Truth Creation and Genocide: The Flaws of the International Criminal Tribunal for Rwanda

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Abstract:

Outside anthropology, law and the truths it espouses are often seen as objective facts. However, there is a growing amount of scholarship contending that while law appears to be an objective force detecting truth, it actually creates truth (Hansen & Stepputat 5). Dr. Raphael Lemkin, the man who first coined the term “genocide,” understood how law could serve as an important truth creator. When asked what purpose it would serve to record the atrocities of the Holocaust after the fact, Lemkin emphatically replied, “‘Only man has law. Law must be built…You must build the law’” (Gilkerson & Schell)! Undoubtedly, then, Dr. Lemkin would understand the importance of the International Criminal Tribunal for Rwanda (ICTR). From April to June 1994, between 800,000 and one million Tutsi and moderate Hutu were butchered by the extremist Hutu majority in Rwanda (Valentino 181 & 187). Experts estimate that this means that between 2 and 3 million people participated in the killings (Neuffer 258). The people of Rwanda desperately needed a legal body that could find a way to prosecute and understand these killings (Neuffer 258). In other words, Rwanda required a body to produce a national truth about the genocide. The ICTR was the United Nations answer to this problem. Established in late 1994, the ICTR was designed to enhance the national reconciliation process (Maogoto 186-187). However, the Tribunal has largely failed in its mission to create a story of truth acceptable for the Rwandan population due to a lack of resources and a failure to address the culture of impunity in Rwanda. This has created jurisdictional conflicts and clashes over judicial procedures between the United Nations (UN), the national government of Rwanda, and the Rwandan village courts.
**Truth Creation and Genocide:**

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Outside anthropology, law and the truths it espouses are often seen as objective facts. However, there is a growing amount of scholarship contending that while law appears to be an objective force detecting truth, it actually *creates* truth (Hansen & Stepputat 5). Dr. Raphael Lemkin, the man who first coined the term “genocide,” understood how law could serve as an important truth creator. When asked what purpose it would serve to record the atrocities of the Holocaust after the fact, Lemkin emphatically replied, “‘Only man has law. Law must be built…You must build the law’” (Gilkerson & Schell)! By describing law as something that “‘must be built,’” Dr. Lemkin illustrated his belief that international norms condemning horrifying acts, such as those of the Holocaust, must be created. We cannot simply rely on human nature to protect groups and individuals from annihilation.

It can also be argued that Dr. Lemkin saw how the law could be used to create the “true” story of the Holocaust. For example, his book, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, was heavily relied upon as a definitive source of truth during the Nuremberg trials by Justice Robert Jackson (Gilkerson & Schell). In other words, Jackson hoped that Lemkin’s detailed analysis of the Holocaust could be used to create a “true” story about the atrocities that would be acceptable to as many groups as possible. Undoubtedly, then, both Dr. Lemkin and Justice Jackson would understand the importance of the International Criminal Tribunal for Rwanda (ICTR). From April to June 1994, between 800,000 and one million Tutsi and moderate Hutu were butchered by the extremist Hutu majority in Rwanda (Valentino 181 & 187). Experts estimate that this means that between 2 and 3 million people participated in the killings (Neuffer 258). The people of Rwanda desperately needed a legal body that could find a way to prosecute and understand these killings (Neuffer
In other words, Rwanda required a body to produce a national truth about the genocide. The ICTR was the United Nations answer to this problem. Established in late 1994, the ICTR was designed to enhance the national reconciliation process (Maogoto 186-187). However, the Tribunal has largely failed in its mission to create a story of truth acceptable for the Rwandan population due to a lack of resources and a failure to address the culture of impunity in Rwanda. This has created jurisdictional conflicts and clashes over judicial procedures between the United Nations (UN), the national government of Rwanda, and the Rwandan village courts.

