weingast, *Violence and Social Orders*, p. 271.

[124] North, Wallis, and Weingast, *Violence and Social Orders*, p. 271. Due to space constraints, I adduce the bulk of my historical evidence in *Transitional Injustice*.

[125] Christian Gerlach, *Extremely Violent Societies: Mass Violence in the Twentieth-Century World* (Cambridge: Cambridge University Press, 2010).

I collected the bulk of ethnographic data for this book between 2002 and 2008 during five months of fieldwork in different parts of Rwanda. The field research commenced in earnest in the summer of 2002 when I shuttled back and forth between Kigali, the capital, and the countryside to study up close the pilot phase for the *gacaca* project. The fieldwork involved observational research of early *gacaca* proceedings in both urban and rural areas, including so-called pre-*gacaca* sessions. With six Harvard undergraduates by my side, I became, for a short while, a participant observer in three small-scale Rwandan communities, so-called cells (from the French *cellule*), located not far from Butare (since renamed Huye, formerly Astrida), the country's intellectual center and seat of the National University of Rwanda.[126] Our Ivy League credentials, for reasons to be explained elsewhere in this book, opened many a door. My field research, at that time and in subsequent years, was ethnographic in the sense that in conducting it I strove to honor the four "commitments" that anthropologist Daniel Miller believes must undergird any such undertaking:

(1) To be in the presence of the people one is studying, not just the texts or objects they produce;
(2) To evaluate people in terms of what they actually do; i.e., as material agents working in a material world, and not merely of what they say they do;
(3) To have a long-term commitment to an investigation that allows people to return to a daily life that one hopes goes beyond what is performed for the ethnographer;
(4) To engage in a holistic analysis, which insists that … behaviors be considered within the larger framework of people's lives and cosmologies.[127]

To honor these commitments during my first extended stay in post-genocide Rwanda, my students and I embedded in the three aforementioned communities for several months. We wanted to get to know up close and personally, and establish a modicum of trust with, the local population to whom the RPF-led government had assigned a starring role in its theater of justice. I doubt that we succeeded in alleviating all the fears and concerns our interlocutors in the countryside had. What I *do* know is that we were allowed, and sometimes we caught, valuable glimpses into the depleted lives of the wretched of Rwanda – Tutsi and

[126] For an overview of this research, see Catie Honeyman, Shakira Hudani, Alfa Tiruneh, Justina Hierta, Leila Chirayath, Andrew Iliff, and Jens Meierhenrich, "Establishing Collective Norms: Potentials for Participatory Justice in Rwanda," *Peace & Conflict*, Vol. 10, No. 1 (2004), pp. 1–24. While I would not go as far as disavowing our findings, the article is shot through with a sentimental tone (reminiscent of the "cruel optimism" of which Berlant warned) that I find difficult to countenance now. It reflects – and reifies – the transitional-justice imaginary that I critique herein.

[127] Daniel Miller, *Capitalism: An Ethnographic Approach* (Oxford: Berg, 1997), pp. 16–17. On the methodological demands of ethnography, see, most recently, Colin Jerolmack and Shamus Khan, eds., *Approaches to Ethnography: Analysis and Representation in Participant Observation* (Oxford: Oxford University Press, 2018). For a valiant effort to establish ethnography more firmly in advanced political-science research, see Edward Schatz, ed., *Political Ethnography: What Immersion Contributes to the Study of Power* (Chicago: University of Chicago Press, 2009).

Hutu alike – and their conflicting (and often conflicted) views about the nature and promise of the government's evolving *gacaca* project. Over the years I developed a sense of what the methodological demands of reflexivity, positionality, and granularity required of me in the very particular context of post-genocide Rwanda, a country fraught with an untold number of repressed emotions and filled to the brim with a people that over the last few centuries has learned to turn inward more than any I ever knew.

