The Case of *Gacaca*

A Flawed Project and the Hope for Transitional Justice

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In 2000 an ambitious new process of transitional justice was launched in Rwanda as a way to adjudicate crimes related to the genocide of 1994 at a local level. It took the name *gacaca* ("justice on the grass") from the traditional village courts on which it was based and between 2006-2010, almost one million cases were heard at gacaca courts throughout the country. Each court was led by a council of elected "people of integrity " and considered a range of crimes, from thefts to murder, connected to the genocide; it also required the participation of all residents who, using informal language, voiced accusations, defended themselves, and served as witnesses. Gacaca was ambitious not just in scope, but also in the expectation that an informal process without the mediation of legal experts could lead to outcomes perceived as legitimate both inside and outside of Rwanda. Now, after the conclusion of gacaca, the evaluations of its success are harsh and focus on the ways it failed to adequately punish perpetrators and became a tool of increasingly authoritarian propaganda about a unified Rwanda. While the critiques are well founded, I suggest that there are promising lessons from gacaca that are being overlooked and should be applied to normative models of justice and citizenship.

I will argue that in its ideal conception the process of gacaca could have been a productive response to two of the biggest challenges that face scholars of transitional justice. The first is the question of how to balance the needs of punishment with the challenge of strengthening the various relationships affected by the crime—this is the tension between retributive and restorative justice— and the second is the question of how to provide a direct link between the work done during institutions of transitional justice and the possibility for

cooperation and new alliances in the period that follows**.** The paper begins by considering the trajectory of the scholarship of gacaca, then considers its identity as a hybrid institution of justice that has divergent goals, and lastly looks at the case of Joanita Mukarusunga, whose experiences during gacaca serve as a compelling example of the benefits I advocate. This article is unusual in that much of it involves the subjunctive tense. That is, I move between the reality of gacaca as a flawed process and the normative possibilities it inspired by its unusual format. This is a paper not about what happened, but what could happen if we take seriously the truly new frontiers for transitional justice gacaca has opened up.

The Three Stages

Thus far there have been three moments in the scholarship about the gacaca process in Rwanda and they are consistent with a familiar arc in regards to political institutions: the conventional wisdom has moved from tentative hopefulness to skepticism to disappointment. The first stage refers to the time early on in the process, before the courts had been fully implemented and the strengths and drawbacks of gacaca were conceptual. In the second stage, mixed responses to the courts' effectiveness and impact became more pronounced. The third and current phase is marked by sustained and extensive criticism of the process as a failed experiment. I do not deny the critiques that have motivated the third wave, nor do I want to return to the naïve optimism of the first stage, but the ideals that the innovative structure of gacaca allows are still useful ways of envisioning what is possible during transitional justice.

The idea of using a traditional form of conflict resolution in villages as a response to the violence of 1994 did not emerge right away.[1] Rather, the national courts and the International Criminal Tribunal for Rwanda (ICTR), held in Arusha, Tanzania, were the primary formal

mechanisms of punishment, but several reasons emerged to make a revised version of gacaca a possibility.[2] First, the existing institutions were not adjudicating the offenders quickly enough; over 100,000 were arrested shortly after the genocide and were being held in jail.[3] Up to 750,000 were eventually charged once property crimes were also included and there was no way that the national courts could manage the caseload.[4] The ICTR, funded by the United Nations, was only meant for the most influential and strategic leaders of the genocide and by April of 2011, 55 cases had been completed and 20 more were awaiting trial.[5] Second, President Paul Kagame's government saw in gacaca an opportunity to shape public opinion at the local level.[6] Kagame, a former leader of the Tutsi-based RPF, knew that his legitimacy, particularly in the rest of the world, would be connected to how he led a national response to the crimes of 1994. One aspect of this leadership was his commitment to a particular narrative of the genocide that emphasized that colonial powers were to blame for inscribing the categories of Hutu, Tutsi and Twa into everyday life and making them the basis of privilege. In reaction, the new Rwanda would be free of these categories, at least at the discursive level, and this perspective was formally codified in laws banning speech that promoted "divisionism." The charge is notoriously vague and could be used as a way to silence political opposition. The UNHCR describes the divisionist legislations as the following: "The use of any speech, written statement, or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination." [7] The ambiguity inherent in the legislation was interpreted to mean that all speech that referred to ethnic identity could potentially punishable by law. [8] Lastly, implementing gacaca would be a way to show the applicability and resilience of local responses to conflict.

The purposes of gacaca, as listed on the official website, were broad and multi-faceted: (1) To reveal the truth of what happened, (2) To speed up legal proceedings, (3) To eradicate the culture of impunity, (4) To build reconciliation and unity, and (5) To prove that the Rwandan society has the capacity to settle its own problems through a system of justice based on Rwandan customary law.[9] It is clear from this list that the goals of gacaca were not purely based on retributive ideas of punishment for particular crimes; the legitimacy of the state and the creation of a new political culture (although not an explicitly democratic one) were also at stake. On a logistical level, the structure of gacaca was impressive, with the country divided into 10,000 cells, each with its own gacaca court and formalized appeals process.[10] Each cell elected people of integrity, the *inyangamugayo*—of which there were 254,000 in total—to act as judges and determine guilt and punishment.[11] They were not compensated for their work. It is important to note that women were elected as well, even though they were not included in the traditional format.[12] The jurisdiction of gacaca included theft, assault, murder, and some forms of sexual assault, with the exception of those crimes labeled "Category One", the designation for the most severe crimes committed by those who led or orchestrated the genocide. Category One crimes fell under the jurisdiction of the national courts and the International Criminal Tribunal to ensure the highest level of scrutiny and resources for the defendant.

The gacaca courts met weekly and attendance was required; this marked a change from other large institutions of transitional justice like the Truth and Reconciliation Commission in South Africa, where only a fraction of the country was directly involved. While scholars contend that mandatory participation was considered a burden, and the threat of fines was necessary for enforcement, it is difficult to imagine extensive participation otherwise.[13] From the beginning, the stipulation that legal counsel would not be a part of the gacaca process was met

with skepticism on the part of the international human rights community, notably Human Rights Watch and Amnesty International, who registered concerns that a defendant's rights to a fair trial would be compromised because of false accusations and unfounded punishments.[14] They also expressed concerns about the lack of knowledge about the judicial system and the potential for bias. These criticisms of gacaca later led to a debate about whether focusing on formal rights was a way to emphasize western standards of legalism rather than accepting gacaca as a Rwandan institution with its own history and norms.[15] The debate is no longer active largely because the criticisms have become so far-reaching. A charge of Western bias, even if true, can only account for small number of the concerns that have plagued the proceedings. In short, from its inception, critics feared that the multiple goals of gacaca would provide a façade for a show trial that would serve primarily to validate the political power of the RPF and the leadership of Paul Kagame. In hindsight, many of these fears have been realized.[16]