The ICTR was designed to be an independent truth producer and reconciler. On November 8, 1994, the United Nations’ Security Council created the ICTR through the adoption of Resolution 955, which, “…underlies the conviction that prosecution of individuals responsible for serious violations of international humanitarian law are intended to contribute to the process of national reconciliation and the restoration and maintenance of peace” (Maogoto 186-187). However, the International Criminal Tribunal for Rwanda did not have the resources it needed to aid in the process of national reconciliation. The problems of resources were disastrous for the Prosecutor, whose office resided in the Rwandan capital city of Kigali. In a report conducted by the UN Office of Internal Oversight Services on the Rwanda tribunal, Karl Paschke stated that, “Participants and victims and their friends who survived the events of 1994 still live in Kigali…The anger of some of the populace against UNAMIR [UN Assistance Mission to Rwanda] has been transferred in part to the Tribunal, which is now housed in UNAMIR’s old offices in the Amahoro Hotel” (Magnarella 62). This is an excellent example of how something as simple as the very building the tribunal is housed in could affect the ability of a society to create a “truth” about the Rwanda genocide that was acceptable for all. Both perpetrators and victims alike did not feel that the ICTR prosecutor was there to support their interests because his
offices were housed in the same building as UNAMIR. To understand this hostility, one must first briefly examine UNAMIR’s work, or lack thereof, in Rwanda. When General Romeo Dallaire, the leader of UNAMIR, received word from an anonymous Hutu informant in January 1994 that Hutu extremists, “…had been ordered to register all Tutsi in Kigali… [possibly] for their extermination,” Dallaire prepared to raid Hutu arms caches. He was forbidden to do so by his UN superiors (Powers). Worse, many victims of the genocide believed UNAMIR had failed them because when Dallaire received word in April 1994 that the genocide had actually commenced, the United Nations deliberately lessened his personnel in the area, “…rendering the UN mission useless” (Beigbeder 172). By placing the Tribunal in offices that many Rwandans associate with a UN mission that abandoned them, the ICTR has generated doubt not just concerning the truth about the genocide, but also the ability or desire of the Tribunal to “discover” that truth.

The aforementioned example of the Prosecutor’s office is only one instance when the ICTR failed to produce truth due to a lack of resources. For example, while the Prosecutor conducted his work in Kigali, the rest of the Tribunal was established in Arusha, Tanzania. Before the death of former Rwanda president, Juvenal Habyarimana, incited the genocide, Arusha had held symbolic political significance as the location where the accords between the Rwanda Patriotic Front (RPF) and the Hutu extremist government were signed in August 1993. Nonetheless, Arusha was not practically suited for the work of the Tribunal (Magnarella 59-60). For example, the roof of the conference center where the Tribunal was established leaked and the bureaucracy was so ineffectual that two cars needed to interview witnesses, “…had sat in a garage for two months because the registrar’s office had failed to pay $64 for repairs” (Neuffer 266 & 268). This complete lack of resources was not only traumatic for the staff, but also
disseminated a truth completely opposite from the one the Tribunal wanted to create. Even among scholars, the creation of the Tribunal is seen as a, “…post-facto substitute for an effective, timely, military intervention by the UN Security Council [during the genocide]” (Beigbeder 171). In other words, many experts see the creation of the Tribunal as a guilt-driven action. Having done little to prevent the genocide, the United Nations wants to “fix” the problems the genocide left in its wake. Tribunal staff had a slightly different interpretation; believing that, “…powerful countries within the United Nation[s] that were implicated in the Genocide…were intent on ensuring that the court did not succeed” (Neuffer 270). Ultimately, for our discussion here, it does not matter whether scholars or Tribunal staff were correct about the intentions of the UN regarding the ICTR. The point is that the Tribunal’s abysmal lack of resources made even those invested in the ICTR believe that it was ineffectual. It is difficult to imagine that Rwandan citizens would believe that the Tribunal could satisfactorily explain the genocide when Tribunal staff did not.

A second truth-creation problem the ICTR faced was jurisdictional conflicts and clashes over judicial procedures between the Tribunal and the national government of Rwanda. The first of these problems was a difference in opinion about the purposes of the Tribunal. The relationship between the national government and the ICTR was not originally so strained. Following the end of the genocide, the new President of Rwanda, Pasteur Bizmungu, encouraged the United Nations to create the ICTR, “…to avoid any suspicion of…a speedy, vengeful justice…” (Beigbeder 174). Bizmungu realized that reconciliation could never happen in Rwanda unless all of its citizens believed that the new government was impartial. He wanted an international neutral party to give his government that legitimacy. Yet less than a year later,
Rwanda was the only country in the United Nations to vote against the establishment of the Tribunal (Maogoto 187).

Rwanda’s change can primarily be attributed to jurisdictional disagreements over the purpose of the Tribunal. The ICTR’s mandate ordered it to persecute individual genocide perpetrators (Maogoto 187). However, Rwanda’s government believed that, “it was impossible to build a state of law and arrive at true national reconciliation without eradicating the culture of impunity that had characterized Rwandan society” (Beigbeder 174). The “culture of impunity” referred to here actually has many of its roots in Burundi, Rwanda’s southern neighbor. In 1972, the Hutu majority in Burundi attempted to overthrow the minority Tutsi government through mass killings that one Belgian diplomat referred to as genocide. The Tutsi government responded with a counter-genocide against all Hutu “rebels” (Huttenbach 59-60). Nothing was done internationally to persecute either Hutu or Tutsi genocide leaders. Furthermore, thousands of Hutu refugees fled to Rwanda, where they, “…contributed to the radicalization of the now dominant Hutu against the Rwandan Tutsi minority who, they feared were plotting to regain the presidency” (Huttenbach 60). The Hutu's fears stemmed from the fact that they had been brutally repressed by the Tutsi and the Belgian colonial government until 1959; when the colonial administration's hasty retreat from the region ignited a civil war that overthrew the Tutsi minority and placed the Hutu majority back in power. The lack of persecution of the twin genocides in Burundi, coupled with the influx of Burundi Hutu refugees, caused many Rwandans to believe that genocidal violence was an effective and just way to solve these political differences.