Ever since the anthropologist Clifford Geertz jotted down his observations about the Balinese, the ethnographic imperative has been that of "thick description."[128] References to thick description in the social sciences are legion – yet seldom illuminating. It is rarely clear what authors mean when they talk about thickness, not least because interpretations have shifted. As Sherry Ortner writes,

> The forms that ethnographic thickness have taken have of course changed over time. There was a time when thickness perhaps was synonymous with "exhaustiveness," producing the almost unreadably detailed descriptive ethnography, often followed by the famous "Another Pot from Old Oraibi" kind of journal article. Later, thickness came to be synonymous with "holism," the idea that the object under study was "a" highly integrated "culture" and that it was possible to describe the entire system or at least fully grasp the principles underlying the entire system. Holism in this sense has also been under attack for some time, and most anthropologists today recognize both the hubris of the "holistic" vision and the irreducible complexity of all societies … Yet I would argue that "thickness" (with traces of exhaustiveness and holism) remains at the heart of the ethnographic stance. Today issues of thickness focus primarily on issues of (relatively exhaustive) "contextualization."[129]

Ortner goes on to lament what she calls "ethnographic refusal," the failure of researchers to understand local worlds *despite* being immersed in them. She has detected in studies borne of such refusal "an air of romanticism." As she puts it, "The impulse to sanitize the internal politics of the dominated must be understood as fundamentally romantic."[130] Few countries – and few institutions – have been romanticized so readily and as widely as Rwanda and its *gacaca* courts. These affective accounts are the products of the kind of ethnographic refusal against which Ortner rails. It was in the service of contextualization that I supplemented my immersion in the aforementioned communities near Butare with shorter stints of pure observation in other locations, including in most of the country's prisons, and other regions.

[128] Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973).
[129] Sherry B. Ortner, "Resistance and the Problem of Ethnographic Refusal," in Terrence J. McDonald, ed., *The Historic Turn in the Human Sciences* (Ann Arbor: University of Michigan Press, 1996), pp. 281–282.
[130] Ortner, "Resistance and the Problem of Ethnographic Refusal," pp. 285, 287.

Visual Ethnography

This book is filled with a large number of photographs – almost all of them mine. There is method to this multitude. I relied heavily on visual ethnography in my field research. My camera was a methodological tool. It allowed me a way to capture "those aspects of experience that are very often sensory, unspoken, tacit and invisible."[131] I think of visual ethnography as an underutilized form of participant observation, one that can – luck and the right circumstances permitting – provide an additional perspective on "how people grapple with uncertainty and ambiguity" because, just as with more conventional forms of ethnographic immersion, "the fieldworker's closeness to others' daily lives and activities heightens sensitivity to social life as a process."[132] Ethnographic images of the kind I am using, however, must be distinguished from the snapshots of early anthropologists. As Jay Ruby remarked, tersely, in an important intervention a few decades ago, "no one seriously regards these pictures as a professional scientific/humanistic product."[133] Whenever I managed to finagle a permission in post-genocide Rwanda to create a visual record of what I was observing, I proceeded with clear methodological intent: to provide context. I combined the taking of field notes with that of photographs to *literally* show what ordinary and extraordinary Rwandans do when they (are made to) engage in transitional justice – and the physical spaces in which they do it.[134] By relying extensively on photography, I gained three advantages: (1) additional access, (2) additional data, and (3) additional insight. Let me explain.

Hiding behind my camera often gave me *additional access*, especially in rural areas. I did not expect this. After all, the lens of any camera is by definition an intrusive implement – one that in post-conflict settings can painfully remind subjects of the barrel of a gun. As a white scholar in Rwanda, and because of the permits that the post-genocide government issued to me, I was automatically regarded as an authority figure on every hill I visited. I had to dispel, as best I could, the notion that my camera was a tool of ocular control, one wielded at the behest of the RPF. It is difficult to know how often I succeeded, but I do know that occasionally I did.

