

Reviews

Investing in Authoritarian Rule: Punishment and Patronage in Rwanda's Gacaca Courts for Genocide Crimes by ANURADHA CHAKRAVARTY

New York: Cambridge University Press, 2016. Pp ix + 367, £64.99 (hbk).

Inside Rwanda's Gacaca Courts: Seeking Justice after Genocide by BERT INGELAERE

Madison, WI: The University of Wisconsin Press, 2016. Pp xi + 234, US\$64.99 (hbk).

Courts in Conflict: Interpreting the Layers of Justice in Post-Genocide Rwanda by NICOLA PALMER

Oxford: Oxford University Press, 2015. Pp v + 224, £59.00 (hbk).

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The question of whether prosecutions promote political transformation and social repair after mass atrocities is much debated. Three books by Anuradha Chakravarty (2016), Bert Ingelaere (2016) and Nicola Palmer (2015) examine Rwanda's experience of post-genocide justice and provide important insights. After close to a million people were killed in a genocide in 1994, three new judicial institutions were established: The International Criminal Tribunal for Rwanda (ICTR) in 1995; a special chamber within the Supreme Court at the national level in 1996; and local community-level courts, *gacaca*, in 2002. The latter alone processed 1,958,634 cases. The *gacaca* courts formally closed in 2012; the ICTR in 2015, and only a few genocide cases remain in Rwanda's national courts, so now is a good time to take stock. The extensive field research undertaken by each of the authors allows us to see inside the courts. Additionally, Chakravarty and Ingelaere lead us to a deeper understanding of Rwandan politics and society since the genocide.

In Chakravarty's study of *gacaca* the analysis moves well beyond the 'transitional justice' lens, towards a more expansive consideration of the role of justice processes in the constitution of political authority. In one sense, the book is an intricate investigation of the inner workings of the local *gacaca* processes, and the ways that people engaged with them – we learn much about the judges, the operations of the courts, and the genocide suspects. Yet the analysis also reveals how the courts served the ruling Rwandese Patriotic Front (RPF) in its effort to consolidate power over a profoundly suspicious and often hostile population. *Gacaca* emerges as a mechanism for the 'mass socialization into the new rules of political life' (2016: 4). The courts enabled the RPF government to penetrate the rural domain and forge networks and cheap clientelist bargains, trading in fears of prosecution and incentives for participation. The book depicts the reconstruction of authoritarian clientelism in Rwanda, while

also elaborating on the political significance of justice – its revelations are worth keeping in mind while reading Ingelaere's nuanced social anthropology of *gacaca* and Palmer's detailed discussion of the inner workings of the local, national and international courts.

To make sense of the three books' various findings, it is worth noting a few points about the context. Firstly, most of the bare facts of the genocide were established by the time that the tribunals were established, so all the courts sought to prosecute crimes of genocide and violations of international humanitarian law or crimes against humanity: the ICTR confined itself to crimes committed between January and December 1994, while the *gacaca* and the national courts considered crimes between October 1990 and December 1994. Secondly, a political imaginary of the genocide and its causes, a 'Truth-with-a-capital-T' as Ingelaere labels it (p. 12), was promoted by the RPF government in other forums beyond the courts, including re-education camps and commemoration ceremonies. This selective account framed and constrained the work of all the courts such that it was not possible to address war crimes accusations made against members of the Rwandese Patriotic Army (RPA) in any of the forums, and there were only rare prosecutions in a military court (Palmer 2016: 59). Thirdly, all the courts faced considerable practical challenges; they held the accused in prolonged pre-trial detentions (at the ICTR) or arbitrary detentions (in Rwanda) as they struggled to assemble the evidence. Relatedly, cases at every level, and especially at local levels, relied almost entirely upon testimonial evidence. Each of the courts secured substantial numbers of convictions, especially *gacaca*, but Palmer, Ingelaere and Chakravarty all expose different facets of the problems that surfaced in relation to their wider aims of peace, truth and reconciliation.

