

Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge University Press, Cambridge, 2010)
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The use of gacaca trials in Rwanda to respond to the genocidal violence of 1994 has polarised the international community. Some human rights and international criminal lawyers have criticised gacaca for failing to provide the minimum guarantees of a fair criminal procedure which are embedded in the international human rights law (which binds Rwanda). Others have tended to romanticise gacaca as a flexible transitional justice approach which is embedded in local customary and cultural practices. Gacaca is also commonly thought to provide a functional alternative to the practical impossibility (as a result of the sheer numbers of perpetrators) of regular criminal trials or international criminal prosecutions, and which brings reconciliation benefits which cannot be attained by conventional prosecutions.

Phil Clark's book is remarkable because it cuts through much of the polemic, rhetoric and poorly substantiated positions which have featured in some of the discussion to date. Clark's book is particularly valuable because it is grounded in seven years of ethnographic field work in Rwanda, involving 500 interviews with those involved in the gacaca process. It is thus capable of assessing the promise and limits of gacaca within the affected community itself, while situating such analysis within the wider scholarly literature, the political positions of the Rwandan authorities, the disparate views of the international community (whether NGOs, international criminal justice practitioners and the UN system).

In Chapter 1, Clark situates his analysis of the gacaca trials within the broader framework of transitional justice—that is, questions of how societies address conflict and repressive rule, and how they approach reconstruction.¹ He begins by investigating the aims and objectives of the various participants in gacaca, rather than by attempting to presuppose them. Clark identifies a series of key issues discussed by his sources, and divides these into three pragmatic objectives and six profound objectives. Due to their ambiguity and complexity, Clark sets about introducing theoretical frameworks for the six profound objectives—truth, peace, justice, healing, forgiveness and reconciliation—with

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1 Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge University Press, Cambridge, 2010), 29.

the caveat that this theory will go on to be informed by the discussions of the sources themselves and an acknowledgment that these objectives necessarily intersect and overlap.²

Clark traces the history and mechanics of gacaca in Chapter 2 in order to better understand its purposes and assess its effectiveness. He argues that contrary to romanticised accounts of gacaca as a traditional, deeply entrenched and static system, gacaca is rather a ‘constantly evolving phenomenon’ that has been adapted specifically to the ‘post-genocide environment’ on the ground.³ Furthermore, Clark points out that the ‘legal pluralism’ of multiple institutions operating in the same field facilitates a more holistic approach to transitional justice. He argues that gacaca not only operates in a hybrid system alongside national courts and the International Criminal Tribunal for Rwanda (located in Tanzania), but that it has an internal hybridity, incorporating a number of different objectives and processes.⁴ Clark argues that most non-Rwandan critiques of gacaca arise from a mischaracterisation of this history and hybridity.⁵

Having established the hybridity of gacaca’s influences and practices, in chapter 3 Clarke considers its purposes and how its effectiveness ought to be assessed, before evaluating its effectiveness.⁶ He discusses the controversy surrounding gacaca’s effectiveness in dealing with genocide and its perceived violations of human rights, arguing that these critiques are grounded in a discourse that limits gacaca’s objectives to punishing the guilty as a form of deterrent justice.⁷ He argues instead that given the community-wide role gacaca plays, these objectives ought to be drawn more broadly from the interpretations of all interested parties—official, popular and critical.⁸

Accordingly, in chapter 4 Clark details the first-hand experiences of three detainees, based on a series of interviews with them and their communities, to ‘provide the narrative context within which gacaca operates’ and lay the foundation for further analysis. These accounts are used to illustrate the ‘gacaca journey’, which involved detainees returning to their home communities to face gacaca trials.⁹ Clark explores the emotional responses of detainees and communities to this process and the impact on their participation in it.¹⁰

Chapter 5 to 10 of the book involve a normative and empirical analysis of gacaca’s objectives and methods. Clark outlines the significance of popular participation as the *modus operandi* of gacaca in Chapter 5, and notes that a uniquely high percentage of the Rwandan adult population has personally engaged in the process.¹¹ While non-Rwandan

2 Ibid 32-3. 46

3 Ibid 49-50.

4 Ibid 48.

5 Ibid 47.

6 Ibid 81.

7 Ibid 81-2.

8 Ibid 87.

9 Ibid 98-9.

10 Ibid 131.

11 Ibid 132.

legal commentators tend to be wary of this process—contending that it is unjust and cannot properly protect individual rights—Clark argues that this is a false dichotomy. Rather, popular participation within clearly defined boundaries ensures that Rwandans themselves continue to regard gacaca as a legitimate process.¹² This popular participation, he argues, fosters the engagement that is crucial—though not sufficient by itself—in the pursuit of both pragmatic and profound outcomes, including reconciliation.¹³

