

Rwanda's Gacaca Courts: Between Retribution and Reparation. By Paul Christoph Bornkamm. OUP Oxford, 2012. Pp. 272. \$140.00 cloth.

Rwanda's Gacaca Courts: Between Retribution and Reparation is a research monograph that attempts to accomplish three interrelated objectives: 1) to contribute to the growing discussion on the applicability of international standards within national responses to human rights abuses, particularly regarding investigation, prosecution, and reparation; 2) to attest that Rwanda's genocide courts, *gacaca*, should be viewed as a traditional liberal-legal criminal process; and 3) to evaluate these courts against international legal standards.

Bornkamm organizes his monograph into four chapters, moving from description to theory to assessment. The first chapter is brief (13 pages), and provides a summary of historical context of Rwanda from the pre-colonial period up until the 1994 genocide. The second chapter, comprising approximately half of the book, describes the evolution of *Gacaca*, from its origin as a grassroots mechanism used prior to and during colonial rule, to the modern, state-instituted mechanism it is today. While similar to Phil Clark's (2010) description of the evolution of *gacaca*, Bornkamm's account offers more detail on the domestic and international legal developments that led to the implementation of *gacaca*.

Bornkamm's third chapter moves from describing the *gacaca* legal process to discuss the application of universal rules of state conduct. Here, Bornkamm situates *gacaca* within international criminal and human rights legal frameworks, finding that "deficiencies" in the structure of *gacaca* have compromised its ability to abide by international criminal and human rights procedural obligations (p. 117). Some of the challenges in *gacaca*'s design, argues Bornkamm, are its laymen judges who are ill-equipped to deal with complex legal cases, the failure to provide counsel for individuals lacking the ability to defend themselves in a court of law, and the assignment of collective guilt on persons of Hutu origin rather than individual culpability of perpetrators. This last issue of collective guilt manifested for two reasons. First, jurisdiction was limited to only cases of genocide against persons of Tutsi origin (and some Hutu moderates) and not potential war crime acts committed as retaliation after the genocide (p. 116). Second, the limited training provided to judges created what Bornkamm described as a "lumping of ringleaders and bystanders" into the same category of perpetration potentially leading to wholesale condemnation of ethnicity rather than individual responsibility (p. 159).

In the fourth and final chapter, Bornkamm seeks to evaluate *gacaca* from the perspective of international norms, with a specific focus on the state's obligation to provide reparation for victims. Like the preceding chapter, Bornkamm argues that international legal precedence exists, obliging states to issue restitution for victims following mass violence. Despite ample promises of reparation in *gacaca*'s official mandate, there has been little follow-through in practice. What little reparation that has occurred has done so at the collective level through Rwanda's perpetrator community service programs (TIG). This program provided an alternative to incarceration for those that admitted guilt, requiring individuals to labor in public works in exchange for partial freedom. These public works, however, rarely directly benefit victims of the genocide, many of whom still live in extreme poverty. Accordingly, when assessing *gacaca* according to this universal legal obligation, Bornkamm finds the *gacaca* process deficient.

Overall, Bornkamm's work is one of the most encompassing legal descriptions of the *gacaca* process to date—indeed; this is its most important contribution. While Bornkamm is not the first to assess *gacaca*'s written codes and structures, he is one of the first to analyze the entire legal process in such detail. Such comprehensiveness is important

given the complexity of the Rwandan genocide and the unique justice mechanisms used in response. I found Bornkamm's discussion of how *gacaca* fits within (or comes into tension with) universal legal norms of investigation, prosecution, and reparation informative and insightful, contributing to the discourse on universal jurisprudence and theorizing how Rwanda's *gacaca* courts might fit into that discussion.

The methods section of the monograph describes Bornkamm's work as partly a socio-legal assessment of the *gacaca* courts. After reading the book in its entirety, however, I would describe his approach as primarily a legal description of *gacaca* and subsequent legal comparison to a universal legal framework. Social science fieldwork is done only as a minimal supplement to the primary goal of legal criticism and Bornkamm rarely divulges original insights into the impact of *gacaca* at the ground level.

Bornkamm also relies too heavily on secondary observations of the *gacaca* courts by local and international NGOs to assess procedural practices of the entire process. While many of these NGO observations may be true, many were anecdotal, thus weakening the author's claim that his work attends to the "practical implementation" of *gacaca* legislation [p. vii]. Unfortunately, Bornkamm's minimal assessment at the micro-level combined with over-reliance on secondary observations reveal a viewpoint that dismisses cultural context. The failure to evaluate the courts on their own terms retracts from Bornkamm's claim that the courts lacked the structural necessities to render justice. In addition to assessing *gacaca* solely through an international legal lens, Bornkamm could have supplemented his analysis by looking more closely at internal influences and consequences related to *gacaca*. In other words, for this work (or any work) to truly appraise the *gacaca* system it must examine the nature of Rwandan justice prior to the genocide, the legal expectations and understandings of ordinary Rwandan citizens, and the feasibility of internationally-approved legal mechanisms.

In sum, Bornkamm provides a valuable description of the *gacaca* process, detailing the entire legal process as it evolved over the ten years it operated. Legal and transitional justice scholars will surely benefit from the comprehensive description of Rwanda's legal process and may find beneficial some of the book's theoretical arguments regarding victim's rights to reparation.

JORDAN NOWOTNY

University of Illinois at Chicago

Clark, Phil. *The Gacaca Courts, Post-genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*. Cambridge University Press, 2010.