As the process began to be implemented, first with a pilot program and then with the full roster of courts, criticism of gacaca grew more pronounced (this is the period I refer to as the *second stage*).[17] Legal restrictions on speech were made more explicit and the *ingando* re-education camps became a central mechanism for disseminating the official narrative.[18] These camps, mandatory for perpetrators who wanted to enter society after being in prison as well as for schoolchildren and others, were a way to indoctrinate individuals into thinking about the genocide in a way that was consistent with the goals of the government.[19] The camps facilitated enforcement of laws concerning divisionism and education in a revised version of Rwandan history. Lars Waldorf has argued that President Kagame's experience in military intelligence in Uganda before 1994 has aided his efforts at propaganda and censorship. The efforts included the ousting of Joseph Sabarenzi, the Tutsi parliamentary leader, in 2000 and the banning of three

opposition parties in advance of the 2003 presidential elections.[20] It also became clear during this period that the courts would only consider Hutu crimes against Tutsi during the genocide and not RPF crimes against Hutus and others during the civil war.[21] Hutu suffering did not fit with narratives of the colonial legacy and even positing moderate Hutus as the exception was seen as a threat to the sanctioned narrative. For example, Kagame attempted to minimize the achievement of the Hutus by denouncing Hotel des Milles Collines manager Paul Rusesabegina as a self-serving entrepreneur.[22] Furthermore, judges were criticized for being corrupt and insensitive to sexual violence.[23] While this wave of scholarship may have been tentative about proclaiming a fatalistic assessment, fears were mounting that the desire to expedite the process of justice, along with Kagame's increasing control of speech in civil society, would overwhelm gacaca's goals of documenting an accurate collective history and promoting "reconciliation."[24]

Recent scholarship (the *third stage*) has become increasingly strident in characterizing gacaca as a failed project.[25] New data on false accusations, lack of interest in attending the trials, and the perception that guilty individuals are not being punished (at all or harshly enough) because they have confessed or offered to help identify the remains of victims have fueled the argument.[26] The informalism of the legal process is depicted as a tool for state coercion rather than a boon for participatory democracy. Critics have also focused on how the international community granted legitimacy to the process because gacaca was branded as a local response, even though its current incarnation diverged from the traditional gacaca in significant ways.[27] Waldorf writes, "Gacaca's failings underscore the need to look past such Pan-Africanism rhetoric and distinguish clearly between 'locally driven' conflict resolution and state-imposed informalism designed to expand the state's reach into local communities."[28] To him and similar critics, gacaca is best understood as a tool for state penetration under the cover of locally-derived

legitimacy. It is interesting to note that Phil Clark's analysis of gacaca objects to the third wave of scholarship and he, like myself, emphasizes the unique strengths of gacaca as a hybrid institution with multiple goals.[29] He argues that when critics focus on the lack of punishment, they overlook the "distinctive ethos of popular ownership, participation, and public engagement."[30] In contrast, Kasaija Phillip Apuuli's characterization is more representative of the third wave of scholarship:

> The Gacaca jurisdiction, being rooted in popular tradition, profoundly compromises the principles of due process as defined in human rights and criminal law instruments. The deficiencies inherent in the process include: lack of separation between prosecutor and judge; no legal counsel; no legally reasoned verdict; strong tendency towards self-incrimination; and a strong potential for major divergence in punishment. These deficiencies have raised doubts about the mechanism and indeed the distrust of this justice, has led to many Rwandans particularly of Hutu ethnic background, to flee from it.[31]

Apuuli's language is consistent with the current perspective of gacaca that sees the shortcomings as so pronounced and impossible to ignore, that a discussion of its merits feels beside the point. Official restrictions against the consideration of Tutsi war crimes have catalyzed the most serious types of concern. The failure to recognize that Hutus also suffered suggests that the gacaca process may be fomenting resentment against Tutsi authority that will increase proportionately to propaganda proclaiming Rwandan unity. Max Rettig's study of the impact of gacaca in Sovu highlights the erasure of Hutu violence and the minimized role of Hutu judges.[32] While it may be premature to say that the gacaca process will lead to ethnically motivated violence, it is important to recognize this dynamic as a significant legacy of the process. The charge of divisionism continues to affect political life and was evoked in relation to Kagame's opponents during the election in 2010. His actions once again raised the question whether he was using the

language of reconciliation as a way to obscure political repression and implement anti-democratic processes.[33]

I suggest that the exclusion of RPF crimes, along with the restrictions on speech, might be understood in terms of Bonnie Honig's concept of the *remainder*, in which political stability is attempted by closing off what is acceptable in terms of content and emotion within political life for the illusion of consensus.[34] Yet, this closure can only be temporary because what is excluded will inevitably return to the political realm. The form the remainder will take is uncertain, but Honig's formulation suggests that the remainder is always prefigured by structures of exclusion. The manner and means of exclusion constitute the ideas and identities that will propel their way into politics. In this case, the restrictions on what types of crimes are acceptable and the tacit categorization of all Hutus as perpetrators will not be seamlessly assimilated into the propaganda of one Rwanda; the expunged stories will somehow find their way back into political life.

Retributive Versus Restorative Justice

One of the biggest challenges of transitional justice is to simultaneously create and adjudicate new norms regarding justice and political participation in the wake of a compromised legal structure. Gacaca provides a fascinating case of an institution that included both retributive and restorative elements when implementing new norms, a compromise that has long vexed institutions of transitional justice. Despite its flaws, the type of restorative justice practiced in gacaca has much to contribute to scholarly thinking about future approaches. Although the need for both retributive and restorative approaches during periods of transitional justice is persuasive, one approach is often used in the scholarly literature to criticize institutions that favor the other,

without the possibility of synthesis. While retributive justice is primarily concerned with punishing the perpetrator, restorative justices focuses on the relationships between the perpetrator, victim, bystander, and community. Punishment may be a part of the process of repairing relationships, but restorative justice conceives of the process of justice to be much broader than the appropriate administration of punishment. Truth commissions, which do not assign criminal punishment but emphasize testimony and documenting a collective history, are the most prominent examples of restorative justice at the national level. In the introduction to their edited volume on the subject, McLaughlin et. al write, "According to restorative justice proponents, the established social system embodies and seeks to promote a dominant, traditional, hierarchical, and ostensibly mechanistic mode of governance. Restorative justice envisages radical transformation in favour of a 'Third Way,' that is partially decentralized, informal, participatory and communitarian."[35] Gacaca emerges as a strong example of restorative justice because of its grounding in universal participation and informal language, as well as its goal of building relationships between many different subgroups within the community. Gacaca was an evocative case of restorative justice for two additional reasons. First, it responded to critics' assertion that restorative justice is a return to pre-modern forms of justice—*kadi* justice in Max Weber's classification—plagued by irrationality and status hierarchy.[36] Just as the restorative justice tradition as a whole emphasizes a return to the role of the community while still paying attention to the formal ideals of equality and legal protection, gacaca re-envisioned of an indigenous form of conflict resolution that neither glorifies nor disdains the role of the community. The election of the *inyangamugayo* not limited by gender or age, challenged entrenched hierarchies. I acknowledge that formal inclusion does not automatically necessitate substantive change, but it provided an opening that did not exist before.

Secondly, gacaca demonstrated that restorative justice does not mean a complete lack of retributive punishment. While the term emerged as a critique of purely retributive views of punishment, it is not mutually exclusive from it and the local council of gacaca had the power to punish. When examining restorative and retributive justice together, the necessity of trade-offs becomes clear because there is not one axis upon which to measure the successful outcome. Rather, there are several ways of thinking about proportionality and the appropriateness of punishment in relationship to the possibility of greater trust between participants or attention to the needs of the victim (such as the desire for a formal burial). These decisions are made by those who have been elected by participants and are embedded in the community; they understand local customs and prejudices. For those who think that impartial and strict guidelines for punishment (without plea bargains, etc.) are the most important purpose of transitional justice and should never be compromised for other ends, institutions like gacaca will never be persuasive. But for those who accept that compromises must be made when goals are as divergent as they were in the case of gacaca, a different calculation is necessary. This acceptance that institutions of transitional justice can include both approaches to justice within the process is novel and requires a different set of criteria by which to judge the effectiveness of the process. I suggest that the following dimensions be assessed when thinking about the value of a hybrid process such as gacaca: the investigation of the crimes of the past and its psychological and political legacy in the present, the opportunity for participation by ordinary people, the chance for an individual to play multiple roles within the process (i.e. not solely victim, accused, bystander), the possibility of punishment, and the affirmation of individual rights. A study of gacaca provides a way to consider how these multiple goals may benefit as well as undermine each other. The criticisms, especially of the third wave, reveal how the violation or distortion of

one dimension (namely, punishment or individual rights) can overwhelm the other dimensions. This is a powerful critique, particularly in relation to an analysis of Rwandan political life, but on a theoretical level, it is more fruitful for me to consider the complex interplay between these dimensions that began to emerge at gacaca.

