“FULLY AWARE OF THE POWER OF WORDS”:

MORALITY, POLITICS, AND LAW IN THE RWANDAN “MEDIA TRIAL"

A Thesis

by

BRADLEY SERBER

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

August 2012

Major Subject: Communication Studies

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Morality, Politics, and Law in the Rwandan “Media Trial”

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ABSTRACT

"Fully Aware of the Power of Words":

Morality, Politics, and Law in the Rwandan "Media Trial". (August 2012)

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Incitement to genocide is a fairly recent and elusive concept in international law. First used at Nuremberg, the concept did not reappear for more than fifty years, when the International Criminal Tribunal for Rwanda (ICTR) used it to convict and sentence three media executives: Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze. Using their trial as a case study, I use rhetorical analysis to help clarify both the concept of "incitement" and the role that morality, politics, and law play in genocide and its aftermath.

This case study helps to explain some of the complexities that often accompany genocide. First, because incitement depends on one person's words and another's actions, the answer to the question of who is responsible for the final outcome is unclear. Second, because genocide affects, and is affected by, the decisions of both local and international communities, actions (not) taken by either affect one another in significant ways. Finally, in the aftermath of genocide, questions of culpability, punishment, and reconciliation complicate international law. Based on this case study, I suggest ways in which the international community might learn from what happened in Rwanda.

DEDICATION

This thesis is dedicated to the memories of two of the humblest and most altruistic individuals I have ever known: my adopted grandfather, Michael Engel, and my father, Stephen Serber. Additionally, I dedicate it to my nephew and niece, Dimitri and Lilly Queen. May you grow up in a world free of the problems I describe here.

ACKNOWLEDGEMENTS

I would like to thank my adviser, Jim Aune, and my mentor, Jen Mercieca for their support, encouragement, guidance, and advice. In addition to preparing me for this project and the ones that will follow, Jim and Jen have taught me countless lessons about life itself. I also want to thank Larry Yarak for his critical eye and great recommendations and Colleen Murphy for her passion for transitional justice and for her great taste in reading materials. Finally, I want to thank my family and the faculty, staff, and students in the Department of Communication for their support and encouragement.

NOMENCLATURE

CDR	The Coalition pour la Défense de la République
ICTR	International Criminal Tribunal for Rwanda
RPF	Rwandan Patriotic Front
RTLM	Radio-Télévision Libre des Mille Collines
UNAMIR	United Nations Assistance Mission for Rwanda

TABLE OF CONTENTS

Page

ABSTRACT iii

DEDICATION iv

ACKNOWLEDGEMENTS v

NOMENCLATURE vi

TABLE OF CONTENTS vii

CHAPTER

I INTRODUCTION 1

II MORAL RESPONSIBILITY AND THE TRANSFER OF WORDS TO ACTION: UNDERSTANDING INCITEMENT AS SITUATIONAL VIOLENCE 13

III "ACTUALLY 'DO SOMETHING'": THE INTERNATIONAL POLITICAL RESPONSE 39

IV "IMPERFECT MECHANISMS . . . YET WHAT IS THE ALTERNATIVE?": INTERNATIONAL LAW AND INCITEMENT 64

V CONCLUSION 84

REFERENCES 88

VITA 93

CHAPTER I

INTRODUCTION

To date, the legal concept of *incitement to genocide* has only appeared in two international trials. As a result, the concept and its application remain unclear. Lawyers, scholars, and those who have been affected directly by genocide continue to debate whether incitement is possible, and, if so, what constitutes incitement, whom to hold responsible for it, what actions can and should be taken to prevent it, and what the appropriate punishment for it should be.

Before looking at *incitement* in the context of genocide, however, it makes sense to look first at the concept generally. In the U.S., the concept that we know now as *incitement* evolved from the English Common law's concept of *bad tendency*, which sought to curb potentially dangerous speech in its early stages. Over time, the Supreme Court has refined the concept through a few later iterations. In *Schenck* v. *United States*, for example, Justice Oliver Wendell Holmes established the *clear and present danger* standard, which asserted the existence of "substantive evils that Congress has a right to prevent."[1] In *Brandenburg* v. *Ohio*, the Supreme Court replaced *clear and present danger* with the current standard of *incitement*, which limits government action to cases in which "advocacy is directed to inciting or producing imminent lawless action and is likely to produce such action."[2] With its emphasis on the likelihood of producing effects,

This thesis follows the style of *Rhetoric & Public Affairs*.

[1] *Schenck v. United States*, 249 US 47 (1919).
[2] *Brandenburg v. Ohio*, 395 US 444 (1969).

the *Brandenburg* test significantly narrows the scope of words that qualify as *incitement*.