Once my presence was explained and accepted, I typically faded into the background – and often surprisingly fast. Because my research subjects were not required

[131] Sarah Pink, *Doing Visual Ethnography*, 3rd ed. (London: Sage, 2013), p. 47. See also Jon Wagner, "Constructing Credible Images: Documentary Studies, Social Research, and Visual Studies," *American Behavioral Scientist*, Vol. 47 (2004), pp. 1477–1506. See also Linda Mulcahy, "Eyes of the Law: A Visual Turn in Socio-legal Studies," *Journal of Law and Society*, Vol. 44 (2017), pp. S111–S128.

[132] Robert M. Emerson, Rachel I. Fretz, and Linda L. Shaw, *Writing Ethnographic Fieldnotes*, 2nd ed. (Chicago: University of Chicago Press, 2011), p. 5.

[133] Jay Ruby, "In a Pic's Eye: Interpretive Strategies for Deriving Significance and Meaning from Photographs," *Afterimage*, Vol. 3 (1976), p. 5.

[134] For a classic guide to the methodology of photography in the social sciences, see John Collier Jr. and Malcolm Collier, *Visual Anthropology: Photography as a Research Method* (Albuquerque: University of New Mexico Press, 1986).

to speak, which is what some feared the most, many appeared to be more at ease than they might have been had I asked them to communicate with me verbally, lest they say (or are seen to be saying) something untoward about the authoritarian regime. In calmer contexts, whenever I was able to show my subjects what I had photographed, the sensation of being captured on film regularly produced a moment of levity, a fleeting bond. The pleasurable sensory experience of being recorded by an authoritative stranger and realizing that the record he created of you was benign not infrequently created a modicum of unexpected trust. This sometimes opened the door for a less guarded verbal exchange with my interlocutors about everyday life – and everyday law. This form of "photo-elicitation" was particularly useful in the remote areas of Rwanda where the reach of the authoritarian state is, for reasons to be explained below, much greater than at the center.[135]

Although my presence in the countryside always remained an alien one, my use of photography led to a form of participation that differed fundamentally – especially in the context of the *gacaca* proceedings – from that of stationary ethnographer. My positionality was dynamic; I had a roving role. I adopted this stance partly in response to a shortcoming common to many ethnographies, as summarized succinctly and accurately by Jon Wagner: "We simply have not seen enough of what people do and the physical contexts in which it is done."[136] More visual evidence from post-genocide Rwanda, or so I hope, may render revisionist interpretations of *inkiko gacaca* like mine more plausible – and more persuasive – than lexical types of evidence alone would.

With a camera on my person, I was regularly able to subvert the officially sanctioned rules of the research game. I often managed to push *more deeply* into the midst – as well as into the margins – of social action than I would have been able to had I been armed with a pen and notebook alone. I was able to see *more closely* and *more personally* faces and bodies, winks and sensations. By regarding the pain of others, to use Susan Sontag's evocative phrase, I was able to look sympathetically (as Max Weber wanted us to) on the experiences of all kinds of Rwandans – those who stood trial, those who sat in judgment, and those who huddled together as audience members in the thousands of makeshift courtrooms that for ten years dotted the countryside. Being able to *see* affect in this environment allowed me to impute meaning more accurately, or so I'd like to think. By relaying visually in this book some of what I saw, I hope to convey the *experience* of transitional justice: what it looked like, and,

[135] On the methodological technique of photo-elicitation, see Dona Schwartz, "Visual Ethnography: Using Photography in Qualitative Research," *Qualitative Sociology*, Vol. 12 (1989), pp. 119–154. For commentary on the utility of photography for studying Rwanda, see Jens Meierhenrich, "The Transformation of *Lieux de Mémoire*: The Nyabarongo River in Rwanda, 1992–2009," *Anthropology Today*, Vol. 25 (2009), pp. 13–19; and Jens Meierhenrich and Martha Lagace, "Photo Essay: Tropes of Memory," *Humanity*, Vol. 4 (2013), pp. 289–312.