Deliberative and Agonistic Conceptions

Gacaca also had the potential to act as a hybrid between two understandings of what constitutes legitimate democratic debate. The distinction between retributive and restorative justice refers to the legal orientation of the institution while that of deliberative versus agonistic democracy is concerned with the political practices of the demos. Within political theory the agonistic approach to politics is often contrasted with deliberative democratic models and the distinction stems from a debate over what types of communication are desirable within political society. Deliberative democrats emphasize the power of reasonable arguments and persuasion to achieve the goal of political decisions most can agree with (the mandate of consensus is a straw man when talking about deliberative politics, but works as a regulative ideal).[37] The central challenge for politics, they argue, is to arrive at a mutually beneficial and rationally justifiable decision about how to proceed despite disparate interests and in a manner that is inclusive of a wide range of participants. Procedural safeguards, such as described in Habermas's ideal speech situation, act as norms to balance inclusion with universalizable outcomes.[38] Agonistic thinkers, such as Chantal Mouffe, Bonnie Honig, William Connolly and others, have been frustrated with what seems to be lost or overlooked in this approach to politics.[39] Namely, it is the spirit of the agon, strife, and the struggle between competing interests that should make up the proper content of political debate. The dictates of reasonable argumentation within deliberative democracy

suggest that all perspectives, properly formulated, are given an equal change at success. An agonistic approach would find the idea of "proper formulation" unacceptably limiting because of the restrictions on the types of communication allowed, such as those grounded in the passions. Instead, an agonistic approach seeks to excise the ideal of consensus altogether and accept that communication will include emotional, visceral, and passionate expression. Furthermore, an agonistic approach draws attention to the remainders of politics and the need for direct engagement with them.[40]

Agonistic politics, by its very presupposition, is difficult to institutionalize. It seems that any time formal mechanisms and constraints are put into place, the openness and contestation desired by proponents of agonism is lost.[41] It is easier to imagine incidents of non-institutionalized democracy: public demonstrations and protests that refuse to abide by established restrictions. In other work, I have suggested that victim testimony at truth commissions can be consistent with agonistic aspirations, provided that the commission is open and responsive to the most volatile and difficult emotions—notably anger—that have had an uneasy place in previous iterations.[42]

Because of the nature of the criticism, the gacaca process is not an obvious choice for a discussion of agonistic politics, but I suggest that there could have been significant agonistic moments built into the process apart from the adversarial aspects of the criminal jurisprudence. These would have been moments to contest the official narrative promoted by the state through open discussion about the legacy of the genocide *and* the war crimes committed by the RPF, as well as a consideration of the ongoing effects of the categories of Hutu and Tutsi despite the rhetoric of a unified Rwanda. Such forums would also have been a space to express frustration at the lack of punishment or the fear of false accusations; my argument here is similar what Lida

Maxwell suggests about the undeniable dependence of the authority of the law on agonistic practices.[43] Had they been more open (and further research may reveal relevant moments) the discussions at gacaca could have embodied the spirit of agonistic democracy by representing pluralistic and contestatory perspectives given insufficient attention elsewhere and central to the process of reckoning within transitional justice. However, the empirical evidence thus far does not support this conclusion and I acknowledge that this means that the agonistic dimension of gacaca exists only in theory and not in practice. Still, it remains important for thinking about normative models of transitional justice. More so than the other transitional justice institutions, the structure of gacaca *could have* permitted agonistic exchange and yet, it also shows how such exchanges can be tools of the state. To prevent this outcome, liberal democratic protections such as those related to defendant rights are necessary. This is not to say that a protection of human rights or civil rights is the panacea, but rather that the protection of rights relating to speech, association, and criminal defense, would have been an important bulwark against the trenchant critiques of slander and retaliation at gacaca.[44] For agonistic ideals to be incorporated into formal institutions of transitional justice, we must pay special attention to the ways it can easily become co-opted (through censorship) or misdirected. The protections of individual rights can be the countervailing force and do not necessarily undermine the agonistic potential of the encounter (but they should not become the pre-eminent focus).[45] Individual rights are the safeguard for the contestation over ideas and the protection against agonistic debate turning violent or coercive. The inclusion of individual rights as critical to transitional justice does not imply a conception of the liberal self that exists prior to the community, but is part of the institutional, political framework that permits agonistic debate to exist.[46] The concerns of deliberative democrats thus do not go unheeded in the possibility of an agonistic forum; they are reminders of corruptibility

and the need for liberal protections. Yet, an agonistic framework is more appropriate for post-war political life because of the reality of conflicting accounts, the role of emotion, and the framework's incorporation of upheaval as procedurally desirable.

Organizing this type of agonistic event at a national level is overwhelming and potentially chaotic, but at the level of gacaca it was a much more plausible undertaking. While the outcome of these discussions would not have been tied to an official decision, it should have been recorded and consulted in reference to future political actions. The concern with envisioning gacaca as this type of forum would be, as it often is in relation to potentially disruptive debate, that the agonistic atmosphere would undermine the functioning of the gacaca process by introducing subversive opinions. The agonistic component of discussion is exactly what the state may fear even as it is setting up an otherwise ambitious model of debate. This is the fear that an open airing of grievance of all types would puncture the legitimacy and make it difficult to proceed, but this is a risk that is necessary to ensure that the process is participatory and includes perspectives that are likely to become the remainder. In addition, the fact that gacaca was grounded in repeated and informal interactions between citizens is an antidote to this frequent criticism of agonistic spaces. To contribute to trust, as I discuss below, the divergences that may appear in agonistic exchanges should have the opportunity for reconsideration over time. The upheaval must have a post-script. [47] I argue that gacaca's orientation toward allowing a participatory process (moment of open debate) to contribute to the decision of the *inyangamugayo* (a closed decision) is a useful model for thinking about the institutionalization of retributive and restorative justice as well as agonistic politics.[48]

An agonistic struggle over the meaning of politics, impunity, and ethnicity was implied by several of the functions of gacaca, as articulated at its inception, but to achieve it would

require a movement away from a narrow legalistic approach to the crimes and, even more emphatically, a movement away from an atmosphere of censorship. Agonistic communication requires a delicate balance— too much strife and it can become a chaotic altercation, too little and communication is either stifled or lacks impact. Gacaca could have been a great example of this delicate balance; it didn't succeed. Gacaca as an example of agonistic politics is one that is imagined rather than grounded in the reality of the process, but it is still an important contribution to institutionalized visions of transitional justice.[49]

The Value of Informal and Face-to-face Interactions

Scholars have noted that communities that come together for restorative justice processes often disband just as quickly and I suggest that community involvement in crimes related to genocide are vulnerable to the same trajectory.[50] However, the possibility of building upon concern for past crimes in order to contribute to new types of relationships in everyday political life is one of the contributions of the gacaca model. The fact that the discussion at gacaca could lead neighbors to see each other as potential allies is a significant contribution, even if it was only a rare occurrence. This connection has been hard to imagine in other types of transitional justice institutions including war crimes trials and truth commissions.

