

Paul Christoph Bornkamm, *Rwanda's Gacaca Courts. Between Retribution and Reparation*. Oxford University Press, 2012. Pp. 242. £70. ISBN: 9780199694471.

The commencement of proceedings at the Gacaca Courts in Rwanda on 18 June 2002 attracted enormous interest. The question of how the country would deal with a past shaped by the genocide that had ended eight years earlier not only aroused the curiosity of national observers, it also attracted large numbers of international commentators. This situation remained largely unchanged in the years that followed. It sometimes seemed as though a constant stream of academics, in particular, were lining up to take a look at the traditional Rwandan justice workshop.

A correspondingly large number of publications on Gacaca have been issued so far. Articles, essays, and books have been published, the quality of which is extremely varied and can generally be measured by the extent to which the author retained a capacity for critical analysis when confronted with the details of the horrendous crimes typical of genocide.<sup>1</sup> As is generally known, emotional involvement can easily clash with judicial appraisal, which must send a robust and future-oriented signal.

The book under review is based on a doctoral thesis submitted to Humboldt-Universität zu Berlin in late 2009. However, the Gacaca justice process for the judicial appraisal of crimes of genocide did not reach its conclusion until 18 June 2012, ten years to the day after its establishment. The Rwandan government recently published the following general summary data on the process: Gacaca proceedings were instigated against just over one million suspects, of whom 90 per cent were men and only 10 per cent women. By far the majority of the proceedings concerned so-called Category 3 acts, i.e., unauthorized acts against property, for example, theft and plunder (a total of 1.3 million individual acts). These were followed in number by Category 2 acts, which included murder, manslaughter, and grievous bodily harm (577,000 individual acts). Third and last came Category 1 offences, which related to acts involving the planning and organization of the genocide and crimes of rape and sexual torture (60,000 individual acts). The penalties imposed ranged from orders to pay compensation (the standard punishment for Category 3 crimes) to life imprisonment. In 14 per cent of all cases, the accusations proved unjustified and the defendants were acquitted.

Needless to say, it is not necessarily disadvantageous if an author presents only a partial account of a research object in a study. However, it is essential that the key questions are asked and answered; these are, essentially, questions that allow a differentiated and well-founded assessment of the matter under investigation. A glance at the table of contents of Bornkamm's study promises that this requirement will be met. Following a brief introduction to the object, aim, and method of the study, the reader is informed of the salient points essential to an understanding of the pre- and post-history of the genocide and the genocide itself ('A Short History of the Rwandan Genocide and Its Aftermath', at 9–30). Despite its summary nature, this section of the study succeeds in clearly conveying the fact that the genocide in Rwanda does not allow a consistent dividing line to be drawn between the victims and perpetrators. This is particularly important as for years now official Rwandan policy has taken great pains to distinguish clearly between perpetrators and victims and to create the foundation myth of the new Rwanda from the genocide of the Tutsi, based on which the pledge of 'never again' provides the guiding objective for all future policy.

<sup>1</sup> Recommended publications on Gacaca are: Human Rights Watch, 'Justice Compromised, The Legacy of Rwanda's Community-Based Gacaca Courts', Report, 31 May 2011; S. Friese, *Politik der gesellschaftlichen Versöhnung. Eine theologisch-ethische Untersuchung am Beispiel der Gacaca-Gerichte in Ruanda* (2010); quite disturbing due to its rather poor understanding of the political dimension of the Gacaca system is P. Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (2010).

In the chapter entitled 'The Implementation of Modern Gacaca' (at 31–90) Bornkamm then describes how and when the Gacaca justice system became a centrepiece of the new Rwandan policy. This chapter also provides all of the information necessary for the reader to understand what was involved in the Gacaca process. Following a short presentation of the traditional concept of Gacaca justice, which is based primarily on the restoration of social harmony, the material-legal and procedural process that the concept underwent to enable its application to the crime of genocide is described in considerable detail. Several examples are presented to show how the reactivated Gacaca concept worked in reality; the author's findings are informed by the considerable time he spent in Rwanda for research purposes.

The following two chapters, which build on the findings of the preceding chapter, can be understood as the heart of the study, as they examine Gacaca in terms of its relationship to the concept of traditional justice. As indicated by its title, 'Transitional Justice Through Prosecution' (at 91–118), the first of these two chapters focuses on the extent to which Gacaca as an instrument of criminal prosecution can constitute a precondition for the socially constructive appraisal of genocide. The author has justifiable doubts in this regard and presents various examples in support of this view (the lack of independence and impartiality of Gacaca judges; a well equipped prosecution vs. minimal rights for the defence; the inability to individualize criminal responsibility); the norms of international law as accepted by Rwanda or customarily applied, for example Article 14 of the International Covenant on Civil and Political Rights, provide him with an obvious benchmark here. Hence, it comes as no surprise that the other side of Gacaca justice, namely that of restorative justice intended to restore social harmony in a community, is also affected by these doubts. A process that can be perceived as unfair in its course and unjust in its outcome proves unsuitable (apart from exceptions) for reuniting a village community that is torn apart or divided by ethnic hate or, at the very least, prejudice.

