

THE VIOLENCE OF LAW

“Lawfare” describes the systematic use and abuse of legal procedure for political ends. *The Violence of Law* examines this insufficiently understood form of warfare in post-genocide Rwanda – where it contributed to the making of dictatorship. In this pioneering study, Jens Meierhenrich provides a redescription of Rwanda’s daring experiment in transitional justice known as *inkiko gacaca*. By dissecting the temporally and structurally embedded mechanisms and processes by which change agents in genocide’s aftermath maneuvered to create modified legal arrangements of things past, Meierhenrich reveals an unexpected jurisprudence of violence. Combining nomothetic and ideographic reasoning, he shows that the deformation of the *gacaca* courts – and the rise of lawfare in post-genocide Rwanda – was not preordained but the outcome of a violently structured contingency. *The Violence of Law* tells a disturbing tale and will appeal to scholars and practitioners of foreign, comparative, and international law.

Jens Meierhenrich is the Stephen and Barbara Friedman Visiting Professor of Law at Columbia Law School and Professor of International Relations at the London School of Economics and Political Science. He previously taught for a decade at Harvard University. His many books include *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652–2000* (Cambridge, 2008), which won the American Political Science Association’s 2009 Woodrow Wilson Foundation Award, and *The Remnants of the Rechtsstaat: An Ethnography of Nazi Law* (Oxford, 2018). He is the editor of, among other collections, *The Oxford Handbook of Carl Schmitt* (Oxford, 2016), and *The Cambridge Companion to the Rule of Law* (Cambridge, 2021).

“Law is violence, not always (let alone necessarily) an alternative to it, Jens Meierhenrich brilliantly documents in this long-awaited masterpiece, in the process entirely overturning congratulatory, melodramatic, and orientalist depictions of local ‘justice.’ A genuinely monumental work, in insight as well as in scope.”

Samuel Moyn, Chancellor Kent Professor of Law
and History, Yale Law School

“Deeply informed theoretically, and truly interdisciplinary, *The Violence of Law* builds upon a granular account of Rwanda’s post-genocide experience, including a detailed ethnography of its widely noted *gacaca* courts, to develop an important argument of how legalism and ‘lawfare,’ consent and coercion, are simultaneously constructed and entangled in support of governmentality. The book deserves close attention from everyone interested in legal theory.”

Mark Tushnet, William Nelson Cromwell Professor of
Law Emeritus, Harvard Law School

“*The Violence of Law* is a first-rate critique of transitional justice as injustice. It reveals a jurisprudence of violence unexpected by those who misunderstand rule-of-law promotion as an inherently good practice.”

Laura Nader, Professor of Anthropology,
University of California, Berkeley

“Meierhenrich pulls back the veil of ignorance to show the violence embedded in the law. Meticulously and exhaustively researched and expertly analyzed, *The Violence of Law* is a magisterial accomplishment. Its findings go beyond the *gacaca* courts to question the entire transitional justice enterprise.”

Michael Barnett, University Professor of International Affairs and
Political Science, George Washington University

“Weaving together on-the-ground observations, political theories, photographic evidence, and historical narratives, *The Violence of Law* exposes how brutal effects of power can be accompanied by a narrative of victimhood, mobilizing international sympathy.”

Martha Minow, 300th Anniversary University Professor,
Harvard Law School

The Violence of Law

THE FORMATION AND DEFORMATION
OF GACACA COURTS IN RWANDA

JENS MEIERHENRICH

Columbia Law School



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For Élodie

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Acknowledgments

This book almost broke me. Twenty years in the making, the account of transitional injustice it contains is disheartening. There is no evidence for hope in this book. Instead, there is violence all around.

