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Have attempts at reconciliation and justice in post-genocide Rwanda fostered or hindered a new national identity?

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CHARLIE TARR, SEP 8 2011

Questioner: Is it true that ethnicity played a role in the genocide?

Speaker 1: Yes, because in times past, there was no ethnicity. Everyone was called Rwandan. The policies of the Whites sowed the problem of ethnicity, the origin of the segregation of Rwandans. If there had been no ethnicity, there would have been no genocide.

Speaker 2: Wherever a Rwandan is, he should be considered a Rwandan, not as a Tutsi or Hutu.

These answers, given during a focus group in post-Genocide Rwanda, reveal one of the key issues at the centre of the search for a new Rwandan national identity. Is it possible to forge a new national identity after a period of brutal ethnic-led violence? The fallout from the 1994 Rwandan genocide would always be complex and littered with historical, ethnic and political issues. Whether Rwandans see themselves as 'Rwandans' or remain detached from any tangible national identity means that national reconciliation, as Zorbas has argued, is 'vague and messy.'^[1]

This essay will address post-Genocide Rwanda's search for justice and reconciliation and whether this fosters a 'Rwandaness' that attempts to discard the divisions of the past. It will first describe the very notion of 'justice' in Rwanda and how it contributes to a revised Rwandan identity. It will be suggested that the effort to find 'closure' through the judicial process is inherently problematic in a nation still defined by dynamic ethnic affiliations, where truth and memory is highly contested. It will suggest that transitional justice presents a 'reconciliation quandary' that can hinder any long-lasting attempt for a unified Rwandan identity.^[2] As Lemarchand has noted, Rwandan officials 'are quick to point out that the aim of the state at this critical juncture is to build a nation', yet the methods employed can remain steeped in the ethnic division that they proclaim to repudiate.^[3] It will be argued that the International Criminal Tribunal for Rwanda (ICTR) is a form of retributive justice that has a limited effect on forging national reconciliation. Moreover, the restricted nature of the domestic courts, stripped of their capacity, is disconnected from the core issues of post-genocide resolution. The discussion of restorative justice's role in constructing a Rwandan national identity will especially focus on the *gacaca* trials, a system of local justice that aims to strike a balance between vengeance and forgiveness.^[4] The *gacaca* trials hope to bring Rwandans together through national participation, and reconciliation. For some, *gacaca* offers the chance for solidarity that could lead to a rejuvenated nationalist unity. Yet, as shall be a theme throughout this essay, *gacaca* finds it hard to both break the shackles of ethnic division and evade the influence of memory. Finally, the policies of the current government will be analysed in relation to the construction of a unified, post-genocide, post-ethnic Rwanda. It will be suggested that the Kagame regime has attempted to force national unity through an 'official narrative of memory' under the tagline 'Rwandan citizenship first.'^[5] These methods run to the core of how we perceive the importance of primordial and ethnosymbolist dogma in nation building. It will be suggested that Kagame's desire to take Rwanda beyond 'ethnic

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framing', to 'politicise' history, is highly problematic.[6]

The monumental scale of the 1994 Rwandan genocide – 'the most intimate and efficient in recent memory' – is a historical event that requires little overview here.[7] However, its role in the shaping of a modern Rwandan identity is of monumental significance to this discussion. The 'legacy of genocide' forms, distorts and defines Rwandans' search for justice, retribution and reconciliation.[8] As Clark has noted, the desire for a truly unified Rwanda must extend beyond mere 'peaceful coexistence.'[9] Thus justice is key to future nation building, where the process of reconciliation 'requires reshaping ... relationships [and] laying the foundation for future interactions.'[10] Yet concepts of justice and reconciliation in Rwanda are inherently problematic. Zorbas has stressed how national reconciliation 'presents special difficulties that stem from the particular nature of the Rwandan crisis and the popular participation that characterized the Rwandan atrocities.'[11] Moreover, mass violence unsettles any nation-building project. Amstutz has echoed this, seeing trust as a decisive facet in reforming national identity. He correctly highlights the justice-unity dichotomy, where the problem 'is that justice and reconciliation are not necessarily complimentary goals. While legal accountability is essential in the rule of law, an exclusive focus on prosecution can impair the quest for unity.'[12] Herein lies the issue – the very nature of retributive and restorative justice opens up a Pandora's box of tribalism and diverging perceptions of memory and truth.