In addition to understanding the developmental history of *incitement*, reflections on the concept as a limit of free speech offer some food for thought. For example, in his dissent in *Gitlow* v. *New York*, Justice Holmes, who devised the idea of *clear and present danger*, argued that "every idea is an incitement."[3] In other words, to apply any kind of incitement test would necessarily be arbitrary and subjective. Given this history, the U.S. has been strongly protective of free speech and hesitant to punish anyone for *incitement* for a very long time.

Of course, the strong protection of free speech in the US makes its laws very different from those of other Western democracies and other countries around the world. Questions thus arise about how to handle *incitement* when it enters into international debates. These questions originally surfaced on an international level during the trial of Nazi propagandist Julius Streicher at Nuremberg. They did not resurface again until more than fifty years later, when the International Criminal Tribunal for Rwanda began to try major figures involved in the Rwandan genocide. In an effort to make sense of these questions, I explore the latter trial, the so-called "Media Trial" of three Rwandan media executives (Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze) for incitement to genocide. This trial, which began in 2001, was the first case of its kind in more than fifty years. Despite its many complications, the trial ultimately convicted

[3] *Gitlow v. New York*, 268 US 652 (1925).

all three men on counts of genocide, incitement to genocide, complicity in genocide, and crimes against humanity.[4]

However, as the many complications of this trial demonstrate, the process of finding, detaining, and prosecuting these men was anything but simple. First, all three of them fled the country after the genocide, and efforts to find and arrest them took a great amount of time, energy, and international cooperation.[5] Second, even after they were captured, legal issues related to their detainment became grounds upon which they could challenge the court's authority and appeal for their freedom. Finally, several complications with adjudication related to the struggle between local and international jurisdiction raise some tough questions about international law and genocide prevention. Consequently, this trial makes a good case study for testing international law and politics as it poses more questions than it answers.

With this in mind, I analyze the issues of morality, politics, and law involved in this trial. The moral question here is one of media ethics, agency, and culpability. It asks if incitement is possible, and, if so, where the blame should lie for it. The second question, the question of politics, is primarily concerned with genocide prevention by the international community. It asks what the role and responsibilities of those outside of the direct context of the genocide should do once they have identified a possible case of incitement. Finally, the third question focuses on the international legal process. It asks

[4] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, ICTR-99-52-T (2003).
[5] For that matter, their alleged co-conspirator, Félicien Kabuga, remains at large to this day.

who should be in charge of prosecuting those who are accused of incitement to genocide and what the appropriate legal consequences should be.

Of course, these dimensions—morality, politics, and law—are not mutually exclusive in each of these chapters. The political question of what uninvolved parties should do once they can identify a possible case of incitement is as much a moral question as the legal question of who should be in charge of trying accused criminals is political. Nevertheless, dividing my chapters this way makes logical sense as it simultaneously traces the beginning, middle, end, and aftermath of the genocide and moves from local to international concerns.

The morality chapter of this thesis will examine questions of agency and culpability in cases of incitement. Whereas it might be tempting to view incitement as a relatively clean and basic cause-and-effect relationship, the reality is that it is not always so simple. By definition, the concept of incitement implies a person or group who incites through words and a person or group who acts in response to those words. However, the mechanism by which this process occurs often eludes explanation. For instance, it is often difficult to pin down why strong words lead to action in some situations and not others or to determine a priori which combination of words must be uttered in order to move people to action.

Questions of agency and culpability in cases of incitement can thus take many forms, depending how the concept is framed. For instance, a view of incitement that describes the process as an inevitable cause-and-effect relationship from which the audience has no escape and no control might place the blame for actions heavily, if not

entirely, on the speaker. At the other extreme, a view that concludes that words have little or no effect on the receivers of messages might place the blame for actions heavily, if not entirely, on the individual(s) who committed them. Somewhere in between these views lie other perspectives that might share the blame (for instance, the view that individuals or groups might feel angry and vigilant but will not act unless they are provoked by strong words). Therefore, the concept of incitement is not as clean and simple as we sometimes would like to believe.

Further complicating this issue is the fact that different countries have taken different positions on questions of hate speech and incitement. For example, the United States, which strongly protects the freedom of speech, views incitement differently from post-Nazi Germany, which, given its history, enforces stricter limits on hate speech. Accordingly, when questions of incitement warrant international attention, the international court must navigate the tension among competing speech codes. As a result, the manner in which the international court frames questions of agency and culpability matters. For starters, it determines the extent to which politicians, media executives, and other leaders can be held accountable for their words. Not only does the court's position determine who can and cannot be prosecuted under international law, but it also sets legal precedent for future cases. As a result, the letter and spirit of decisions that the court renders matter for the sake of legal arguments. Furthermore, having a clearly defined standard of incitement backed up with the threat of severe international legal consequences might serve as a deterrent to those who might desire to incite genocide in the future.