This belief was only solidified during the Habyarimana regime, in which the Hutu extremist government used Rwanda’s judicial system to systematically violate the basic human
rights of Tutsi citizens in the years leading up to the genocide (Magnarella 71). The culture of impunity had solidified ethnic divisions in Rwandan culture. It was as if Rwandan society was a zero-sum game where one ethnicity could only gain if the other suffered. By prosecuting individual genocide perpetrators, who were almost entirely Hutu, the ICTR was enforcing these ethnic divisions and ignoring the “root causes” that helped lead to the tragedy of 1994 (Maogoto 187). This has caused many scholars to fear that the Tribunal will not promote national reconciliation through truth creation at all; but instead incite another episode of mass violence between Hutu and Tutsi in the region.

In addition to the jurisdictional problems mentioned above, a mandate that focused on individuals also meant that the Tribunal was overwhelmed with cases. The ICTR therefore agreed to allow Rwandan national and village courts to try some of the less famous genocide perpetrators (Huttenbach 61). This ushered in a new set of judicial problems between the ICTR and the Rwandan government that have impeded satisfactory truth-creation. The first of these problems concerns the Rwandan Organic Law. Created in 1996 by the post-genocide government, the Organic Law divides offenses during the genocide into four different categories. The first of these categories is the most important. It, “…includes genocide organizers…persons with military or governmental authority who committed or encouraged genocide, ‘notorious murders [whose]…excessive malice…distinguished themselves…’ and persons who ‘committed…sexual torture’” (Magnarella 73). Individuals in Category One are tried by military tribunals and often lack attorneys (Magnarella 73-74). Category One prisoners are also the only group under Organic Law who face being sentenced to death by a firing squad (Beigbeder 181-182). The immediate problem here is that the ICTR, which prosecutes the most infamous perpetrators, “…rules out capital punishment…As a consequence, leaders who devised, planned
and organized the genocide may escape capital punishment, while lower-ranking perpetrators ‘would be subjected to the harshness of [the death] sentence’” (Beigbeder 174). The lack of consistency between the policies of the ICTR and the Rwandan national government has caused many Rwandans to see the Tribunal as too far removed from Rwandan society to be of any use to them (Maogoto 187). To put it another way, these judicial conflicts have greatly damaged the Tribunal’s legitimacy as a useful truth producer. The ICTR cannot promote national reconciliation if the people of Rwanda refuse to acknowledge its usefulness.

This loss of legitimacy has allowed the Rwandan government to subvert the rule of law without fear of retaliation from the Tribunal; perpetuating the very culture of impunity that President Bizmungu wanted to destroy. This statement may at first seem contradictory to previous sections of this paper. However, while Bizmungu, a moderate Hutu, was president of Rwanda, real government power rested in the hands of Rwanda’s vice president, General Paul Kagame. Kagame led the Rwandan Patriotic Front (RPF) invasion that eventually overthrew the genocidal government in 1994 (Neuffer 252). The new joint government between Kagame and Bizmungu may at first appear to be ethnically inclusive, but in reality, “The government…was an uneasy alliance of conqueror and conquered that, by 1996, had all but fallen apart. Hutu officials, finding themselves disenfranchised by Kagame and his supporters, quit in disgust” (Neuffer 252). One could argue that the enmasse departure of moderate Hutu officials from the new government dramatically undermined Bizmungu’s power - allowing Kagame to enforce a system of retributive justice against Hutu’s in Rwanda.