I agree with scholars who connect the development of trust to shared vulnerability and the chance to hold in one's care what someone else views as important.[51] In his introduction to an edited volume, Mark E. Warren writes, "Trust involves a judgment, however implicit, to accept vulnerability to the potential ill will of others by granting them discretionary power over some good. When one trusts, one accepts some amount of risk for potential harm in exchange for the benefits of cooperation." [52] The risks to which he refers would be salient during the gacaca

process, but so too would be the process of judgment and the benefits of cooperation. I suggest that this calculation between vulnerability and the benefits of cooperation is both experienced firsthand and modeled normatively through the experience of gacaca. The question of how to build trust within societies is one of the most difficult tasks theorists of transnational justice face. In the case of trials, it is the legitimacy of the proceedings and the commitment to "stay the hand of vengeance" as articulated by Robert Jackson at Nuremberg that is meant to inspire trust in the proceedings, but it is not concerned with the relationship between the accused and the victims, nor the interpersonal foundation for future political cooperation.[53] The primary relationship is between the accused and a formal institution and the trust that is cultivated is a type of delegated trust directed to a third party or institutions.

What the format of gacaca could have fostered, in at least a few cases, is a type of direct trust between individuals that is based on "wholly personal criteria in deciding the costs and benefits of entering a relation of trust."[54] With restorative justice more generally, the emphasis is shifted to a direct interaction between the accused and victims with the help of a mediating party and the particular needs and emotions of the victim become part of the process. They are not asked to make their claims consistent with formal rules that may have the danger of distorting the claim itself. A victim is also able to see firsthand how the accused chooses to defend herself and react to this in a public way. This back and forth among different actors—drawing on past experiences of negotiation and compromise—becomes the foundation for trust. It is also significant that these conversations take place over the course of repeated interactions.[55] This allows trust to increase incrementally without the potential resentment of assumed solidarity or strong ties from the beginning. Repeated, informal interactions between citizens also allow individuals to use their existing skills and intuitive mechanisms for determining trustworthiness,

rather than relying on an intermediary institution such as the media. They would also be able to observe subtle changes over time, including the authenticity, or lack thereof, of confessions or pleas for forgiveness. With these types of repeated interpersonal exchanges, many outcomes are possible, including the worsening of relations. Yet, this uncertainty cannot be precluded; in order to allow for the possibility of positively transformed relationships, transitional justice institutions must take on the risk of negatively transformed ones (that is, the possibility of anger and resentment being expressed in public), a possibility that becomes clear with the examination of the agonistic characteristics of gacaca above.

Even with truth commissions, such as the South African TRC, informal and face-to-face communication between citizens was impossible. Most people watched the events on TV or listened on the radio and it was not the same community in the audience week after week. Also, while the language of testimonies at the Human Rights Violations committee hearing at the TRC was informal, the necessities of translation meant that it was difficult to communicate directly to the commissioners and the audience.[56] The informal language of the proceedings at gacaca could have helped to prevent them from becoming dominated by elites, though further research is necessary to examine just how this occurred. For example, Phil Clark's fieldwork challenges to the assumption by many scholars that the gacaca process is primarily driven by elites and the central government.[57] Clark emphasizes both the participation of ordinary citizens as well as the connections between gacaca in this context and the participation in "Christian gacaca" (the phenomena of confessing crimes to a member of the clergy and asking for forgiveness from the Church community).[58] The lack of legal counsel was a consistent basis for criticism but it opened up a space for language, forms of expression, and social norms to emerge from the locality itself and not from distinctions based on education or legal training. This is not to say that the power

relationships within a community are not reproduced within the procedure. Of course they are, and all participants may not feel equally entitled to speak, although they have the formal right to do so. In its ideal form, the type of communication that was possible at gacaca is similar to what James Tully calls for with his mandate for the state to engage with the language, customs, and idioms of particular peoples and groups, rather than be confined to impartial debate.[59] Informal debate can be marked by distinctions of status, class, gender, etc. in a way that is similar to formal debate. This is part of the argument for establishing liberal individual rights as a precondition for agonistic debate and face-to-face interactions based on equality. I still consider the conditions of gacaca to be highly conducive for direct communication and, as I will explain below, the chance for a transformation in the social roles which had been defined by the violence.

While the decision to forgo formal legal representation was consistent both with gacaca's identity as indigenous process of conflict resolution and with the practical concerns about funding such a high number of criminal trials, it has resonances with the emphasis on informal language in literature on deliberative democracy. Yet gacaca is also a vivid manifestation of its limitations; Iris Marion Young argued that deliberative democracy must not rely on formal inclusion because of the way it excludes large swaths of the populace and variations in communication styles, there must be creative ways of inspiring and ensuring participation. [60]Greeting, rhetoric and storytelling must all be seen as forms of political communication that are especially necessary in the absence of shared understanding. She also suggests that proponents of deliberative democracy should heed the benefits of practices such as street demonstrations and sit-ins, along with music and visual art. Asserting cognitive validity as the prerequisite for political speech, as Habermas does, is constrictive for the form and content of a transitional

justice process like gacaca. A better normative model is the idea of the agonistic “game” offered by James Tully. Interpreting action in the Arendtian public sphere in an agonistic way, Tully suggests that the model of the game is important because of what it suggests about the importance of the contestation of norms and the way in which shared assumptions must emerge from the practice of politics itself, not some external source. He writes, “At any one time, some constituents are held firm and provide the background for questioning others, but which elements constitute the shared background sufficient for politics to emerge and which constitute the disputed foreground vary. There is not a distinction between the two that stands outside the game, beyond question for all time.”[61]

My interpretation of the value of informal language in the gacaca process finds resonance with Tully’s conception, with a particular focus on how the practice of the “game” can become the basis for the possibility of transformed relationships between citizens. The language of testimony is a way to interpret the event of the genocide but is also a reflection on one's role in the new polity emerging in the transition. The lack of restrictions on what constitutes acceptable speech permits such a transformation to a new citizen identity.

Thinking about what aspects of gacaca may be transferrable to other cases is not an easy proposition, and it is this complexity that, in part, motivates this paper. The mandate for universal participation, some may argue, could only be tied to coercive capacity of an authoritarian state that has a history of mandatory community service (such as Rwanda had with “work days”). I disagree with such a reading. Still, it is the criticisms related to coercion, the silencing of political opposition, and the lack of individual rights, that are most compelling and in need of mitigation in a normative model of a transitional justice process based on gacaca. The central challenge is thus to maintain the informalism of participation that is so important for

restorative and agonistic goals without the heavy hand of the state. The role of the state in administering such a process is critical, but this does not mean that the process must only be a form of propaganda. For many critics, the outcomes of community service and the uncovering of remains and proper burial will always be secondary to the significance of individual punishment. Yet, these outcomes must be taken seriously as compromises made within the structure of a hybrid institution of transitional justice.

One of the enduring critiques of testimony at truth commissions is the charge that witnesses are only heard as victims who are passive recipients worthy of pity, but not political agents who are seen as equals within political life.[62] Gacaca had the opportunity to challenge this critique because of the ways in which the legal process became an extension of social and political life and allowed a plurality of roles; the victim in one situation could also be a friend, witness, or the accused in another. In trials, the roles of victims, perpetrators and bystanders are static. Their interaction within the institutional space is always mediated by this identity and this is part of the limited set of possible outcomes at its conclusion. While the emotions felt with regards to guilt or innocence may vary, the parameters of the decisions are already demarcated. In the context of truth commissions in which amnesty is not an issue, the purpose of testimony is considerably broader and can include connections between past violence and future political participation, as well as commentary on what would be required for future trust. Yet, because of the national scale of the commission and the distance between the testimonies and actual communities, the institution cannot lead to the actual praxis of cooperative action. By cooperative action, I mean tasks or projects that arise from the discussions at gacaca. These could be personal such as helping with child care or political as related to the terms of the distribution of resources in the community. In the case I examine below, the transition to life

outside gacaca occurs when the members of the community meet to unearth the remains of victims of the genocide after the end of a gacaca session.