Violence tracing takes a toll on you. It also takes time, which is why the path to publication was long as well as arduous. To my relief, I received help along the way. Those who helped the most, I am unable to name, unfortunately. The hundreds of Rwandans who aided my research over the years, whether as interpreters or as respondents or in a thousand other ways, must remain anonymous. Too great would be the risk to them if I acknowledged their existence. Their assistance was essential, however. By facilitating access, they enabled understanding. They made it possible for me to collect the “meta-data” on which my interpretation rests.¹

The first draft of my interpretation dates from 2002. The book was beginning to take shape then, but it was incomplete. I felt it necessary to deepen and broaden my field research – and to wait until Rwanda’s *gacaca* courts were shuttered before I sat in judgment over them. Little did I know it would take me an additional decade after that to complete my analytic narrative – to bring the increasingly sprawling project to fruition. I finished a second, enhanced draft of the book early in the new millennium, while on sabbatical at the American Bar Foundation. There John Hagan, Terry Halliday, and John Comaroff were wonderfully supportive of my research on lawfare. They helped me see that mine was a project on foreign, comparative, and international law. They knew before I did that my argument about law’s violence transcended the Rwandan case. When this dawned on me as well, I broke the original project in half.²

In readying both halves for publication, I benefited from audiences the world over, especially at Amherst College, the University of California, Berkeley, Case Western

¹ Lee Ann Fujii, “Shades of Truth and Lies: Interpreting Testimonies of War and Violence,” *Journal of Peace Research*, Vol. 47 (2010), pp. 231–241.

² See, Jens Meierhenrich, *Lawfare: A Genealogy* (Cambridge: Cambridge University Press, forthcoming).

Reserve University, Columbia University, the University of Edinburgh, the European University Institute, Harvard University, King's College London, the University of Michigan, Northwestern University, Princeton University, Ohio State University, the School of Oriental and African Studies, Stanford University, the University of Maryland, the University of Michigan, the University of Notre Dame, the University of Oxford, the University of Toronto, the University of Texas at Austin, Yale University, and the Institute for Advanced Study, Princeton. The insights I gained in each and every one of these settings propelled the project. I am grateful to Danielle Allen, Catherine Boone, the late David Caron, Christian Davenport, Lawrence Douglas, Michael Doyle, Stephen Elkin, Caroline Elkins, Didier Fassin, the late Lee Ann Fujii, Carol Gluck, Stephen Hopgood, Gary Jacobsohn, Erik Jensen, Stathis Kalyvas, Christopher Kutz, Andrew Lawrence, Ron Levi, Sanford Levinson, James Mahoney, Scott Mainwaring, Michael McFaul, Dirk Moses, Michael Scharf, Kim Lane Scheppele, Kathryn Stoner, the late Charles Tilly, Leslie Vinjamuri, Jennifer Welsh, Alexander Wendt, and Laurence Whitehead for extending invitations to talk about the violence of law.

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Although illness prevented the late Klaas de Jonge – the very first scholar of Rwanda's *gacaca* courts – from attending my manuscript workshop, his local knowledge left an imprint on the book nonetheless. I treasure my conversations in Rwanda and Amsterdam with this former anti-apartheid campaigner – and *Umkhonto we Sizwe* operative. Equally meaningful were my exchanges with Thierry Cruvellier, the late Alison Des Forges, Mark Drumbl, Nigel Eltringham, the late Lee Ann Fujii, André Guichaoua, René Lemarchand, Cyanne Loyle, Omar McDoom, Karen Murphy, Scott Straus, Carina Tertsakian, Susan Thomson, Noel Twagiramungu, the late Bert Ingelaere, Luc Reydam, Filip Reyntjens, Peter Uvin, the late Jan Vansina, and Lars Waldorf. They all taught me, in ways large and small, about seeing Rwanda for what it is. Three of these remarkable scholars deserve to be singled out: Lars Waldorf, Noel Twagiramungu, and Filip Reyntjens. Lars played a crucial role at the project's inception, Noel in the middle years, and Filip throughout.

When I first arrived – with six Harvard undergraduates in tow – in Kigali, it was Lars who provided a crash course on all things Rwandan. The Human Rights Watch representative in the country at the time, Lars was thoughtful, generous with his time and documents, and witty. We shared sensibilities and a similar outlook on law. And we traded adventures in music. That Lars noticed – and liked – my Sub Pop T-shirt further cemented our bond. If it hadn't been for Lars and his scholarship, I may never have embarked on this book.

And I may not have stayed the distance save for Noel Twagiramungu's encouragement. It was a pleasure – a relief, in fact – to be able to welcome Noel to Harvard as a Scholar-at-Risk. I am indebted to him as well as to Seraphine Twagiramungu, his wife, for tutorials on Rwanda's lifeworlds – and for help with translations from Kinyarwanda. Noel and Seraphine fled their homeland and raised – in addition to their own – the orphaned children of others. I recall with fondness our weekly meetings at 1737 Cambridge Street. Martha Lagace was the fourth member of our genocide quartet.

