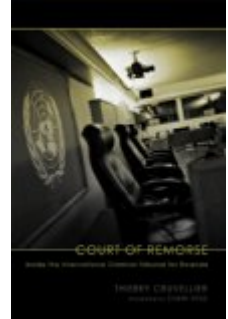


Thierry Cruvellier. *Court of Remorse: Inside the International Criminal Tribunal for Rwanda*. Critical Human Rights Series. Madison: University of Wisconsin Press, 2010. Illustrations. xiii + 188 pp. \$14.95, e-book, ISBN 978-0-299-23673-1.



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Published on H-Law (November, 2010)

Commissioned by Christopher R. Waldrep (San Francisco State University)

Journalists have covered wars for a very long time indeed (Ambrose Bierce famously disappeared following Pancho Villa's army in 1913), but journalistic engagement with war crimes trials, due to their recency, has a much briefer history. The trial of the top Nazi war criminals at Nuremberg was among the first to afford opportunities for on-the-scene international reportage. The spectacle of ashen-faced Nazis sitting meekly in the defendants' dock—men who a short time earlier had their boot on the throat of Europe—did not always captivate the onlookers. The English journalist Rebecca West found the trial a “citadel of boredom.”[1] Hannah Arendt, reporting on the 1961 Adolf Eichmann trial for *The New Yorker*, found fault not with the tedium of the proceedings but with the Israeli court's procedure. Arendt and West shared a generally critical attitude toward the events unfolding before them. Thierry Cruvellier, the author of *Court of Remorse*, is, like his precursors, a reporter present at an extended, history-making sequence of war crimes trials, and like them he turns a disapproving eye on his sub-

ject. West's and Arendt's criticisms, however, pale beside the gallons of vitriol that Cruvellier pours on the United Nations Tribunal for Rwanda (ICTR).

Cruvellier is well positioned to write about these trials. As an investigative journalist, he covered the ICTR for five years (1997-2002), in the course of which he interviewed many of the principals involved. In a slim book with few endnotes, we can only assume that much of Cruvellier's account is based on these interviews. The relative lack of hard references sometimes imparts a glib, shoot-from-the-hip quality to the book. Untethered to sources, his denunciations of the Office of the Prosecutor (OTP), whom he accuses not only of incompetence but also of bad faith, seem the product less of fair-minded analysis than an unacknowledged grudge. The author's pique bursts through his prose like a capricious Vesuvius, erupting at unpredictable moments that jar the reader, and raining onto the ICTR his often whimsical charges of fraud and malfeasance.

The book promises to relate “three histories”—the history of Rwanda, the defendants’ individual histories, and the larger history of international justice (p. 8). Such an ambition would challenge a monograph thrice the length of Cruvellier’s book (173 pages). The result is a sketchy and impressionistic rendering of each of these histories. Of the three, Cruvellier’s handling of the Hutu defendants’ life stories is the most satisfying. The strongest part of the book is chapter 7, in which the author explores the pathetic case of Georges Ruggiu, a Belgian civil servant turned radio broadcaster charged with incitement to genocide and crimes against humanity. A troubled man with an unstable sense of identity, Ruggiu became an ardent political activist for the Hutus in 1993, eventually receiving a job with RTL, the rabidly pro-Hutu radio station instrumental in coordinating the genocide over Rwanda’s airwaves. Among his contributions to mass killing, Ruggiu drafted hit lists of targeted politicians and displayed them at the RTL offices. The machete killers visited RTL to consult these lists; as the targeted persons were murdered, their names were crossed out. Ruggiu was eventually convicted in June 2000 and sentenced to a prison term of twelve years. Cruvellier’s reconstruction of Ruggiu’s story is deftly poignant, making clear that this piteous man ultimately found his place in the world at the cost of becoming an accomplice to genocide. The psychological complexity of the Ruggiu case confirms William Blake’s insight that “cruelty has a human heart.”[2]

A key to the effectiveness of chapter 7 is the author’s restraint in telling Ruggiu’s life story. Judgment is suspended and the defendant’s biography emerges in compelling form. Unfortunately, Cruvellier does not practice the same restraint in other parts of the book. Instead, its pages are devoted to a sustained philippic against the ICTR and, in particular, the OTP. The bitterness of the author’s attacks—for this reader, at least—weakens his standing as a reliable, fair-minded commentator on the trials. His language drips with bile, and

his observations on the OTP’s trial tactics are less balanced criticisms than angry fulminations, often delivered in a snide, dismissive tone. On the refusal of the ICTR to grant the request of one defendant (Jean Kambanda) for a specific lawyer, Cruvellier berates the court for being “spineless and oversensitive,” noting en passant that “the UN is a kingdom for petty tyrants and the obsequious.” Rather than critically assess the ICTR’s justification for denying Kambanda’s request (viz., the requested counsel had been sanctioned by the court while representing a previous defendant), the author merely assumes, without argumentation, that the proffered reason was a “pretext” that sent the tribunal on a “downward spiral” (p. 41).