Of course, justice itself is difficult to define.[13] Yet the pronounced ethnic divisions that have existed in the decades prior to the genocide mean conceptions of reconciliation in Rwandan society are far from uniform. Gustafson has summarised this argument neatly, noting how '[Different] societies and their members have distinct notions of what is fair and right...The meaning ascribed to justice varies widely because the concept is inextricably contextual.'[14] Furthermore, Uvin has outlined the scale of this challenge:

The almost total destruction of the Rwandan justice system, the enormity of the crime being judged, and the massive popular participation in it, created giant legal and social challenges that some observers claim no country in the world has ever encountered.[15]

Thus in this chaotic post-genocide paradigm formulating an 'official narrative' becomes extraordinarily difficult. Amstutz has noted that since Hutu and Tutsis 'hold divergent accounts of the genocide, they have different perspectives on how the country should reckon with the past.'[16] However, it would be difficult to ignore the role of transitional justice in post-conflict nation building. Graybill and Lanegran have shown how restorative forms of justice can be framed successfully in this cause. For instance, in post-apartheid South Africa, through repentance and forgiveness 'the South African nation as a whole would likewise be reconciled.'[17] Yet in Rwanda, the construction of a national identity has more unstable foundations. All forms of justice, whether that be at the ICTR or the restorative *gacaca* courts, are plagued by the assigning of 'collective guilt' by the victors over the perpetrators, as well as the manipulation of this process by those holding political office.[18]

Rwandan national identity must therefore be framed in this problematic justice and reconciliation paradigm. For legal purists, political healing can only come about through full accountability.[19] In this light, the ICTR in Arusha was set up to offer the justice that was deemed absolutely necessary to punish key perpetrators of genocide crimes. After the Nuremberg trials, this type of retributive justice was seen 'as the hallowed principle of nation states.'[20] Also, the international community had to show some form of united response. As Kirkby has outlined: 'If a crime like genocide offends the moral value of every human, then a collective international retributive response is justified.'[21]

Yet the ICTR has significant flaws that preclude it from any genuine contribution towards a post-genocide Rwandan national identity. The ICTR's failings have been well documented and have come under severe criticism from academics.[22] There is the perception that the ICTR is simply 'institutionalized vengeance', a distant room where a 'western' form of justice is handed out with no relevance to ordinary Rwandans.[23] This disconnect extends beyond mere geography, even though a courtroom in Arusha clearly has little significance to those on the streets of Kigali. Firstly, the ICTR's methods have given it a distinctly 'un-Rwandan' character, where smartly dressed lawyers in Tanzania, not speaking a word of Kinyarwanda, pursue a particular form of justice. Kirkby has noted that

Rwandans remain ignorant of the ICTR's work and many, including some survivors, may not even know it exists.

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Thus, the ICTR, as an institution of transitional justice, is perceived as illegitimate (if known of at all) by most ordinary Rwandans.[24]

Beyond this, many ordinary Rwandans see the ICTR as an extension of the regime, a Tutsi-led vengeance exacted in the courts. This is a theme, as we shall see, which strikes a broad and grave blow to the chance of true national unity in Rwanda. Not only do many Rwandans see the results of the ICTR as underwhelming, but also the process suggests further ethnic bias. The fact that many Rwandans have renamed the ICTR as the TPIH – *Le Tribunal Penal International pour les Hutus* – speaks volumes about their dissatisfaction at this perceived Western-Tutsi retributive pact.[25]