In a terrific demonstration of collegiality, Filip Reyntjens, finally, read the final draft of this book's manuscript – the doorstopper version – from beginning to end. Most of the comments and suggestions he gave I heeded because no scholar knows more about legal development in colonial and postcolonial Rwanda. And anyone studying trajectories of authoritarianism in Rwanda will be hard-pressed to best Filip's narrative of the country's transition to – and from – genocide.³

The late Leila Chirayath, Justina Hierta, Catherine Honeyman, Shakirah Hudani, Andrew Iliff, and Alfa Tiruneh played significant roles when this project was still in its infancy. They are the Harvard students I mentioned above. Harvard's Faculty of Arts and Sciences funded my – and their – first immersion in post-genocide Rwanda. Its senior leadership supported this example of education abroad at a time when it was not yet fashionable (and still possible) to send students overseas – to a post-genocide society – for a bespoke learning experience. And a formative experience it was for everyone involved. To my delight, one of my former undergraduates even beat me to publication. Catie's own book on post-genocide Rwanda hit the shelves in 2016; Shakirah's is in the offing.⁴ My goal in accompanying this exceptional group of students to Central Africa was to teach them – inside Rwanda's dictatorship – how

³ Filip Reyntjens, *Political Governance in Post-genocide Rwanda* (Cambridge: Cambridge University Press, 2014). More recently, see Marie-Eve Desrosiers, *Trajectories of Authoritarianism in Rwanda: Elusive Control before the Genocide* (Cambridge: Cambridge University Press, 2023).

⁴ Catherine A. Honeyman, *The Orderly Entrepreneur: Youth, Education, and Governance in Rwanda* (Stanford: Stanford University Press, 2016); Shakirah E. Hudani, "Carceral Urbanism: Reconstructing the Architecture of Punitive Space in Post-genocide Rwanda," *Punishment and Society*, Vol. 23 (2021), pp. 631–649. See also Andrew R. Iliff, "Root and Branch: Discourses of 'Tradition' in Grassroots Transitional Justice," *International Journal of Transitional Justice*, Vol. 6 (2012), pp. 253–273.

to conduct fieldwork in conflict zones. In the event, they taught me as much as I taught them. Together, we acquired local knowledge.⁵

To this stock of meta-data, I added observations as often as I could. My two institutional homes during the last twenty years – Harvard’s Department of Government and the LSE’s Department of International Relations – made this possible. Colleagues to whom I owe thanks for supportive gestures include Robert Bates, Chris Brown, Daniel Carpenter, Jeffrey Chwieroth, Timothy Colton, Grzegorz Ekiert, Peter Hall, the late Samuel Huntington, Mathias Koenig-Archibugi, Fawaz Gerges, Milli Lake, Tomila Lankina, Susan Pharr, Robert Putnam, Alastair Iain Johnston, Nancy Rosenblum, Michael Sandel, John Sidel, Karen Smith, Peter Trubowitz, Peter Wilson, and Daniel Ziblatt. Harvard’s Project on Justice in Times of Transition, now defunct, welcomed me into the fold when I was starting out. The late Philip Heymann and Martha Minow introduced me to Harvard Law School. Steven Miller and Stephen Walt did the same over at the Belfer Center for Science and International Affairs, John F. Kennedy School of Government. At Harvard’s Program on Intrastate Conflict, Robert Rotberg invited me to think about failed states.

Jacqueline Bhabha, Stephen Greenblatt, and Harvard’s University Committee on Human Rights, on which I served, were immensely supportive, as was Emmanuel Akyeampong at Harvard’s Committee on African Studies. Alex de Waal of the World Peace Foundation was also a collaborator during my Cambridge years. Together with Bridget Conley of the United States Holocaust Memorial Museum, we studied how genocides end. During my sabbatical at the American Bar Foundation to get this project off the ground, Alex stepped in to teach my genocide course. At Harvard’s Committee on Degrees in Social Studies, Richard Tuck, but especially the late, inestimable, Judy Vichniac, were enablers. I owe my first teaching job to Judy. Through her I also met one of my intellectual heroes, Barrington Moore, Jr. Charles Tilly was another. My intellectual trajectory would look different had Chuck not encouraged me – before I had an academic career to speak of – to join his Workshop on Contentious Politics at Columbia University. For two years I was a regular. The institution taught me about social science as a vocation. Chuck gave me confidence when I – a first-generation student – lacked it. Nowadays I think of Chuck whenever I need – or feel that I need – license to be different.