[136] Jon Wagner, ed., *Images of Information: Still Photography in the Social Sciences* (Beverly Hills: Sage, 1979), p. 286.

by extension, what it felt like. "'Recapturing an experience' is important for accurate understanding," Weber taught us, because it enables us to "adequately grasp" – like no other method does – "the emotional context in which the action took place."[137]

I also collected *additional data* by way of photography. Visual ethnography is not a "rigorous" methodology of the social sciences, but it is nonetheless capable of contributing to the collection of what the sociologist Howard Becker long ago called "visual evidence."[138] In a paean to photography, Becker, in 1974, as one of the first social scientists to take seriously the visual method as a research tool, gave valuable advice to any ethnographer thinking about taking up a camera in the field – advice that still holds up fifty years later. A scholar–photographer, Becker figured, needed to be alert at all times, attuned to his environs, and to pursue his research questions rigorously

> by asking people about what he has seen and by observing closely and listening carefully as the everyday activities of the group go on around him. He should not keep away from the people he is working with, shooting from a distance with a long lens, but rather should get up close and establish a working relationship with them, such that they expect him to be there and accept that he has some sort of right to be there which he will probably exercise most of the time. (Aside from the visual considerations, photographers doing this kind of research might want to use a wide-angle lens, perhaps 35 mm, as standard equipment, because it will force them up close where they ought to be.)[139]

My photographs from Rwanda are irredeemably specific. Yet I have come to think of them as "specified generalizations," as Becker uses the term.[140] They embody, at least to my mind, the conceptual, theoretical, and empirical ideas contained in the wealth of text that surrounds them in this book. What statistics is to others, photography is to me: *a way of seeing*, *a way of showing*, and *a way of knowing*:

> The images, then, are evidence. They are specific instances of the general argument. They do not "prove" the argument, as we might expect a scientific proof to do, but rather assure us that the entities of the abstract argument, the generalized story, really exist as living people who come from and work in real places. This is not evidence as "compelling proof," but rather as what is sometimes called an "existence" proof, a showing that the thing we are talking about is possible.[141]

In addition to conventional forms of evidence, I have relied on visual evidence to show "real instances of what the text talks about, with enough detail about the

[137] Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, [1922] 1978), p. 5.

[138] Howard S. Becker, "Visual Evidence: A Seventh Man, the Specified Generalization, and the Work of the Reader," *Visual Studies*, Vol. 17 (2002), pp. 3–11.

[139] Howard S. Becker, "Photography and Sociology," *Studies in Visual Communication*, Vol. 1 (1974), pp. 13–14. For a paean to Becker, see Adam Gopnik, "The Outside Game," *New Yorker*, January 5, 2015.

[140] Becker, "Visual Evidence," p. 5.

[141] Becker, "Visual Evidence," p. 5.

specific people and places we are looking at," the idea, in methodological terms, being that the *visuality* of (some of) my evidence may enhance the *plausibility* of my theory and thus strengthen the *validity* of my ethnography.[142] When selected carefully, the real-world instances displayed as visual evidence "are both specific and general, abstract and concrete."[143] These unique characteristics, says Becker, speak to "the question often asked of people who use visual materials in their social science work: what can you do with pictures that you couldn't do just as well with words (or numbers)?"[144] For Becker, the utility of photography is self-evident:

> I can lead you to believe that the abstract tale I've told you has a real, flesh and blood life, and therefore is to be believed in a way that is hard to do when all you have is the argument and some scraps and can only wonder if there is really anyone [or anything] like that out there.[145]

With my "show-and-tell," I endeavor to take readers behind the justice facade – and counter the RPF's campaign of "information warfare."[146]