The weekly gatherings that made up gacaca could have been more explicitly oriented to citizenship relations in the future. In an ideal version, this orientation may become salient when, for example, the proceedings revealed that many women in the village sought small loans to start entrepreneurial projects but discovered they were available. If someone in the village is either able to help directly or help arrange a meeting with banks interested in micro-lending, a new alliance could be formed. To put it another way, although the proceedings were concerned with crimes of a particular period, the repeated interactions of participants and the openness to informal communication suggest that the process could have generated an awareness of collective concerns and a chance for citizens to interact on issues other than those that explicitly related to punishing crimes. Further research is necessary to assess the extent to which this was the case and the dynamic that followed.[63] Gacaca was not only about re-creating factual evidence, but through repeated interactions grounded in informal language, it was also a way to allow a new political culture to emerge through the lived practices and participation of the citizenry.

In the Tall Grass

The documentary *In the Tall Grass*, produced and directed by J. Coll Metcalfe in 2006, focuses on a single case heard at the gacaca court of the Mugera province. Joanita Mukarusanga, one of the few remaining Tutsis in the village, accuses her neighbor, Anastase Butera, a Hutu, of murdering her husband and three children in April of 1994. While she was able to bury her husband, the bodies of her children had not been found. On the night in question, Joanita claims

that Anastase Butera came with a group of Hutu men and asked to see her husband's identity card, which confirmed that he was Tutsi, and then killed him with a club and machete. The next day Joanita tried to run from the home with her children, but she says that Anastase Butera followed her and asked another person, Karenzi, to kill the children. Karenzi refused but Anastase Butera attacked Joanita with a machete until she fled. Then he attacked her children, but she was not a witness to their murders. When Anastase responds to the accusations, he admits to being at Joanita's house and asking for the identity card, as well as using a nail-studded club against Joanita's husband, but he denies using a machete to injure him or the children to the point of death. Throughout Anastase and Joanita's testimonies, audience members and members of the *inyangamugayo* ask clarifying questions.

During the next session, a neighbor comes forward and testifies that she saw Butera chasing the children in front of the house and then throwing them in a ditch nearby, at which point Joanita's daughter was dead, but the others were buried alive. [64] The witness also says that she knows where the remains are located. Butera is given the chance to respond to these charges and maintains that he did not participate in the murders. After the proceedings conclude for the day, a member of the audience suggests that they go to the site mentioned by the neighbor in order to look for the bodies of Joanita's children. This is an action taken by a group of neighbors that is not formally connected to gacaca, but emerges from the information revealed therein.

The film then shifts to a scene of a group of villagers using shovels to unearth a grove of banana trees. Butera is among them. They initially do not find the bodies, but the next morning, the children's bodies are found shallowly buried in a ditch close to Joanita's home. It is Butera who lifts out several of the remains and helps to rinse them to prepare them for the funeral, while Joanita gives him instructions. Another scene shows three small wooden caskets with the

remains inside in preparation for a makeshift procession and funeral. During the funeral Joanita stands toward the back of the group, visibly shocked and exhausted; she places three wooden crosses on the graves.

Meanwhile, the *inyangamugayo* has met at a local schoolhouse and deliberated about the outcome of the case. We see footage of several members saying that they believe Joanita is telling the truth and that Butera was directly involved in the murders. The scene ends with the president of the council saying that the council finds Butera to be worthy of a Category One classification, that is, as a leader of the genocide. Due to the severity of the crime, he must be tried in the national court system. It is thus the recommendation of gacaca that he be re-arrested and wait for trial at the higher court. We are not shown footage of him finding out about this decision and as of April 2011, Butera had not been tried.[65]

I suggest that this case demonstrated a productive compromise between immediate retribution and restorative justice. While scholars have written about the potential complementarity between trials and truth commissions, gacaca offers a different model where the legal and non-legal aspects can be seen as reinforcing the possibilities of future trust and civic cooperation.[66] It its ideal form, gacaca allowed for interactions between citizens that could contribute to a political culture of increased trust in the future. The relationship between Joanita and Anastase Butera, while tense, may be a realistic model for what can be achieved through institutions of transitional justice. "The only way gacaca will work is if Butera is brutally honest. That's where I stand, " Joanita says during the process, and this type of demand, alongside a desire for punishment, often motivates victims during institutions of transitional justice. They are, of course, two of the most difficult things for institutions to achieve. This case shows that the participatory and informal nature of gacaca can lead to the beginnings of trust even if these other

two expectations are not fully met. While Joanita knew that finding her children's remains would bring her comfort, she could not have predicted how it would shape the way she interacted with Butera and others, as well as how she perceived gacaca. For Butera, too, it is striking to note that when he talks about receiving forgiveness or punishment in the film, he implies that he had confessed to a murder during gacaca and is worthy of mercy. This must be infuriating for all those involved because he made his case on *not* confessing, on vehemently maintaining his innocence, but the sentiment may reveal his guilt. Butera did not want to confess to everything of which he was accused, but it seemed that he did not want to further alienate his neighbors, either. His participation in the burial, while at least partially instrumental to be sure, may also have been an opportunity for him to interact in a constructive way with Joanita Mukarusanga and his neighbors. His involvement symbolized an awareness that he will have to perform actions in order to begin to repair the relationships in this community. With the decision of the *inyangamugayo*, retributive justice was deferred to the national level in this case and it is plausible to argue that there was a failure to punish and only the goals of restorative justice were served. This is not accurate; the deferral was a sign of the seriousness of the crimes and the need for punishment, if true. The threat of punishment was also necessary for the information about the case to emerge from Joanita, her neighbor, and Butera himself.

While Joanita, Anastase Butera, and her neighbor are giving testimony, it seems that their roles in the community are fixed (as victim, accused, and bystander), as they would be in a trial or a truth commission. In those institutions their interaction with each other would have been circumscribed by what they offered to the evidence allowed by the trial or by their one appearance on the witness stand at a truth commission. This assumption of fixed identities is dramatically altered in gacaca in the scene where they are looking for the remains of Joanita's

children. In this situation, a direct result of the neighbor's testimony, a subgroup of gacaca participants have gathered for a different purpose. Their identities have been transformed, Joanita is still the mother of the victim, but she is also a fellow villager who needs help in the present. Anastase Butera is the accused, but also an ally. Anastase's presence is initially startling and immediately raised the question of his motives. He seems insistent on helping and is at the center of the mission when the bones are found. Speaking directly to the camera, Joanita say that she hopes his involvement with lead to "a change of heart." This indicates that she continues to believe that he is responsible, and his confession would still give her some comfort. We do not get a parallel interview with him revealing how he understands his involvement.