When I relocated from Harvard to LSE, Peter Katzenstein’s wise counsel – and personal touch – eased the transition. A collaborative residency fellowship that I was lucky to hold – en route from Cambridge to London – at the Rockefeller Foundation’s Bellagio Center together with John Hagan and Joachim Savelsberg, ensured that this liminal period in my life was both poignant and productive. On

⁵ Like all foreigners in the country, we constantly were at risk of being instrumentalized by the powers that be. And yet, because of its Ivy League cachet, the Harvard logo also opened doors for us. On the marketing of dictatorship at, and with the aid of, Harvard University, see Sacha Yabili, “How Harvard Abdicates Its Moral Responsibility,” *Harvard Crimson*, February 26, 2016, at www.thecrimson.com.

Lake Como's promontory, I produced another full draft of this book. In a silly quest for perfection, I tinkered with it for another decade in London. I finally embarked on its completion at Harvard Law School.

I returned to Massachusetts when it was time to deliver the book to Cambridge University Press. This was in January 2020 – just before COVID-19 – and with a newborn in tow. I am tremendously grateful to Martha Minow and Gabriella Blum and especially Mark Tushnet for the invitation to spend time as a visiting professor at HLS. Co-teaching my course on the rule of law with Mark, just before his retirement, was a memorable experience – in equal measure edifying and terrifying. I will always think of it as a highlight of my career.

Lew Bateman and John Haslam, my editors at Cambridge University Press, were steadfast in their support of my lawfare project – and the books it turned into. I must also acknowledge Toby Ginsberg, Carrie Parkinson, and Robert Judkins. They saw to it that everything went smoothly during the production. My copyeditor, John Gaunt, took exceptionally good care with the manuscript. Best of all, he dealt magnanimously with missed deadlines.

The late Heather Adams, and Toby the dog, were paragons of friendship. I miss both dearly. Britt Aylor, Ellisa Cholapranee, Sara Igl, Jeewon Jung, Sun Kim, Mathias Risse, My Sam, Raz Segal, Oliver and Sylke Simons, and Carrie Sun also brightened my life in Boston and environs, as did Melody Ko and Josh Komyerov and their son Tairou, the first of their lovely brood. Awards for special contributions to friendship go to Carolyn Chen, Chia Chen, Robert Davies and Ben Ross, Hans-Martin Jäger, Alex Krämer and Malte Stellmann and their son Elias, Dirk Moses, Angelo Pacillo, Anke Rose, Uli Scherr, George Shaw, and Tracy Yen. In New York City, Oliver Simons, Sylke, Matilda, and Carl Simons more than once provided a home away from home. Michelle Tihal deserves a very special mention for being there without fail – and cheerfully – when it mattered. In London, Ben and Jodie Elley, Philippa Larbi, Omar Qureshi, John Sidel, and Dan Stone, as well as Roz Ghosh and Stephen Richards and Arlo, are always wonderful company, and so is the extended Lam family: Shiu Cho, Woon Hing, Chi-Ho, Cathy, Emma, Cole, Kie, Aria, and Shay Shaked. I am also grateful to my parents, Friedel and Christa Meierhenrich, to Günter and the late Rita Großpietsch, and to Stefan and Verena Großpietsch. Memories of my maternal grandmother, Helene Brokmann, sustain me. They keep me going when the going gets tough.

My wife, Shan Lam, is most deserving of my gratitude. She was there through thick and thick. Shan pulled us out of the quagmire. For that tremendous feat, and for her many quirks, I love her. She also has my adulation for carrying the other love of my life, our bundle of joy. I dedicate this book to Élodie, my perfect daughter.



MAP 0.1 2004 United Nations map of Rwanda. Map No. 3717 Rev. 9

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MAP 0.2 2008 United Nations map of Rwanda. Map No. 3717 Rev. 10