Cruvellier’s unbalanced treatment of the Kambanda case is symptomatic of his approach to other ICTR proceedings in the rest of the book. His method is to extrapolate strongly worded conclusions that are either unsupported by his evidence, or amount to highly speculative, idiosyncratic inferences. Examples of this apodictic style are numerous in the text, but I will cite just a few by way of illustration. Cruvellier asserts that “out of the eleven national leaders of the killers who came to symbolize the effort to exterminate Tutsis, three were dead, two had vanished, three others were entirely or partially spared by justice, and three had been tried, albeit quite belatedly.” From the “belated” prosecution of the three Interahamwe leaders, the author concludes that the OTP was “motivated by interest more than duty” (p. 55). Such allegations of “interest” (a vague term the author leaves undefined) are grave, and should be based on evidence and measured interpretation, neither of which Cruvellier presents to support his view. Similarly, the ICTR’s decision not to release a defendant whom the appellate chamber in The Hague had placed beyond prosecution is construed as a sign of “utter disarray,” a judgment that the facts surrounding the defendant’s pending release from custody belie (p. 110). The Rwandan government, infuriated at the prospect of a

notorious genocidaire leaving his jail cell scot free, retaliated by suspending cooperation with the ICTR--meaning that the tribunal's access to essential witnesses would be cut off in future trials. The decision not to release the defendant was motivated by an understandable desire to placate the Rwandans and preserve access to witnesses. We could debate the ethicality of the OTP's actions here, yet they hardly seem indicative of "utter disarray."

Elsewhere, the author appears to soft-pedal the contributions of proven killers to the genocide of the Tutsis. He describes the indictment of Ignace Bagilishema, the one-time mayor of Mabanza charged with transporting refugees to Kibuye with the knowledge they would be massacred there. Cruvellier downplays the charges against the defendant, characterizing them as "the most benign indictment ever confirmed by an ICTR judge" (p. 117). One page later, however, the author summarizes a chain of events as related by witnesses that, if true, reveals Bagilishema as a major perpetrator of the Rwandan genocide. These include the defendant's actions in luring Tutsi refugees out of hiding when told by another mayor that Mabanza "was the only commune where there was still 'scum and filth'" (p. 118). Witnesses placed Bagilishema at a leading massacre site in Kibuye, the Gatwaro stadium, where he not only coordinated mass killings but also launched the atrocity by personally killing a victim with his own hands. Uneven and contradictory witness statements ultimately led to Bagilishema's acquittal. Inexplicably, after disparaging the court and the OTP for their zeal in prosecuting this and other cases, the author expresses doubt that justice was done. For Cruvellier, the ICTR was deficient whether it convicted or acquitted.

The author's discussion of Bagilishema's trial highlights another regrettable feature of his analysis: a tendency toward naïveté about legal process. This tendency runs throughout the book, but it is nowhere more evident than in Cruvelli-

er's chapter on the trial of Alfred Musema, convicted in January 2000 of genocide, extermination, and rape. In the teeth of eyewitness testimony, Musema raised an alibi defense, maintaining that he was not physically present at the crime scenes. It is significant for the author that the rape charge was added late; unsurprisingly, he impugns the motives of the OTP in introducing on the eve of the trial a "witness who came out of the shadows, both alive and anonymous, convincing, yet unverifiable" (p. 97). Cruvellier is outraged that Musema would be convicted "on the basis of this uncorroborated, miraculously belated testimony"--not just because it was belated, but also because of lapses in its "narrative continuity" and inconsistencies between the victim's statement and that of another witness. The court's acceptance of this testimony becomes an index of its lack of credibility: "Musema was not the only one to suffer from the absence of reasonable doubt. Trust in those tasked with trying him was also shaken" (p. 100). Although Musema's conviction was overturned on appeal, the ICTR's willingness to convict discredited it (an assertion the author offers without support). What Cruvellier does not account for in his splenetic discussion is the near universal problem of witness testimony. Like military commanders who must fight not with the armies they wish for but the armies they actually have, prosecutors have to litigate their cases with the best evidence available. In the absence of physical proof, the foundation of such cases is witness testimony--a notoriously problematic source of forensic evidence. While human memory is deeply imperfect, the real-world alternative facing the prosecutor is to dismiss the case altogether. This, too, is a problematic choice, insofar as it violates Hugo Grotius's dictum that "serious crimes must be punished." [3] Acceptance of conflicting testimony by itself does not discredit the ICTR (judges and juries in actual cases often accept flawed witness testimony, warts and all), nor does the reversal of its verdict by the appellate

chamber ipso facto prove that the court acted dishonestly or mendaciously to railroad Musema.