This system has done little to promote national reconciliation or a satisfactory truth about the Rwanda genocide that is acceptable for all. Since the genocide, the Rwandan army (RPA) is estimated to have massacred up to 310,000 people and imprisoned over 80,000 Hutu without trial
As mentioned previously, when these individuals finally do see trial, they often are not provided lawyers and face the death penalty under the Organic Law (Magnarella 76). The first trial conducted in this fashion lasted only four hours:

During the trial, the 250 court room spectators booed the defendants and cheered the prosecutors… [After the defendants were convicted] The police tied each convict to a post, placed black hoods over their heads and…targets on their chests…four policemen opened fire…on the convicts…A police captain then walked up to the four slumped bodies and fired his pistol twice into each head…Was this the beginning of reconciliation or revenge? (Magnarella 76 & 80)

Magnarella’s question of the motives of the Kagame government is valid here. The fact that the police captain deliberately shot the convicts in the head after they had already died, not to mention the positive reactions of the crowd to those actions, indicates that the Rwandan judicial system has used the loss of the ICTR’s legitimacy not to eliminate the culture of impunity, but to embrace it. By engaging in vengeful violence in front of spectators, the government of Rwanda is once again enforcing the societal “truth” that genocidal violence is a legitimate way to solve its country’s problems.

The lack of ability of both the ICTR and the Rwandan national government to successfully promote reconciliation has caused some experts to look to traditional Rwandan village courts for justice (Huttenbach 61). The Tribunal postulated that involving village courts in the truth-creation process gave, “…the population a sense of participation [in the process of justice]” (Huttenbach 61). Village courts, known as gacaca, or “justice in the grass,” are local courts at which an entire community assembles to try an individual. Gacaca courts use the “moral force” of a village to encourage confession (Neuffer 397-398). These courts, “…reward
confession and participation, offering a blend of jail time and community service” (Neuffer 398). Absent of prosecutors or defense attorneys, these courts also move much quicker than the ICTR or Rwandan national courts (Huttenbach 61). It can also be argued that in a country recovering from extreme violence, this form of law, which focuses on community level forms of truth and forgiveness through repentance to the village, may be essential to promoting national reconciliation in Rwanda. As the Justice Minister of Rwanda, Jean de Dieu Mucyo argues, “‘In Western justice, only the accused, the judge, and the victims are involved – so you only get part of the truth…But if you involve many people in a trial together, you get the truth. Nothing stands between survivors and the implicated’” (Neuffer 398).

However, “justice in the grass” is not without its own judicial problems within Rwanda’s culture of impunity. While members of the Tutsi-led Rwandan government praise the system for its speed, many Hutu fear it for the exact same reason. With no defense attorneys to protect those accused of genocidal crimes, many are apprehensive that gacaca tribunals could become, “…Salem witch trials” (Neuffer 399). Conversely, many Tutsi point out that Rwanda’s population is over 80% Hutu, and less than 20% Tutsi (Huttenbach 59). They fear many genocide perpetrators will not be convicted if their ethnic group is the majority of the population in the village (Neuffer 399). This fear cannot be ignored, especially since some estimates indicate that over 75% of the Rwandan Tutsi population died during the genocide (Valentino 181 & 187). In this way, “justice in the grass” would not act as a truth producer to unify Rwandan society, but instead intensify its divisions by confirming the stereotypes Hutu and Tutsi feel about each other.

Mistrust of the gacaca system has only been exacerbated by the ICTR’s lack of connection to it. While citizens in Rwanda may not desire to take their cases to the national court
system, especially in light of the problems mentioned above, they may desire to take these cases to the ICTR. Unlike the gacaca system, the ICTR has defense attorneys and an Appeals Chamber (Maogoto 190). Unfortunately, though, the only apparent connection between the gacaca system and the ICTR is that the Tribunal agreed to allow the courts to operate. The Tribunal does not monitor gacaca courts or act as a Court of Appeals for gacaca cases (Neuffer 398-399). If the gacaca system comes to be seen by both Tutsi and Hutu as a protector of the other ethnicity’s interests, it could, “…leave a legacy of deep resentment and a sense of injustice that will add for a wish of a day of counter-reckoning” (Huttenbach 61). The gacaca system could actually produce a new instance of massive ethno-national violence by enforcing the perception that Hutu and Tutsi citizens are incapable of judging each other fairly.

The International Criminal Tribunal for Rwanda has largely failed in its mission to create a story of truth acceptable for the Rwandan population about the nation’s devastating genocide. Due to an abysmal lack of resources, Tribunal employees and Rwandan citizens alike have come to see the ICTR as a puppet of a United Nations that did nothing to stop the Rwandan genocide and is doing little to promote national reconciliation through truth creation now. The ICTR has also suffered a loss of legitimacy resulting from a failure to address the culture of impunity in Rwanda. While it is admirable that the ICTR wishes to prosecute all individuals responsible for the genocide, the sheer number of cases has shown this to be virtually impossible. The ICTR loss of legitimacy has also allowed the Tutsi government to perpetuate the culture of impunity. Finally, a failure to ally itself more directly with local gacaca courts has caused many experts to believe that these powerful reconcilers may create more division and violence than peace. Unless the ICTR addresses these issues, it could very well enforce the cycle of violence in Rwanda.
Works Cited