One of the challenges identified seems potentially manageable – Palmer finds that plural justice processes can produce contradictions even when their jurisdiction is different and their objectives are similar. Those who consider transitional justice to be a technical exercise, rather than a political one, might see this as related to the design and sequencing of processes, but Palmer identifies a less visible issue arising in how judicial actors interpreted their role. On paper the three forms of justice processes appeared complementary. For instance, the ICTR could indict the architects and organisers of the genocide, whose exile sometimes placed them beyond the reach of the Rwandan government, while at the national level, *gacaca* was designed to relieve the national courts of a caseload of suspects languishing in detention, whose cases the formal courts could not hope to process. But Palmer finds that the personnel in each institution prioritised and pursued 'distinct objectives', contributing to 'misunderstandings and direct competition' between the courts (p. 10). This 'conflict' meant that each court might act 'at the expense of the others' (p. 12) threatening to undermine their overall legitimacy. A case in point was the handling of material from *gacaca* at the ICTR. Palmer's interviews show that judicial actors were somewhat dismissive and lacked knowledge about the *gacaca* courts, yet proceedings in 47 out of 49 ICTR cases since 2005 'discussed evidence' from *gacaca* (Palmer 2015: 83). The Trial Chamber responded inconsistently to this evidence, for instance

they might have taken greater advantage of usable information gathered by the local courts relating to individual deaths (p. 87).

However, the ICTR's handling of the evidence from *gacaca* also hints at some complex and intractable problems that were essentially political and social in nature. Each of the genocide courts were at the centre of various controversies, indeed some of those relating to the ICTR and national courts might have been given greater consideration as part of the context in Palmer's account. Yet given the vast scale of the *gacaca* enterprise and the acute set of problems it presented, it makes sense to focus principally on what Palmer, Chakravarty and Ingelaere tell us about these 'grassroots courts'.

The *gacaca* courts had many positive features as a response to the crisis of the genocide. They were local and participatory in the sense that every community was called to elect local 'persons of integrity' *inyangamugayo* to judge cases on all manner of crimes, ranging from multiple murders to the looting and destruction of property, such as cows, houses or crops – in fact around 67% were these lesser 'category 3' crimes (Ingelaere 2016: 56). The courts were also a huge success in terms of numbers of prosecutions and far exceeded the initial aim of clearing a backlog of cases in the national courts. However, their establishment led to the proliferation of new accusations, such that over the period of a decade, the courts 'tried 1 in 3 adult Hutu in the population at the time of the genocide in 1994' (Chakravarty 2016: 3), a point of major political significance.

It is often remarked that the *gacaca* courts were economical, costing only US \$53.5 million to handle its caseload of almost 2 million, in comparison to US \$1.5 billion spent on 93 indictments (85 proceedings) at the ICTR (Ingelaere 2016: 29). But from records of the trials we can better understand how the *gacaca* functioned efficiently despite their lack of facilities and paid staff: teams of volunteer judges laboured to uphold the procedures and evidentiary rules they had been taught in brief training sessions. Chakravarty's record of the trial of John, who had confessed to two murders and several thefts, exemplifies this work ethic. After days trying to establish the truth of John's confession, and close to a verdict, the judges heard a last-minute accusation from a survivor. They patiently considered it, took new statements and re-examined witnesses until it was dark. With the case still unresolved, they resumed with equal vigour the following week, until finally they concluded that no supporting evidence could be found for the new charge, so the confession was accepted (p. 155–9).

The 2004 Gacaca Law prescribed that the *gacaca* judges should be elected on grounds of honesty and 'high morals' (Ingelaere 2016: 26); they also clearly understood that they were responsible for 'finding the truth about the genocide and determining individual accountability' (Palmer 2016: 117). But without dismissing their good genuine intentions, we cannot take this at face value. As Ingelaere points out, uncertainties arose over the 'integrity' of some judges – by the end of the trials almost 20% of the original 250,000 cohort had been accused of involvement and had to be replaced. The judges also faced social isolation and threats; 'we can be hated', they explained to Palmer (p. 147). Meanwhile, their role also provided opportunities for advancement and influence.