With all of this in mind, it makes sense to examine how the ICTR has dealt with questions of agency. In their indictments and rulings in the "Media Trial," the court made some noteworthy claims about the power of language and the role of the media. For example, in their conviction of Nahimana, the Court placed heavy blame on him as a speaker rather than on his listeners:

> You were a renowned academic, Professor of History at the National University in Rwanda. You were Director at ORINFOR and founded RTLM radio station as an independent and private radio. You were Political Adviser to the Interim Government sworn in after 6 April 1994 under President Sindikubwabo. You were fully aware of the power of words, and you used the radio—the medium of communication with the widest public reach—to disseminate hatred and violence.[6]

Framing agency this way helps explain why the court initially sentenced Nahimana and Ngeze to life in prison and Barayagwiza to 35 years.

Although the ICTR's ruling provides some closure for this case, it leaves some important unanswered questions for the future: Does "incitement" really exist? If so, what exactly constitutes incitement? Is it possible to determine the point at which one person's words end and another's actions begin? Is it possible to prevent incitement without censoring important ideas and worthy criticism? Can the international community define and enforce an international standard of incitement? If so, what would

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[6] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Summary 29 (2003).

make an appropriate punishment for it? Can a consistent international legal precedent for this concept deter potential criminals in the future?

The ICTR has certainly wrestled with many of these questions and has tried to provide its own answers. Consequently, how the court frames the agency of various actors determines who can and should be prosecuted under international law and how they should be punished. Additionally, it shapes how people all over the world understand the communication process and sheds light on the manner in which humanity grapples with ethical dilemmas. The purpose of this chapter, then, is to explore the options available to the international court when it comes to rendering decisions about incitement when questions of agency and culpability are not immediately clear.

To explore these options, I examine how different countries define incitement, literature about agency and ethics, and the judges' direct statements to Nahimana, Barayagwiza, and Ngeze about the power of language. A comparison of international speech codes will show the available possibilities for definitions of the concept, and an analysis of important cases, rulings, and responses will help evaluate their strengths and weaknesses. Additionally, literature about agency, ethics, and violence will provide theoretical grounds for legal applications. Finally, drawing lessons from the events that took place in Rwanda, I suggest some ideas for the future.

The next chapter shifts the focus from local issues to larger questions involving international politics. Moving away from the process of how incitement operates on the ground, this chapter examines how external bodies (other state and non-state entities) respond to accusations of incitement to genocide. Whereas the previous chapter

examined the agency and culpability of those directly involved in the incitement process, this chapter will examine how the process might be interrupted from the outside. It will ask what roles and responsibilities, if any, external states and international bodies should have when it comes to genocide prevention.

In this chapter, I focus on the rhetoric that influential external policymakers used to justify their decisions not to intervene in the genocide. This chapter will try to understand the discussions and actions of the United States, France, China, and the United Nations. If many people around the world share the goal of genocide prevention, the puzzle of Rwanda is how genocide could be carried out there while so many people did nothing.

The US has received much of the criticism of the West for its failure to intervene, and perhaps rightfully so. Members of the US Department of State and others within the Clinton administration knew what was happening in Rwanda and chose not to get involved. The common justification they usually provided was the failure of the US to prevent violence in the Somali Civil War.[7] After some particularly brutal incidents involving US troops in Somalia, many senior policymakers hesitated to commit US troops to African causes. However, other policymakers suggest that Rwanda would probably not have been a priority regardless of what happened in Somalia. Although many people would argue that the US does not and should not need to take the paternalistic role of world police, critics of this position argue that US military

[7] Jared Cohen, *One Hundred Days of Silence: America and the Rwandan Genocide* (Lanham, MD: Rowman & Littlefield, 2007).

involvement could have prevented or at least curtailed the length and severity of the genocide.

Moreover, many have argued that the US could have made a significant dent without necessarily committing any troops at all. This argument explores the option of a radio jam, which would disrupt the radio signals that Nahimana and Barayagwiza used to spread hate messages and, more importantly, explicit directions to the *Interahamwe* militias. Not only could a radio jam have provided an alternative to a military incursion, but it also could have directly negated the power of messages that arguably constituted incitement.

Considering the options available to the US and the severity of the events and aftermath of the genocide, many critics point fingers at the US government for its inaction. To some extent, some of this finger-pointing is justified; at the same time, the US cannot fight all of the world's battles (hard as it may try), and when it does, it should not have to do so singlehanded. Moreover, more recent scholarship has begun to point fingers elsewhere. For instance, some scholars have examined the links between former French President François Mitterrand and his son Jean-Christophe and former Rwandan President Juvénal Habyarimana, whose assassination triggered the genocide. Additionally, others have begun to question the roles that other countries might have played. Finally, some people have also pointed fingers at the UN for its early withdrawal from the country. The situation is therefore much more complicated that simply a US failure.