The same assessment applies, *mutatis mutandis*, to the following chapter which is entitled 'Transitional Justice Through Reparation' (at 119–157). Since the supposed truth about what happened before, during, and after the genocide is defined in a one-sided way by the country's new rulers, redress is also perceived as arbitrary. As Bornkamm correctly states, not only material but also immaterial redress, such as the recognition of the damage suffered by the Hutu population, which is generally acknowledged as the perpetrator group, has an important role to play here. The failure to fulfil the – however modest – needs that exist in this regard is unduly counterproductive as it deepens the still existing gap between Hutu and Tutsi. Correspondingly, the author's final assessment ('Conclusion', at 158–166), is ambivalent and ultimately negative. Even if Gacaca improved the position of women in Rwandan society through the appointment of female Gacaca judges, and the administration of this form of justice prompted discourse within villages in some locations, it must be acknowledged that, '[t]aken as a whole ... , Gacaca cannot ultimately be recommended as a model' (at 166).

Against the background of the failings of the Gacaca courts addressed in this study, the most important of which were insufficient compliance with the principle of a fair trial and the often result-oriented conduct of the trials, the mildness of the author's final assessment is somewhat surprising. It is, however, symptomatic of the entire study. A sense of unease lingers with the reader on finishing this book (which is complemented by a comprehensive appendix on the legal situation in Rwanda at 167–206). This is in no way the fault of the author. He has presented a solid piece of work which provides an accurate analysis and nowhere generates the impression that his research was clouded by emotional involvement. The reader's unease arises instead from the fact that the Gacaca court processes are assessed on the basis of legal standards while they could very easily be described as the application of injustice and even arbitrariness. The author is aware of this and indicates so in several places in the text, for example when he raises the question of the tabooing of the crimes of the victors. He writes, 'The fact that no one knows what happened during the RPA advance in 1994 [RPA is the acronym for the Rwandan Patriotic

Army, the ultimately victorious army, G.H.] makes it possible for the idea of a counter-genocide against the Hutu population to be spread' (at 142). He continues to probe, discovers positive signs of reconciliation in the interpersonal sphere, but repeatedly encounters aspects that reveal Gacaca to be a pure instrument of power politics. 'Gacaca was never really what it pretended to be and what the sensitization programmes attempted to suggest: a grassroots mechanism used by ordinary people for ordinary people. Instead, it was imposed by the government and operated under the permanent control of local authorities. What kept Gacaca running was often not the conviction that it was responding to the actual needs of communities, but rather that it was an obligation imposed by the government' (at 160). On more than one occasion the reader is tempted to point out to the author that injustice does not become injustice through its repeated comparison with justice. On reflection, however, the reader remembers that institutionalized injustice, in particular, does not leave any stone unturned in presenting itself as justice. And then he realizes that it is good to have as many arguments as possible at hand to enable injustice to be called injustice, even if it is presented by those in power in Rwanda as a successful measure of transitional justice.

Gerd Hankel

Hamburg Institute for Social Research  
Email: [Gerd.Hankel@his-online.de](mailto:Gerd.Hankel@his-online.de)

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Annelise Riles. ***Collateral Knowledge: Legal Reasoning in the Global Financial Markets***. Chicago and London: University of Chicago Press, 2011. Pp. xii + 295. \$27.50. ISBN: 9780226719337.

*Collateral Knowledge: Legal Reasoning in the Global Financial Markets* does for collateral, in legal thought and practice, something like what Marcel Duchamp's *Fountain* did with and for the urinal in artistic thought and practice.<sup>1</sup> The book takes what Annelise Riles calls a 'little sideline item' (at 1) of mundane use in global financial markets – an item of undeniable practical importance, but typically considered unworthy of serious attention – and encourages us to see it anew. As in the case of *Fountain*, what we may experience afresh is not just the object and the use of it, but also the order of knowledge or, in Riles' terms, 'knowledge practice' (at 10) in which it has been repositioned.

Beginning with collateral – secondary assurance or value provided by one or both counter-parties to a transaction to offer a means of satisfying a debt in the event of the provider's default upon a primary undertaking – Riles tells a (perhaps surprisingly) compelling story of global financial markets as 'a constellation of both theoretical and doctrinal maneuvers and material documents' (at 38). Practices of collateralization, in their very marginality, standardization, or taken-for-grantedness, comprise 'a legal technology that is paradigmatic of global private law solutions' (at 41). Prised open under Riles' deft touch, collateral becomes the stuff of 'dreams' (at 37–38 and 138–144) and responsibilities (at 119 and 244); a 'quiet nexus of tremendous political and economic *legitimacy*' (at 4, emphasis in original).

The work that *Collateral Knowledge* performs in this regard is that of legal ethnography, resulting from 'seventeen months of fieldwork conducted in Tokyo between summer 1997 and fall 2001' and 'frequent research visits in the years that followed', focused on large financial institutions and those who work with and for them (at ix). It is closely engaged with ongoing scholarship in the field of science and technology studies – work led by anthropologists such as Bruno

<sup>1</sup> A. Schwartz, *Marcel Duchamp* (1975), at 111; A. d'Harnoncourt and K. McShine (eds), *Marcel Duchamp* (1973), at 16 and 282.