Turning to pragmatic objectives in Chapter 6, Clark outlines three relatively uncontroversial objectives that the government and commentators have linked to gacaca. These are processing the backlog of genocide cases, improving prison conditions and fostering economic development.¹⁴ He contends that gacaca has successfully prosecuted hundreds of thousands of suspects and that by mid-2010 the backlog of genocide cases will have been cleared.¹⁵ While the decreased the number of detainees has improved prison conditions somewhat, Clark's field work reveals that many prisons are still run down and that the government has not directed its limited resources to improving prison conditions.¹⁶ Finally, he concludes that gacaca has failed to contribute significantly to economic development.¹⁷

So far as 'profound objectives' are concerned, in chapter 7 Clark acknowledges the contested and variable nature of these objectives. He attempts to delineate three distinct but overlapping functions of truth in gacaca: 'legal truth' to prove the guilt or innocence of a subject; 'therapeutic truth' to acknowledge harm and facilitate healing on an individual level; and 'restorative truth' to facilitate the rebuilding of relationships on a communal level.¹⁸ Clark also outlines the familiar processes of truth-telling and truth-hearing, and adds a third, namely truth-shaping or truth as a 'mediated outcome'.¹⁹ Clark argues that truth manifests in both 'legal and non-legal forms' in gacaca and that arriving at the truth often involves 'protracted communal negotiation'.²⁰ While admitting that there is a significant tension between the need for popular participation and the need on certain occasions for mediation by judges, Clark contends that gacaca has been generally successful in 'facilitating truth-telling and truth-hearing and, to a lesser extent, truth-shaping',²¹ and that it provides a vital forum for collective discussion.²²

12 Ibid 165.

13 Ibid 168.

14 Ibid 169-70.

15 Ibid 175.

16 Ibid 175-6.

17 Ibid 185.

18 Ibid 187.

19 Ibid 188.

20 Ibid 189.

21 Ibid.

22 Ibid 219.

Clark argues in chapter 8 that gacaca has been generally successful in facilitating the further 'profound' objective of peace and justice. Gacaca has been particularly successful in achieving retributive justice. However, he argues that the pursuit of deterrent and restorative justice has been more fraught. Deterring ethnically motivated mass crimes will require long term processes addressing ethnic antagonism rather than simply the punishment of past perpetrators. Further, while gacaca initiates the process of restoration by returning perpetrators to the community, it requires a continued sense of trust between previously conflicting parties. Clark nonetheless maintains that the pursuit of deterrent and restorative justice along with retributive justice is part of a 'holistic approach' to the response to genocide, and that gacaca has 'contributed meaningfully' to non-legal ends such as reconstructing Rwanda's social fabric.²³

Clark finds in chapter 9 that there is a widespread belief in Rwanda (and overlooked by most commentators) in the importance of Christian principles of mercy, grace, redemption and atonement to the gacaca process, and in the capacity of gacaca to contribute to healing, forgiveness, and the rebuilding of individual lives and communal society. Clarke suggests that gacaca alone is unlikely to realise the objectives of healing and forgiveness because of the long term nature of those aspirations and the difficulties faced by survivors in negotiating their anger, hatred and resentment. He nevertheless highlights how Rwandan society dynamically draws on those local religious beliefs to mould the gacaca system beyond its strict form as constructed by legal documents and state officials. In so doing popular ownership of gacaca is exerted, as against more centralised statist understandings of it.

In the final chapter, Clark argues that the Rwandan government's rhetoric of national unity damages the pursuit of reconciliation, in contrast to the popular religious beliefs which inform gacaca and are optimistically believed by many enhance its capacity to reconcile broken relationships. Clarke argues that the empirical evidence suggests that reconciliation remains a distant goal despite gacaca, and that Hutu and Tutsi communities, and Tutsis who left and those who stayed, remain heavily divided. Some religious beliefs can also work to undermine reconciliation in certain ways. Gacaca is a starting point in opening up the space for moving towards reconciliation, but does not achieve it by itself as the government often suggests.

In summary, this is a landmark work because of the thoroughness of its research, its grounding in empirical field work, its ability to understand and address different national and international audiences, the nuance and sophistication of its articulation of the issues at stake, its skewering of dogma, and its compelling readability of style. Clark is to be congratulated on a magnificent book which is destined to become an essential socio-legal work on gacaca.

23 Ibid 256.