Lastly, *additional insight*. I hope to have put together a book in which my argument, evidence, and images about the violence of law are "so intricately interlaced" that they form an integrated whole that amounts to more than the sum of its parts.[147] The visual method, if used judiciously, has the potential to amplify and make precise the written word. But I also note the interplay between theory and photography in the making of this book. It was Becker's reflections from 1974 that alerted me to the relationship between pictures and ideas – and enabled me to see it. His account is so perceptive that I want to reproduce it at length. It captures a great deal about the gestation of my argument:

> As the work progresses the photographer will be alert for visual embodiments of his ideas, for images that contain and communicate the understanding he is developing. That doesn't mean that he will let his theories dominate his vision, especially at the moment of shooting, but rather that his theories will inform his vision and influence what he finds interesting and worth making pictures of. His theories will help him to photograph what he might otherwise have ignored. Simultaneously he will let what he finds in his photographs direct his theory-building, the pictures and ideas becoming closer and closer approximations of one another.[148]

Visual ethnography is capable of relating the concrete to the abstract, the particular to the universal, and the ideographic to the nomothetic. It facilitates explanation and understanding in a cumulative fashion:

[142] Becker, "Visual Evidence," p. 11.
[143] Becker, "Visual Evidence," p. 11.
[144] Becker, "Visual Evidence," p. 11.
[145] Becker, "Visual Evidence," p. 11.
[146] Johan Pottier, *Re-imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century* (Cambridge: Cambridge University Press, 2002), p. 107.
[147] Becker, "Visual Evidence," p. 5.
[148] Becker, "Photography and Sociology," p. 14.

> Like the sociological fieldworker, who finds much of his later understanding latent in his early data, he will probably find that his early contact sheets, as he looks back through them, contain the basic ideas that now need to be stated more precisely. The photographer, like the sociologist who builds more and more comprehensive models of what he is studying, will arrange the visual material into the patterns and sequences that are the visual analogue of propositions and causal statements. He will consider the problems of convincing other people that his understanding is not idiosyncratic but rather represents a believable likeness of that aspect of the world he has chosen to explore, a reasonable answer to the questions he has asked about it.[149]

Over the course of my fieldwork in Rwanda, I created an archive of around 6,000 research photographs. My visual ethnography of memorialization in over 100 communities across the country netted further observations – and thus additional ethnographic insights – into the social meaning(s) of the *gacaca* system and its changing character.[150] All of this is in the service of an argument about the violence of law that, by Weber's standard, hopefully is not only "correctly apprehended" but also "meaningfully comprehensible."[151]

Aside from this micro-level research (focused on ordinary Rwandans, most of whom were only Kinyarwanda-speaking), I undertook a considerable amount of elite-level research over the years (focused chiefly on privileged Rwandans, almost all English-speakers with only a handful of respondents favoring French). I conducted several hundred hours of semi-structured or unstructured interviews with officials of the RPF-led government, including one two-hour sitting with Paul Kagame. My other respondents, there and elsewhere, included scores of ministers, RPF representatives, professional judges, prosecutors, defense attorneys, members of parliament, and technocrats, as well as representatives of foreign governments, international organizations, nongovernmental organizations, and the ICTR. I focused on those agents whom I knew had a hand – visible or otherwise – in the formation and deformation of the *gacaca* project. In my selection of respondents, I did not rely on random sampling. I followed a strategy of relational interviewing instead. As the late Lee Ann Fujii pointed out, in interpretive research "there is no assumption that the best way to select interviewees is through a random sample. The reason is simple. Many projects are not trying to

[149] Becker, "Photography and Sociology," p. 14. Incidentally, I still did use film (and thus contact sheets) during my first research stint in Rwanda. I made some of the reproductions in this book from prints, others from negatives, but most from digital files, as I switched from a SLR to a DSLR camera during subsequent research trips.

[150] For an overview of this ongoing research project, entitled Through a Glass Darkly: Genocide Memorials in Rwanda, 1994–Present, visit www.genocidememorials.org, an interactive website, built fifteen years ago, that features some 2,000 photographs and other data depicting an inductively selected subset of Rwanda's hundreds of formal and informal *lieux de mémoire*. See also Meierhenrich, "The Transformation of *Lieux de Mémoire*," pp. 13–19.