Among the ‘open secrets’ of *gacaca*, to use Ingelaere’s phrase, was the understanding that judges might use their position to assist family members. In some cases, this proved to be an incentive, even if, as Chakravarty concludes, it was not the only motive: a ‘combination of incentives, ambition, and a genuine desire to do right (in most cases at least) drove the judges’ (p. 317). Still, commitment and good intentions could not overcome the very real difficulties the judges faced; they readily acknowledged that the pursuit of the truth was consistently hampered by the problems of silence, low participation and false testimony in the courts (Palmer 2015: 140–6). The judges, like everyone concerned, including the defendants, knew that the legitimacy of the *gacaca* process should be evaluated against its delivery of ‘full information about the conflict’ (Palmer 2015: 11). They correctly understood that their success depended upon a performance of truth-seeking and a narrative of its accomplishment. But there were other meanings implicit in the public narrative of *gacaca*: private calculations, investments and sentiments lay behind the performances in the courts.

It seems that although the procedures of *gacaca* were generally followed, the *gacaca* confessions, witness statements, and judgements often contained inaccuracies. As the participants themselves explained, various forms of manipulation undermined the truth-telling endeavour. The problem was systemic. It was not that the *gacaca* method of relying on participation, dialogue and confession was flawed; the courts did provide ‘a space for dialogue’ (Palmer 2015: 129) and unquestionably, many truths did emerge. But, as Ingelaere observes, popular participation declined over time and *gacaca* trials varied according to the history and composition of communities in different localities. After the initial information-gathering phase the facts seemed to become ever more elusive as defendants made multiple confessions and changed their stories (p. 62). Their ‘strategic stand’ (p. 12) is understandable, not least because they had no lawyers to act on their behalf. But it seems a wider pragmatic logic took hold across the courts, centred on calculations relating to the confessions procedure (with its opportunities for plea-bargaining and sentence reduction) and influenced by the participatory nature of the forum which reflected power relations within the community. The *gacaca* became an opportunity for ‘corruption, score-settling, vengeance, the search for profit, and power plays’ (Ingelaere 2016: 12); and it was ‘experienced as a relentless set of pressures’ by all concerned (Chakravarty 2016: 134).

Some injustices were inevitable given that proving innocence depended on mustering a ‘coalition of support’ within the community. Chakravarty finds that: ‘If the numbers were thin on the accusing side, the defendant could hope to prove his version of events by rallying more people to his side. But if he was outnumbered by his accusers, he would be convicted.’ Negotiation with fellow accused or community members to suppress or release information was a means to sway the odds (p. 151). As one of the hold outs among the genocide suspects explained, there was no point confessing unless there were ‘at least three witnesses against you’ (p. 184). This rough estimate seemed to apply more broadly, to the extent that in one trial the judges simply laughed when the accused commented that he would only admit to the crime if four witnesses came forward to testify against him (Ingelaere 2016: 123).

Some of the wealthier among the accused managed, according to Ingelaere, to 'buy the hill', purchasing silence and support, so that another suspect would take the blame. The poorest and least well connected were the most vulnerable to abuses – the case of Bihoyiki is a painful illustration. He was locked up in 1995 without charges but, in a bid to gain provisional release in 2007 under the terms of the *gacaca* law, he decided to confess to killing two people (one of whom turned out to be alive). During his trial, he recanted his confession and explained his reasoning: 'I told lies against myself; it was like I was locked in a cave and I wanted out'. But the court was not convinced and without a confession he was not eligible for sentence reductions, so he was given the full penalty for murder – having already spent 12 years in prison he was sent back there for another seven (p. 64).

Truth at *gacaca* was undermined by 'bandwagoning, balancing, and local power struggles' in Chakravarty's words (p. 30). For Ingelaere, an 'effectual truth' was produced instead; 'truth was equated with utility' (p. 117). Yet the concept of pragmatic truth is disturbing from both moral and historical perspectives. Ingelaere likens it to 'consequentialist ethics' although it was not based upon judgements about the maximisation of human welfare and instead mainly involved weighing up the best odds for individual survival. As Ingelaere shows, Rwandans appreciated the gap between the negotiations in the courts and their concept of humanity in which moral truth lies in a person's heart (*uwutima*). If an action is not perceived as genuine it cannot bring about moral and social repair (Ingelaere 2016: 158). An 'effectual truth' is not only destructive of morality, but also of memory and history. Historians of the genocide will now have to reckon with the statements given in the courts, testing them against records of events gathered by human rights organisations, journalists and scholars, including valuable testimonies gathered soon after the events, and prior to the *gacaca*.