The author's naïve attitude toward law reaches its acme in the final two chapters, where he accuses the ICTR of exchanging principled justice based on moral conviction with "realjustice" arising from sordid political considerations. Cruvellier's target, in addition to the tribunal, is the UN and Western powers like the United States, France, and Belgium—that is, the countries that had failed to arrest Rwanda's descent into genocide in 1994. The Rwandan Patriotic Front (RPF), the predominately Tutsi rebel group that governed Rwanda after the genocide, was the only winner; the UN and the Western powers were the losers. Stung by remorse over its moral failures, the West established the ICTR as an act of atonement (hence the "Court of Remorse" in the book title); however, the West's contrition emboldened the RPF, which exploited the Western powers' guilt in order to guarantee the RPF's immunity from prosecution for its own crimes against humanity perpetrated during the conflict. Cruvellier refers to the work of the ICTR as "loser's justice," a court born under an ill-omened star of guilt (p. 166). The ICTR's inauspicious birth led it down a path of expedience and ignoble compromise, culminating in the 2002 decision to suspend investigations into the RPF's alleged crimes. At this point, the author insists, the court was ruled by "realjustice," a pun on Bismark's Realpolitik ("politics of reality"). Cruvellier's unconvincing thesis is that, from this time forward, the ICTR was dominated not by the "need to meet an urgent demand for justice," but "by administrative requirements—the prosaic need to process pending cases within a fixed period of time" (p. 169). This argument is oblivious to the fact that law, especially criminal law, is nearly always a translation of morality into bureaucratic and administrative categories. For years, victims in rape trials have complained about the procedural rigidity and formalism of the criminal justice system, which seems so stolidly resistant to the intense moral outrage of the

crime. In the United States, such criticisms have opened the criminal trial in many jurisdictions to victim impact statements as a means of re-potentiating the trial as a forum for community denunciation. In short, the inescapable "reality" of any proceeding organized by a neutral third party will always structure the visceral quest for justice.

If there is a takeaway from this book, it is the author's contention that the ICTR is not Nuremberg. The International Military Tribunal at Nuremberg is held out as the polar opposite of the ICTR. Where Nuremberg was organized by the victors, the ICTR was organized by the losers. Where Nuremberg sought justice for unparalleled crimes, the ICTR sought to appease the RPF in a fit of guilt. Where Nuremberg successfully prosecuted major war criminals under a theory of criminal conspiracy, the ICTR failed to connect the Rwandan genocide to a central plan. (Cruvellier is mistaken here; the prosecutors at Nuremberg were only successful in linking the Nazis' plans to wage aggressive war to a conspiracy. In fact, the tribunal dismissed the charges alleging conspiracy to commit war crimes and crimes against humanity.) Finally, where Nuremberg became a symbol of accountability for crimes of state, the ICTR was but a "stooped, shameful shadow of a world that had failed" (p. 167). As in so much of his book, the author's critique seems unduly harsh. Rather than emphasize the lamentable shortcomings of the court, we might just as readily see it as a lineal descendant of the Nuremberg tribunal, asserting with it that *raison d'état* will no longer protect mass murders, rapists, and torturers who act as agents of political authority. If such crimes are to be punished while ensuring the accused's due process rights, the conversion of our yearnings for justice into categories of substantive law and procedure is inevitable. Deals will sometimes have to be made with unsavory characters in order to reach the bigger fish (the U.S. justice system routinely turns perpetrators into favored state witnesses against their confederates, offering them *quid pro quos* for their testimony). Er-

rors will be made, justice will sometimes be thwarted, and political forces will often intrude. At moments in his book, the author captures some of these complexities, but he demonstrates little patience--or sympathy--for the real-world search for justice.

Notes

[1]. Cited in Donald M. Bloxham, *Genocide on Trial: War Crimes and the Formation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001), 146.

[2]. William Blake, "A Divine Image," in *The Portable Blake*, ed. Alfred Kazin (New York: Penguin Books, 1974), 120.

[3]. Hugo Grotius, *The Rights of War and Peace*, bk. 2 (Indianapolis: Liberty Fund, 2005), 949ff.

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Citation: Michael S. Bryant. Review of Cruvellier, Thierry. *Court of Remorse: Inside the International Criminal Tribunal for Rwanda*. H-Law, H-Net Reviews. November, 2010.

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