[151] Weber, *Economy and Society*, p. 12.

generalize from a 'subset' of cases to the broader 'population.'"[152] This project is one of them.

My project embodies a phenomenological approach to transitional justice, albeit one that is serious about conceptual innovation and theory building (just not theory testing and generalization beyond my single case):[153]

> These types of projects – all focused on situated meaning – require a different kind of choice strategy, one focused on intentional and mindful selection of participants, based on criteria that the researcher identifies (either at the beginning or during the course of research) as important to the research question. From a relational standpoint, selection is a process, not a set of a priori criteria.[154]

My fieldwork for this book, in other words, involved participant observation and other forms of interpretive research both at the center and on the periphery of post-genocide Rwanda. My research stays were not as numerous or extensive as those that other scholars of the dictatorship have undertaken, but they sufficed for the purpose of my placing law in its context. Just as with my first book, only a fraction of the data that I collected over the years found its way into the manuscript. But it is there nonetheless – the foundation upon which my interpretation rests.[155] My research design is grounded in a politics of interpretation that is geared toward identifying the instrumental and expressive logics of lawfare in times of transition, and, by so doing, the "deep connections between culture and rational choice theory."[156]

A JURISPRUDENCE OF VIOLENCE

This is a long book, a detailed book, a copiously illustrated book, for a reason. It is an attempt to give form to what Austin Sarat and Thomas Kearns have termed "a jurisprudence of violence."[157] They mean by this an appropriate way "to talk about, to represent, and understand ordinary citizens' experience of law, including, but almost certainly not limited to, the effects of law's physical violence (or threat of it) on these persons' experience and their reasons for acting as they do."[158] The thrust

[152] Lee Ann Fujii, *Interviewing in Social Science Research: A Relational Approach* (New York: Routledge, 2018), p. 37.

[153] I return below to the separate methodological question whether the inferences about the logic of lawfare in post-genocide Rwanda that I draw on the basis of select evidence from a random (but not randomized) subset of the country's more than 11,000 *gacaca* courts are valid. For an overview of what a phenomenological approach to transitional justice entails, see Hinton, *The Justice Facade*, pp. 23–28.

[154] Fujii, *Interviewing in Social Science Research*, p. 38.

[155] Meierhenrich, *The Legacies of Law*, p. xvi.

[156] Robert H. Bates, Rui J. P. de Figueiredo Jr., and Barry R. Weingast, "The Politics of Interpretation: Rationality, Culture, and Transition," *Politics & Society*, Vol. 26 (1998), p. 605.

[157] Sarat and Kearns, "A Journey through Forgetting," p. 272.

[158] Sarat and Kearns, "A Journey through Forgetting," p. 272.

of their intellectual agenda is to encourage jurisprudential theorizing "about the impact of violence on the possibility of attaining justice in law."[159] Ideographic reasoning is essential for bringing "violent experience" into jurisprudence. For law, in Geertz's inimitable phrase, "doesn't just mop, it defines," which is why the task of trying to understand how law "lays down the track in the first place" is so essential.[160] Mine, then, is a long and winding study of how violent entrepreneurs in Rwanda laid that track, how they weaponized it, and then hid it behind a justice facade.