The Beginning of Trust

At the beginning of the film, Joanita says to the interviewer that she cannot be outside her home after dark because she is afraid that Anastase Butera will kill her so as to silence her testimony. This statement brings to the foreground what is at stake in this hybrid process of justice, in which the accusations are informal but their consequences may be severe, and possibly violent. This sentiment of fear continues through the film, but after the funeral for her children, Joanita says, "I was very afraid, but today not so." This statement has multiple interpretations, but it is Joanita's transformation from fear to the beginnings of trust that may be most evocative of gacaca's potential. One interpretation of her statement could be that she was haunted by not knowing where her children were buried and this uncertainty was worse than a confirmation that Anastase Butera, her neighbor, was the killer. Another interpretation is that Anastase's involvement in the unearthing of the bodies caused her to be less fearful of him, although she was still frustrated by his denial of responsibility. By participating in the collective activity of the

search, Butera may have indicated a desire and willingness to engage with Joanita and the rest of the community in a new way and thus mitigated her lingering fears. A cynical reading would be that he became involved as a way to shed his perpetrator identity without punishment. This may be true, but if the fluidity of identity is thought to be desirable for victims, as I suggest it is, we should also consider the implications of this possibility for perpetrators. A local process such as gacaca is better positioned to consider the costs and benefits of this fluidity. Still, Butera's apparent role as a leader in the killings arguably makes him a poor candidate for transformation but it raises the question, if punishment is unlikely or not feasible, what is a community's next best solution for addressing perpetrators? I suggest that accepting the limitations of a hybrid retributive and restorative process like gacaca is a worthy second-best solution that responds to the urgent need for legal prosecution while still permitting a variety of interactions between citizens. The case of Butera is useful for thinking about the challenges of living peaceably, with at least some of the perpetrators, whether they were released as a result of time already served or the result of a plea bargain. The opinion that perpetrators have not been adequately punished is almost always widely held within societies after mass violence; though legitimate, it may be a hindrance to political cooperation and new alliances within a community. Still, the incident fits with the criteria I laid out in the beginning of the paper: the specter of punishment was palpable and the decision to deem the crimes to be Category 1 evinces their severity, as well as marks the non-cooperation of Anastase Butera (and thus the inappropriateness of leniency). At the same time, the environment of gacaca was a safe enough space for the neighbor to come forward with her information about the location of the children's bodies. The search for the remains happened outside of gacaca but represents a chance for an alternative interaction between victim, witness, and accused. The protection of individual rights is not salient here, but the restrictions on speech

are not totalizing and Joanita is able to openly talk about what happened to her children and her emotions surrounding her case at gacaca. As a type of hybrid institution, gacaca is important not primarily in itself but in its two pronged complementarity. It can work in conjunction with more formal legal mechanisms to bolster retributive justice and, at the same time, be the foundation for future civic involvement.

After the Trial

Reflecting on the process, Joanita says that she values gacaca because "[w]e talk and then go our own ways." It is hard to tell, because of context and translation, whether she is suggesting that her involvement with her fellow villagers has been distant in the aftermath of the case. If so, this may challenge my interpretation of gacaca as a pivotal moment in changing patterns of interaction. It may also mean that gacaca is all the more necessary as a forum for addressing issues related to the genocide that would live in silence otherwise. Joanita's comment might also suggest that the task of adjudication does not need to be all encompassing for the community for days and weeks at a time. It is important during a certain period, but a preoccupation with the case should be limited and not define all future interactions.[67]

The case presented in *In the Tall Grass* could be said to exist in tension with my arguments about the possibility of informal communication and new alliances as it suggests some skepticism about the general applicability of the case. The lack of an agonistic exchange and the ambiguous outcome are important to note. Waldorf claims that, on the whole, very little emotion was on display during gacaca and he suggests that this is consistent with narratives encouraged by the official discourse connected to gacaca and the ones that are excluded by the culture of censorship around the topic of ethnic identity. Joanita's testimony is restrained in

terms of emotion; for the most part, she affectively communicates sadness and resignation at the devastating loss of her family. She begins to cry while describing what has happened and while describing how she feels about Anastase Butera. The tribunal and the audience do not intervene when this happens, but let her finish speaking when she is ready. Anastase Butera speaks with notes and seems somewhat anxious in his demeanor. After he says that he was present but not responsible for the killing, audience members listen attentively and ask follow-up questions about the weapon he was carrying and the precise nature of his involvement. There is a contentious back-and-forth with the *inyangamugayo* after they are visibly incredulous at his account. When Joanita's neighbor comes forward, she speaks without much emotion.

One could also suggest that the case featured in *In the Tall Grass* is less novel than it first appears and is in line with families' strong desire to recover and properly bury victims' remains. From *Antigone* to the South African Truth and Reconciliation Commission, the desire for formal mourning has always been prominent after mass violence and this case is no exception.[68] In this way, the circumstances of the case may speak less to the possibility of new alliances than the fact that punishment has often been leveraged in order to recover the truth about how someone died and where his or her body is located. The movement between gacaca and the search for the bones is not as significant to a larger argument about political culture because it is the exceptional case. One might argue that the search was an extension of the trial and the cooperation that was present is directly related to Joanita's status as the victim in the trial. I agree that the desire for a proper funeral and burial is exceptional and, in many ways, is the least controversial type of demand that a victim can make. Even those who disagree on the legitimacy of the violence that led to the deaths may be sympathetic to the desire to find the remains. Still, even though it may not represent the forward-looking political alliance I suggest is possible, it is a substantial move

in that direction. The move from the formal space of the gacaca trial to the informal mission to find the remains indicates substantial possibilities for new patterns of citizenship within the gacaca process.

On the Role of Legal Representation

The footage of Anastase Butera defending himself raises questions about what the influence of legal counsel may have been. Is seems that his demeanor as well as the inconsistencies in his story about how directly he was involved led the tribunal to doubt his story. He could not provide an alternative account of the murders. The other people who were references (Karenzi, among others) have passed away or otherwise not able to participate. A formal legal defense would likely have been able to tell a more consistent story about his involvement, or, perhaps, tried to use a confession to change the terms of the punishment if they thought a Category One classification was likely. At the conclusion of the film, we are led to believe that he will have his chance for formal representation if and when he stands trial in the national court. However, in an ironic twist, Butera may have had the winning strategy. By achieving the Category One classification, Butera was not punished at gacaca and, as mentioned above, has not yet been tried in the national courts.[69] The threat of punishment, both at gacaca and at the national courts, seems to me to be a necessary part of the success of hybrid institutions. The unearthing of the bodies was important, but it was also important that Butera's actions were scrutinized to determine his responsibility.[70] Joanita Mukarasunga's relief and frustration at what she perceives to be Butera's false denial of genocide charges reveals the compromises inherent to this structure, even when improved to account for the most serious criticisms of state domination. To find a balance between retributive and restorative goals, as

well as between agonistic and liberal democratic practices, will, in its best form, leave almost every party dissatisfied.

The gacaca process was undeniably flawed in its execution and the implications of these flaws may have a profound impact on future violence in Rwanda. The process may not appear to directly contribute to future violence, but evidence suggests greater authoritarian control over speech and the semblance of victor's justice. Yet, the structure of gacaca is still a useful way to imagine possibilities for greater trust and new alliances between citizens. I am not blind to the criticisms of gacaca, but see the benefits of thinking about gacaca in a new way because we now have a better understanding of how it fell short of its aspirations. Clarity about the major ways in which gacaca was influenced by state-sponsored propaganda, enforced an official narrative about the violence, and failed to offer protections to defendants and witnesses, allows us to now turn to the possibility of burgeoning trust between citizens. In light of this shift, the scholarly community interested in gacaca should have two goals. The first is to examine the potential that existed in the process of gacaca separate from the two major criticisms of the coercive influence of the laws against divisionism and the exclusion of RPF crimes. The second goal is to investigate particular moments that were promising as a way to build interpersonal trust. The moment when Butera participated in the unearthing of the bodies of Joanita's children captures the unique contribution of gacaca as a hybrid process of justice, not purely retrospective and retributive, but also the foundation for a future political culture not beholden to old relations of power. I am not saying that these possibilities were achieved in every case, or even in most cases, I cannot judge this. Moreover, the ethnographic research suggests otherwise. Still, possibilities for incorporating agonistic concerns and fostering interpersonal trust may be present

in ways we have not seen before in institutions of transitional justice on this scale, and this, at least, is a reason to investigate further.