The genocide courts marked a historical turning point in the post-independence politics of Rwanda in an important respect: they ended a post-independence history of impunity, and sometimes reward, for killing Tutsis. Ingelaere records a sense of relief emerging as the *gacaca* trials ended: 'everybody breathed again. Trust improved too', and 'we were safe again' (p. 90). He also reminds us that *gacaca* had opportunities for mediation, pardon and restitution, that improved social relations and created new bonds (p. 158). These are encouraging reflections, yet must be balanced against the indications that an uneasy peace ensued, underlain by a 'subterranean anger' about crimes and abuses that have gone unpunished (Chakravarty 2016: 264).

Even as the RPF government constituted itself as a 'benevolent patron', and won allies and dependants through the *gacaca*, Chakravarty argues, it could not persuade people of its 'moral authority to rule'. Instead cooperation was associated with attempts to 'access the selective benefits that flowed from the state' (p. 20). This means that a reversal of the existing political order could throw all the pragmatic compromises made during *gacaca* into jeopardy. Suspects who had confessed to genocide were acutely aware of this risk. They felt deeply vulnerable and feared the distrust from former friends and relatives they had denounced in their confessions; they also worried that if Hutu extremists recaptured power, they might be punished as 'collaborators of the

RPF'. Many perceived the need to manage future threats by investing in the survival of the regime, becoming loyal supporters of the RPF (Chakravarty 2016: 184). Ironically, in this way, the defendants engaged in a similar 'tacit contract' with the RPF to that of the *gacaca* judges, although the latter were more reliable intermediaries for the state and also had greater opportunities to progress within the system, sometimes gaining posts as local officials.

Notably, each of the books considered here placed the agency of participants in the *gacaca* courts at the core of their analysis. They found that there was some space to shape the outcomes – the RPF government did not, as some previously suspected, bear down heavily. Indeed, the regime governed partly by maintaining its distance, thus encouraging people to undertake their own surveillance, and allowing grassroots elites to pursue their own agendas (Chakravarty 2016: 218). The result was that people turned to the state, seeking interventions when problems arose, and occasionally it responded.

We certainly gain a more profound understanding of both justice processes and of Rwanda's contemporary politics by taking account of the agency of participants and examining how they shaped the work of the courts in practice. But the choices of rural peasants were very narrow. Chakravarty observes that in 1994 peasants responded to the state's orders to commit genocide when they were 'faced with an existential crisis' (p. 69). Her study of *gacaca* reveals a worryingly similar kind of survival logic. Participants in *gacaca* responded to state policy as: 'fearful but calculating agents who explored the possibilities and limits of self-advancement under constrained circumstances and found ways to make some sort of peace within the system' (p. 24).

Nonetheless it is worth emphasising that despite the revival of authoritarian clientelism and the persistence of poverty, some of the structural elements of the post-genocide era contrast with the context in 1994 and there is reason to hope that this difference may matter in the long term. Relatedly, in all the justice processes, and in *gacaca* especially, people were required to privilege performances of justice and morality over enactments of violence. Indeed, some of the participants in the *gacaca* displayed transformative agency in shared expressions of integrity, sorrow and regret, as Chakravarty describes:

The judges, witnesses, audience members, and defendants participated in lessons on human depravity and acceptable standards of moral behaviour; they acted on their desire to reconcile. The audience snorted in disdain at defendants whose accounts twisted and changed with every rendition of their testimony. They sighed in relief when a defendant showed repentance, appealed directly to the plaintiff, and pledged to help her faithfully: 'Mama, I ask pardon from you. I did not do anything to save him ... From now on, whatever you ask of me, I will be there to help you.' (p. 324)

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