Locating this track, digging it out, following it, making sense of it, and mapping it, tested my patience more often than I care to remember. Tracking is tedious. It takes an inordinate amount of time – and detail. The story to come will strike some as convoluted – as meandering even. They would not be wrong. But as anyone who has ever ventured underneath of things knows, the path out of a thicket is rarely straight and narrow. Some patience – but no undue exertion – is required to follow me. Every now and then, I take you off the beaten track. At certain vantage points, I will linger a little longer to take in the view – as unsettling as the vista may be. A few of these detours, some may think, are not strictly necessary. This may be so. But there is method to my roaming. And since you are here, reader, I kindly ask of you, with Michael Ondaatje, "Trust me, this will take time but there is order here, very faint, very human."[161]

Because my argument about the rule of violence is theoretically abstract, and my argument about the formation and deformation of Rwanda's *gacaca* courts empirically cumulative, it is imperative to survey exhaustively the landscape, institutional and real, in which transitional justice played out. To me, this meant taking in also the history of these surroundings. I present no smoking gun. My argument about the violence of law rests on the relentless accumulation of evidence, on the interweaving of perspectives, and on the eclectic synthesis of ideas from law, the social sciences, and the humanities.

For this reason, all of the chapters are detailed and comprehensive; they are deep as well as broad. Whenever possible, I favored a granular approach so that, with a bit of luck, my findings about the violence of law will come to be seen as incontrovertible – not just controversial. I have taken inspiration from Stephen Skinner, who believes that

> in situations where law and its "violence" are experienced as unjust, the very fact of recording and reflecting on that experience could in itself be a response to the ethical demands of alterity, as an endeavor to recognize the Other. The experiential dimension might not therefore only inform understanding of the dislocated

[159] Sarat, "Situating Law," p. 9.
[160] Clifford Geertz, as quoted in Lawrence Rosen, *Law as Culture: An Invitation* (Princeton: Princeton University Press, 2006), p. 8.
[161] As quoted in Colum McCann, *Letters to a Young Writer: Some Practical and Philosophical Advice* (New York: Random House, 2017), p. 8.

relationship between law and justice, but might also constitute a form of justice, by acknowledging, albeit within legal theory, law's impact on the Other.[162]

To inspire such acknowledgment, my book is about two things rarely studied in combination: law as culture and violence in time.[163] My principal argument – that Rwanda's *inkiko gacaca* project turned into an example of lawfare – runs counter to most analyses of this judicial institution to date. By dissecting the temporally and structurally embedded mechanisms and processes – instrumental and expressive – by which change agents in post-genocide Rwanda maneuvered to create modified legal arrangements of things past, I shed light on two intersecting, mutually reinforcing economies of lawfare. By taking the *gacaca* project as my subject, I look for long-run patterns and logics about the social meanings of law *and* of violence, connecting these institutional strands in a manner not, as far as I am aware, previously attempted.

What I offer up is a "heuristic case study," nothing more, but also nothing less. The point of a study such as mine is to "inductively identify new variables, hypotheses, causal mechanisms, and causal paths."[164] The methodological act of bringing violence into jurisprudence must be done in a way that is "neither purely abstract nor merely empirical."[165] I seek to complement purely ideographic studies of Rwanda's *gacaca* courts such as Ingelaere's impressive ethnography.[166] I aspire to supply theoretical foundations for the thickly described accounts we already possess. I want to contribute a "redescription" of Rwanda's *gacaca* project. The methodological practice of redescription is "a two-step venture that starts when one shows that the accepted way of characterizing a piece of political reality fails to capture an important feature of what stands in need of explanation or justification. One then offers a recharacterization that speaks to the inadequacies in the prior account."[167] According to Ian Shapiro, who favors it, the craft of redescription "is important for scientific reasons when accepted descriptions are both faulty and influential in the conduct of social science. It is important for political reasons when the faulty

[162] Stephen Skinner, "Stories of Pain and the Pursuit of Justice: Law, Violence, Experience and Jurisprudence," *Law, Culture and the Humanities*, Vol. 5 (2009), pp. 145–146.

[163] See Rosen, *Law as Culture*; Paul W. Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago: University of Chicago Press, 1999).

[164] Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005), p. 75.

[165] Skinner, "Stories of Pain and the Pursuit of Justice," p. 146.