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[1] Ian Fisher, "Massacres of '94: Rwanda Seeks Justice in Villages," *The New York Times*, April 21, 1999; Jeremy Sarkin, "The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide," *Journal of African Law* 45, no. 2 (2001); Marc Lacey, "After the horror, truth and some healing, maybe. (Gacaca or justice on the grass in Rwanda)," *The New York Times*, June 20, 2002.
[2] Alana Erin Tiemessen, "After Arusha: Gacaca Justice in Post-Genocide Rwanda," *African Studies Quarterly* 8, no. 1 (2004); Peter and Charles Mironko Uvin, "Western and Local Approaches to Justice in Rwanda," *Global Governance* 9 (2003).
[3] Samantha Power, "Rwanda: The Two Faces of Justice," *The New York Review of Books*, January 16, 2003.
[4] PRI Penal Reform International, *Eight Years On…A Record of Gacaca Monitoring in Rwanda* (2010), 28.
[5] "Status of Cases," International Criminal Tribunal for Rwanda, http://www.unictr.org/Cases/tabid/204/Default.aspx (accessed April 8, 1994).
[6] Kenneth Roth and Allison DesForges, "Justice or Therapy?" *Boston Review* (2002).
[7] "Rwanda: Legislation governing divisionism and its impact on political parties, the media, civil society and individuals (2004 – June 2007)," The UN Refugee Agency, http://www.unhcr.org/refworld/docid/474e895a1e.html (accessed May 3, 2011).
[8] Human Rights Watch notes, ""Genocide ideology" as such was made a crime only in a law adopted in June 2008 and still awaiting the presidential signature as of this writing, but the term has been used loosely for at least five years to mean several kinds of conduct referred to in the Constitution of 2003 and made criminal in the 2003 law punishing genocide." "Law and Reality," Human Rights Watch, http://www.hrw.org/en/node/62097/section/8 (accessed May 3, 2011).
[9] "Report on Trials in Pilot Gacaca Courts," National Service of Gacaca Jurisdictions, http://www.inkiko-*Gacaca*.gov.rw/En/EnIntroduction.htm (accessed April 20, 2011).
[10] PRI Penal Reform International, *Eight Years On…A Record of Gacaca Monitoring in Rwanda*, 15.
[11] Power, "Rwanda: The Two Faces of Justice"; Allison Corey and Sandra F. Joireman, "Retributive Justice: The Gacaca Courts in Rwanda," *African Affairs* 103, no. 410 (2004). In response to the Corey and Joireman article, Scheffer defends it on the grounds that the ICTR is better equipped to address Tutsi crimes during the civil war. David Scheffer, "It Takes a Rwandan Village," *Foreign Policy* 143 (2004).
[12] Phil Clark provides an excellent overview of traditional gacaca. Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge: Cambridge University Press, 2010).49-63.

[13] One of the most passionate defenders of gacaca at the beginning was Helena Cobban. Helena Cobban, "The Legacies of Collective Violence," *Boston Review* (2002).
[14] "Human Rights Watch Report 2003: Africa: Rwanda," Human Rights Watch, http://www.hrw.org/wr2k3/africa9.html (accessed April 20, 2011).
[15] William A Schabas, "Genocide Trials and Gacaca Courts," *Journal of International Criminal Justice* 3, no. 4 (2005).
[16] Schotsman deftly describes the change in donor and INGO motivations over time, another factor in the change in emphasis. Martin Schotsman, "'But We Also Support Monitoring': INGO Monitoring and Donor Support to Gacaca Justice in Rwanda," *International Journal of Transitional Justice* 2, no 3 (2011).
[17] Chakravarty notes that at this time, PRI (Penal Reform International) was much more optimistic about Gacaca than either Human Rights Watch or Amnesty International. PRI's 2010 report suggests subsequent disillusionment. Anuradha Chakravarty, "Gacaca Courts in Rwanda: Explaining Divisions within the Human Rights Community," *Yale Journal for International Affairs* 1, no. 2 (2006); PRI Penal Reform International, *Eight Years On…A Record of Gacaca Monitoring in Rwanda*.
[18] Chi Mgbako, "Ingando Solidarity Camps: Reconciliation and Political Indoctrination in Post-Genocide Rwanda," *Harvard Human Rights Journal* 18, no. 201 (2005).
[19] Thomson notes the distinction between solidarity camps for politicians, civil society and church leaders, gacaca judges, and incoming university students" and reeducation camps for ex-combatants and confessed *genocidaires*. Susan Thomson, "Reeducation for Reconciliation: Participant Observations on Ingando," *Remaking Rwanda*, ed. Scott Straus and Lars Waldorf. Madison:University of Wisconsin Press. 2011. 333-4.
[20] Lars Waldorf, "Censorship and Propaganda in Post-Genocide Rwanda" in *The Media and the Rwanda Genocide*, ed. Allan Thompson (London, Pluto Press,2007). 404-416.
[21] Phil Clark, "When the Killers Go Home," *Dissent* 52, no. 3 (2005).
[22] Lars Waldorf, "Remnants and Remains: Narratives of Suffering in Post-Genocide Rwanda's Gacaca Courts," in *Humanitarianism and Suffering: The Mobilization of Empathy*, ed. Richard A. Wilson and Richard D. Brown (New York: Cambridge University Press, 2009), 296. For more on the film Hotel Rwanda, see Mohamed Adhikari, *Hotel Rwanda*: The Challenges of Historicising and Commercialising Genocide', *Development Dialogue*, Vol. 50, (2008).
[23]Max Rettig, "Gacaca: truth, justice, and reconciliation in postconflict Rwanda?" *African Studies Review* 51, no. 3 (2008); Moses Gahigi, "Mixed Reactions as Gacaca Courts Near Closure," *The New Times*, June 29, 2009.
[24] Luc Huyse and Mark Salter, eds., *Transitional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International IDEA, 2008); Rene Lemarchand, *The Dynamics of Violence in Central Africa* (Philadephia: University of Pennsylvania, 2009).
[25] Thomson and Nagy question whether the failures of gacaca are, in many ways, inevitable because of the impossibility of weak state administering fair and comprehensive policies during the period of transitional justice. Susan Thomson and Rosemary Nagy, "Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's Gacaca Courts," *International Journal of Transitional Justice* 5 (2011).
[26] Burnet's research shows the importance of settling scores and local imbalances of power in the gacaca process and she is pessimistic about gacaca's ability to transcend these limitations. Jennie