Additionally, the domestic justice system in Rwanda has heightened concerns that retributive justice is hindering unified nationalist dialogue. This assertion is based on the simple premise that any criminal justice system struggles to cope with the fallout of mass atrocity. With many lawyers and judges murdered or as refugees the system was left to cope with a professional vacuum. Its task was staggering – it was estimated that prior to January 2003 around 125,000 Rwandans languished in prisons awaiting trial.[26] Yet the system pushed ahead, executing, detaining but also releasing on a grand scale.[27] More importantly, however, is that the trial of *genocidaires* is immensely difficult when observed through the prism of genocide memory. Goldstein Bolocan has alluded to the fact that the Rwandan national justice system has failed to instil a sense of culpability amongst prisoners, who simply regard themselves ‘as prisoners of war ending up on the losing side.’[28] As Jones argues, this has ramifications for the construction of a positive national narrative; it remains a struggle ‘to instill responsibilities in perpetrators for their actions’ and justice is perceived as ‘victor’s justice.’[29] Thus the ‘profoundly abnormal reality’ occupied by the judiciary in post-genocide Rwanda has unsettling consequences for any hope of a more unified national identity.[30]

Where retributive justice has failed to galvanise a Rwandan national identity, the local *gacaca* system has attempted to redress the balance. *Gacaca* is an informal justice system, requiring voluntary confessions and headed by locally appointed, unqualified judges. By its very nature it is ‘participative’, its roots emerging from ‘incidents resulting from the fact that people in Rwanda live in close proximity to one another...Most of the litigation takes place between members of the family or among close neighbours.’[31] Furthermore, it is *gacaca*’s emphasis on reconciliation where it finds relevance to our discussion of national identity. As Daly has argued, restorative justice can be closely associated with nation building: ‘Increasingly one finds the term associated with the resolution of broader political conflicts such as the reconstruction of post-apartheid Africa...post-genocide Rwanda...and post-sectarian Northern Ireland.’[32]

While one must concede that *gacaca*’s participatory approach has some merit, it reveals as many questions in the nation building project as it does answers. There are those that are willing to champion the system, yet its flaws remain. Joireman admits that *gacaca* has a practical benefit of releasing backlogs within the justice system.[33] Yet Corey and Joireman, for example, have asserted that *gacaca* fosters insecurity rather than a unified community.[34] Thus a *gacaca* system steered by a Tutsi led government can just as easily encourage a new form of divisive ethnonationalism. This ‘ethnically biased’ form of justice builds a new national paradigm where victors and losers clash in the reconciliation process.[35] As Kirkby has shown, the weakness of the *gacaca* restorative model is that there is no uniform level of forgiveness amongst Rwandans. It is, therefore, down to individuals to forgive, to create ‘a new communal order alongside their oppressors.’[36]

This disunity has consequences for nation building. It is only in a system that treats all ethnic crimes equally that a cohesive national identity can emerge. Corey and Joireman have been emphatic in their belief in the need for a universal treatment of genocide crimes:

National reconciliation demands that individual Tutsis must bear the responsibility for crimes committed against civilians during and after the genocide just as individual Hutus are held accountable for their crimes. Without equal application of the *gacaca* process to both Hutu and Tutsi, it will be interpreted more as revenge than reconciliation.[37]

Thus restorative justice’s ability to manufacture a new Rwanda is hindered by Tutsi manoeuvring. As Tiemessen has

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argued, 'the process of *gacaca* are highly politicised and the participants racialised by assumptions of guilt based on ethnic groups membership.'^[38] There have been some scholars, such as Ndazinga, who see *gacaca* framed in a Rwandan context, a 'form of justice originating from and serving Rwandan culture.'^[39] Therefore, restorative justice can itself heal wounds through a process of reconciliation, which finds relevance in the national psyche. In short, such participative, communal justice helps foster a stronger sense of national unity. Ndazinga adds that Rwandans need to 'build within themselves a renewed sense of Rwandan nationality' through the revival of traditional Rwandan values.^[40] Yet, as Clark has argued, the role of *gacaca* in fostering national unity is highly problematic:

...the linkages between popular participation and notions of 'national unity' and 'duty' are highly unconvincing. An overview of Rwandan history makes it difficult to accept that this allegedly lost sense of unity ever existed, or that external actors such as the colonial administrators are exclusively responsible for creating major divisions in Rwandan society.^[41]

Moreover, this concept of history lies at the very centre of the Kagame regime's program for national unity. Through the creation of the National Unity and Reconciliation Commission, the government has attempted to construct an official narrative where the problems of the past are re-interpreted to alleviate the tensions of the present. Through trials, memorialisation, commemorations, re-education camps and solidarity *ingando* camps, as well as a new national flag and anthem, the regime '[hopes] to transform how Rwandans understand their social identities and replace them with a unified national identity.'^[42] Furthermore, the discussion of ethnic difference is met by fierce resistance from official quarters – such dissenters are labelled as 'divisionists' or *les Rwandais de l'extérieur*.^[43] Under the mantra of "Rwandan citizenship first", the government has attempted to produce their questionable version of 'Rwandaness', based upon an account of a pre-colonial era where all ethnic groups supposedly lived in harmony.^[44] This control, of what Hoffman calls 'critical memory', hopes to catalyse a new national unity, where traditional narratives of ethnic division are replaced by a common national experience.^[45]

Yet, as with *gacaca*, this manipulation of the past, a forced search for a primordial root to Rwandan national unity, is littered with problems. Lemarchand has written persuasively about the inherent risks of such historical tweaking. The legacy of genocide is lasting and collective memory is fiercely resistant to such overt manipulation. This problematic relationship between memory and nation building is well served by Cohen's argument that 'memory is a social product, reflecting the agenda and social location of those that invoke it.'^[46] It is that very agenda which has yet to persuade many Hutus that a palpable national unity exists within Rwanda. As Lemarchand concludes:

...what was being remembered ... was the collective agony of the Tutsi, not also the sufferings and loss of the Hutu. The exclusion of the Hutu victims from Rwanda's official memory can only strengthen the conviction of the majority of the population, that the genocide has been shamefully instrumentalised for the benefit of the regime.^[47]

Therefore, these contentious claims that Rwanda was an ethnically harmonious nation-state in pre-colonial times foster suspicion and division amongst the Hutu majority. Karakezi highlights how this interpretation of the Rwandan past is 'also being shaped by ideological considerations, albeit an ideology that may be intended to promote national unity rather than division.'^[48] As Lemarchand argues, an 'official memory' cannot conveniently camouflage the horrific realities of genocide.^[49] Ironically, Kagame's brandishing of his enemy as 'divisionists' produces further antagonism between these already polarised ethnic groups. Crucially, the government of Rwanda's programme of simplifying identity to that of 'Rwandan' has not found relevance outside of official circles.^[50] As Tiemessen concludes:

The social conditions of post-genocide Rwanda remain constructed in terms of ethnic identity and relegation to the private sphere renders them more destructive. As a Hutu woman stated, "If you ban these terms...they take a different form that's even more exclusive." Rwandans now ask each other, "is he one of us?"

The politicisation of history is thus another attempt by the Rwandan government to form a post-genocide national unity devoid of ethnic division and hatred. Yet, as we have seen, these efforts of reconciliation are fraught with problems. Where the ICTR's retributive justice caused frustration with its meandering progress and disconnect from ordinary Rwandans, both the national courts and the *gacaca* system have failed to dampen tension between Hutus

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and Tutsis. Although, as Wierzynska has asserted, attempts to construct peaceful reconciliation may nurture national communal ties within Rwanda, such efforts are also perceived as “victor’s justice.”[51] While the Kagame regime may well be encouraging a new ‘shared identity’, the government’s refusal for open discourse vis-à-vis ethnic issues creates additional fissures in an already fraught post-genocide paradigm. Despite interdependence between Hutus and Tutsis, there remains an unresolved tension. The failure to address the grievances of all ethnic groups in post-genocide Rwanda will continue to hinder chances for a lasting national identity. The Rwandan proverb *ofahabaye inkovu hadasubriana* (‘a wound does not heal completely’) remains startlingly relevant.[52]

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