[166] Ingelaere, *Inside Rwanda's* Gacaca *Courts*. Another knowledgeable, ideographic study that eschews theoretical reflection is Timothy Longman, *Memory and Justice in Post-genocide Rwanda* (Cambridge: Cambridge University Press, 2017).

[167] Ian Shapiro, "Problems, Methods, and Theories in the Study of Politics, or: What's Wrong with Political Science and What to Do About It," in Ian Shapiro, Rogers M. Smith, and Tarek E. Masoud, eds., *Problems and Methods in the Study of Politics* (Cambridge: Cambridge University Press, 2004), p. 39.

understandings shape politics outside the academy."[168] In the case at hand, a redescription is overdue for *both* of these reasons.

Because redescription is usually a "theory-influenced, if not theory-laden endeavor," this book approaches Rwanda's *gacaca* courts very differently than existing ideographic accounts.[169] I am interested in the proverbial forest, less so the trees. Borne of analytical eclecticism, my study is meant to complement, not replace, the empiricism that has dominated the study of post-genocide Rwanda, notably by bringing it in conversation with other literatures, many of them theoretically ambitious.[170] Empiricism – the practice of describing without theorizing – is not always problematic; in fact, it is indispensable up to a point. But the dearth of theoretical inquiry about the Kigali-based authoritarian regime has kept its study intellectually anemic. Existing scholarship is almost entirely disconnected from advances in the theory of dictatorship. Regrettable is also the neglect of law's violence in the study of post-genocide Rwanda, a failing that I correct.[171] The pages to come should be read with this analytical project – and the intellectual gap that it services – in mind. Taking a leaf from Sally Falk Moore's celebrated study of so-called customary law on Kilimanjaro in the period from 1880 to 1980, my inquiry into Rwanda's history – distant as well as contemporary – oscillates between "small-scale events" and "large-scale processes."[172] I assess the impact of one on the other to bring into sharper relief the formation and deformation of Rwanda's *gacaca* courts. In the process I advance a novel theoretical argument about the violence of law – then and now. The analysis to come is disheartening, however. There is no evidence for hope in it. But perhaps, as Ecclesiastes 1:18 teaches us, there is no wisdom to be had without grief. For as the Bible verse has it, "he that increaseth knowledge increaseth sorrow."

[168] Shapiro, "Problems, Methods, and Theories in the Study of Politics," p. 39.

[169] Shapiro, "Problems, Methods, and Theories in the Study of Politics," p. 39.

[170] One of the most incisive scholars of the country, Filip Reyntjens, exemplifies the purely empirically driven approach to studying post-genocide Rwanda. Aside from his many learned articles, see Reyntjens, *Political Governance in Post-genocide Rwanda*.

[171] Lest I be misunderstood, some of the best scholarship on Rwanda's *gacaca* courts has a discernible theoretical edge. For a theoretically informed account of the *gacaca* courts, as well as of grassroots legal fora such as *comite y'abunzi* (mediation committees) and legal-aid clinics, see, for example, Kristin Conner Doughty, *Remediation in Rwanda: Grassroots Legal Forums* (Philadelphia: University of Pennsylvania Press, 2016). For a comparable – and similarly insightful – use of theory, see Jennie E. Burnet, *Genocide Lives in Us: Women, Memory, and Silence in Rwanda* (Madison: University of Wisconsin Press, 2012); Thomson, *Whispering Truth to Power*; Breed, *Performing the Nation*; Andrea Purdeková, *Making Ubumwe: Power, State and Camps in Rwanda's Unity-Building Project* (New York: Berghahn, 2015); and Anuradha Chakravarti, *Investing in Authoritarian Rule: Punishment and Patronage in Rwanda's Gacaca Courts for Genocide Crimes* (Cambridge: Cambridge University Press, 2015).

[172] Sally Falk Moore, *Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880–1980* (Cambridge: Cambridge University Press, 1986), p. 12. Due to space constraints, the bulk of my comparative historical analysis appears in *Transitional Injustice*, the companion volume to this book.