E. Burnet, "The Injustice of Local Justice: Truth, Reconciliation, and Revenge in Rwanda," *Genocide Studies and Prevention* 3 vol. 2 (2008).
[27] Three areas of divergence included the leadership of women, the severity of the crimes considered, and the possibility of prison as punishment. In the traditional form of gacaca, punishment would take the form of cattle or beer bought for the community by the accused. Lars Waldorf, "'Like Jews Waiting for Jesus': Posthumous Justice in Post-Genocide Rwanda," in *Localizing Transitional Justice*, ed. Rosalind Shaw, Pierre Hazan, LarsWaldorf (Palo Alto: Stanford University Press, 2010).
[28] Lars Waldorf, "Remnants and Remains: Narratives of Suffering in Post-Genocide Rwanda's Gacaca Courts," 301.
[29] Clark, *The Gacaca Courts.*
[30] Ibid, 83.
[31] Kasaija Phillip Apuuli, "Procedural due process and the prosecution of genocide suspects in Rwanda " *Journal of Genocide Research* 11, no. 1 (2009).
[32] Max Rettig, "The Sovu Trials: The Impact of Genocide Justice on One Community", *Remaking Rwanda*, ed. Scott Straus and Lars Waldorf (Madison: University of Wisconsin Press. 2011), 199-205.
[33] Jeffrey Gettleman and Josh Kron, "Doubts Rise as Rwandan Election is Held," *The New York Times*, August 8, 2010.
[34] Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell University Press, 1993).
[35] Eugene McLaughlin et al., "Introduction: Justice in the Round," in *Restorative Justice: Critical Issue*, ed. Eugene McLaughlin, et al. (London: Sage Publications, 2003), 2.
[36] Max Weber, "Bureaucracy," in *From Max Weber: Essays in Sociology*, ed. H.H. Gerth and C. Wright Mills (New York Oxford University Press, 1946), 221.
[37] Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004).
[38] Jürgen Habermas, *Moral Consciousness and Communicative Action* (Boston, MA: The MIT Press, 1990).
[39] Agonistic critiques of identity and power come together in this quote by Chantal Mouffe: "An 'agonistic' approach acknowledges the real nature of its frontiers and the forms of exclusion that they entail, instead of trying to disguise them under the veil of rationality or morality. Coming to terms with the hegemonic nature of social relations and identities, it can contribute to subverting the ever-present temptation existing in democratic societies to naturalize its frontiers and essentialize its identities." Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), 105.
[40] The interaction between agonism and transitional justice is an increasingly popular topic in the field. See, for example, Alexander Keller Hirsch, ed. *Theorizing Post-Conflict Reconciliation*: *Agonism, Restitution, Repair* (New York: Routledge, 2011).
[41] Tully emphasizes that the openness to struggles for recognition within democratic societies is a manifestation of the agonic spirit. James Tully, "The Challenge of Reimagining Citizenship and Belonging in Multicultural and Multinational Societies," *The Demands of Citizenship*, ed. Catriona McKinnon and Ian Hampsher-Monk. (London, Continuum, 2000)
[42] Sonali Chakravarti, "Agonism and Victim Testimony," in *Theorizing Post-Conflict Reconciliation*, ed. Alexander Hirsch (New York, Routledge, 2011).

[43] Lida Maxwell, “Toward an Agonistic Understanding of Law: Law and Politics in Hannah Arendt’s Eichmann in Jerusalem,” *Contemporary Political Theory*, 11, no. 1 (2012).
[44] Many have critiqued the reliance on human rights, I do not mean to rehash that debate here. It is one tool among several. For a critique of human rights, see Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt. 1951. For a critique of liberal rights, see Karl Marx, “On the Jewish Question,” *The Marx-Engels Reader* ed. Robert C. Tucker. New York, Norton. 1978.
[45] For more on the rule of law, see Colleen Murphy, “Political Reconciliation, the Rule of Law, and Genocide,” *The European Legacy* 12, no. 7 (2007).
[46] I thank Ernesto Verdeja for his help with this idea. Ernesto Verdeja, *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence*, (Philadelphia: Temple University Press, 2009), 61.
[47] Bruce Ackerman and James S. Fishkin, *Deliberation Day* (New Haven: Yale University Press, 2005).
[48] Dryzek and Schapp also emphasize the need for multiple space during periods of transitional justice so that different goals can be emphasized. Andrew Schaap, "Agonism in Divided Societies," *Philosophy & Social Criticism* 32, no. 3 (2006); John Dyrzek, "Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia," *Political Theory* 33, no. 2 (2005).
[49] My position is similar to Schaap in that I take the possibility of transformation from the deliberative approach, but value the process by which norms are debated and constituted through agonistic exchanges. Schaap, "Agonism in Divided Societies."
[50] Adam Crawford and Todd R. Clear, "Community Justice: Transforming Communities through Restorative Justice?" in *Restorative Justice: Critical Issues*, ed. Eugene McLaughlin, et al. (London: Sage Publications, 2003), 225.
[51] Annette Baier, "Trust and Antitrust," *Ethics* 96 (1986).
[52] *Democracy and Trust*, ed. Mark E. Warren (Cambridge, UK: Cambridge University Press, 1999), 1.
[53] Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2000).
[54] I take this distinction from Patterson. Orlando Patterson, "Liberty against the democratic state: on the historical and contemporary sources of American distrust," in *Democracy and Trust*, 155.
[55] Pickering has argued that repeated interactions grounded in initially weak ties, such as those of co-workers, may be the best way to foster “cross-ethnic cooperative relationships.” Paula M. Pickering, "Generating social capital for bridging ethnic divisions in the Balkans: Case studies of two Bosniak cities," *Ethnic and Racial Studies* 29, no. 1 (2006).
[56] Catherine M. Cole, *Performing South Africa's Truth Commission: Stages of Transition* (Bloomington: Indiana University Press, 2010).
[57] Clark, *The Gacaca Courts,* 11.
[58] Ibid, 196-197.
[59] James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, Cambridge University Press,1995).
[60] Iris Marion Young, “Activist Challenges to Deliberative Democracy” *Political Theory* 29, no. 5 (2001), 674.
[61] James Tully, “The Agonic Freedom of Citizens” *Economy and Society* 28, no.2 (1999), 170.

[62] For a philosophical treatment of this idea, see Wendy Brown, "Wounded Attachments," *Political Theory* 21, no. 3 (1993).
[63]My argument is similar to the one made by Aneta Wierzynska where she argues, using Robert Dahl's standards of participation and contestation, that gacaca can still be a tool for consolidating democratic practice, even if it fails on expectations of retributive justice or "reconciliation." Aneta Wierzynska, "Consolidating Democracy Through Transitional Justice: Rwanda's Gacaca Courts," *New York University Law Review* 79 (2004).
[64] In response to my inquiry about this, J. Coll Metcalfe said that Joanita and her neighbor had likely not talked about it before because there was a silence surrounding the genocide in this predominantly Hutu village. Email correspondence with J. Coll Metcalfe, filmmaker, April 15, 2011.
[65] Email correspondence with J. Coll Metcalfe, April 13, 2011.
[66] Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2001), Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998). Lawrence Douglas, "The Didactic Trial: Filtering History and Memory in the Courtroom," *European Review* 14, no.4 (2006).
[67] The creation and political involvement of Ibuka, a group for survivors, can be considered another contribution of gacaca to a transformed political culture. Victims groups are not new, in fact they have been instrumental in past institutions of transitional justice just as Las Madres in Argentina and Khulamani in South Africa. Still, the centrality of Ibuka to public discussions of gacaca makes them an exceptional case. They have been instrumental in documenting the deaths, registering complaints and challenging the state-sponsored narratives about gacaca. One way they have done so is through investigations into the judges, both at the international tribunal as well as in the local gacaca courts. At the ICTR, they revealed that one judge had connections to Hutu violence and at the local level, they identified eight justices in the Rusizi district who were accused of taking bribes in return for a not-guilty verdict. The fact the story ran in the New Times, a paper closely tied to the ideology of the state and vested in portraying gacaca in a positive light, speaks to the significance of Ibuka's efforts. Timothy Longman and Theoneste Rutagengwa, "Memory, Identity, and Community in Rwanda," in *My Neighbor, My Enemy*, ed. Eric Stover and Harvey M. Weinstein (Cambridge, UK: Cambridge University Press, 2004); Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in the The Hague* (Philadelphia: University of Pennsylvania Press, 2005).
[68] See Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004); Mark Sanders, *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (Stanford: Stanford University Press, 2007).
[69] Email correspondence with J. Coll Metcalfe, April 13, 2011.
[70] Through an analysis of *Antigone* and *Sophie's Choice* Bonnie Honig notes that the emphasis on burial and mourning can become a diversion from engaging with difficult political questions. Bonnie Honig, "The Other is Dead: Mourning, Justice and the Politics" *Theorizing Post-Conflict Reconciliation:Agonism, Restitution, and Repair*, Alexander Keller Hirsch, ed., (New York, Routledge, 2011).