In this chapter, I analyze the rhetoric used to justify and critique political decisions (not) to intervene. As more information about the Rwandan genocide becomes available, it seems clearer that the genocide resulted from many collective communicative failures rather than simply the failures of one or two parties. If this proves to be true, a close examination of the decision-making processes of external parties should help determine how they individually and collectively failed to prevent genocide in Rwanda and how the international community might overcome these obstacles in the future.

Additionally, I explore the rhetoric of retrospective suggestions for preventing genocide. Many of those closely involved in the genocide have proposed lessons to be learned from Rwanda and suggestions for preventing future genocides. Unfortunately, the "never again" mantra of Holocaust remembrance has not lived up to its promise even after Rwanda, given the events that took place in Darfur. Nevertheless, genocide prevention remains a worthy goal, and arguments toward this cause deserve to be scrutinized.

Next, the legal chapter examines the ICTR's handling of the Rwandan genocide from. The question here shifts focus again from the rhetoric of local and external actions during the genocide to the international response after it ended. After the genocide, the UN granted the ICTR authority to try cases of high-level genocidaires and granted Rwanda authority to try low-level ones. In this particular case, the UN's international court system has been both praised for simplifying and blamed for complicating the judicial process. Consequently, a critical assessment of the ICTR's strengths and

weaknesses might facilitate genocide prevention, or, at the very least, lead to better adjudication of cases in which the international community fails to prevent genocide.

Of course, the ICTR has made some remarkable achievements, and it deserves to be commended for them. First, the ICTR assumed a role that would be simply too large and too difficult for Rwanda's legal system to handle in the direct aftermath of the genocide. Second, as I previously mentioned, the ICTR successfully apprehended and convicted these three men for incitement to genocide. Given that all three had fled the country, that efforts to find and capture them required strong international political pressure, negotiation, and cooperation, and that several legal and political obstacles almost led to their release throughout the entire process, it is simply astounding that even the ICTR succeeded in these efforts. In short, the Rwandan genocide and its aftermath demonstrate a need for an international justice system.

On the other hand, the ICTR has also been criticized from several angles. For starters, the Rwandan government expressed dissatisfaction with the creation of the tribunal. This contentious issue begs the question of whether international courts should have the right to overrule the will of many of the people whose interests they seek to defend. Second, like the *gacaca* courts (local trials) within Rwanda, the work at the ICTR has been painfully slow. The court did not deliver its sentence to Nahimana, Ngeze, and Barayagwiza until 2003, nearly a decade after the genocide, and it is still trying cases to this day. Third, international jurisdiction opens up a Pandora's Box of free speech questions, including but not limited to competing standards, line drawing, self-censorship, and government censorship. Whereas other issues in Rwanda's case

demonstrate a need for international justice, these issues demonstrate a need for local justice. It seems that some kind of balance must be struck between the two, but the exact line is not yet clear.Accordingly, this chapter attempts to resolve some of the tension between local and international jurisdiction and to explore the free speech implications of an international incitement standard. To explore answers to some of the unresolved issues of the ICTR, I turn to law reviews, literature on transitional justice and reconciliation, literature about free speech and international law, and statements made by lawyers and officials about the legal process of the ICTR. By tying the moral, political, and legal issues together, I hope to learn from the strengths and weaknesses of the "Media Trial" in order to further discussions of legal and political rhetoric, free speech, transitional justice, and communication ethics.

CHAPTER II

MORAL RESPONSIBILITY AND THE TRANSFER OF WORDS TO ACTION: UNDERSTANDING INCITEMENT AS SITUATIONAL VIOLENCE

The first question to ask when dealing with an abstract concept like incitement is an ontological one; that is, whether such a phenomenon even exists. Indeed, it is at least hypothetically plausible to suggest that the concept of incitement is invented, arbitrary, and even meaningless. To hold this position, one could insist that individuals maintain complete control over their own decisions and that no combination of words can ever truly provoke them to action. This rather extreme approach posits that individuals act entirely out of their own volition. Perhaps the greatest strength of such a position lies in the fact that it grants unlimited agency to those on the receiving end of messages. For better or worse, it treats people as free, active, and autonomous beings who are fully capable of making their own decisions. However, as any teenager who has ever tried to fit into the "popular" crowd knows, social pressures can and do affect humans' ability to make rational decisions.

This approach to incitement therefore encounters several problems. First, it implies that both the words we use and the status of speakers are unimportant and inconsequential. Second, it fails to explain why, under many circumstances, violent or even genocidal inclinations that stir among a population often do not materialize. Third, it exempts those who use words as a way to bring harm to others from ethical responsibility. Thus, to place blame entirely on individual actors ignores the fact that

such actors, despite what may be malicious intent, often fail to act until they are provoked.

Furthermore, concrete examples from history also challenge the notion that incitement does not exist. The Rwandan genocide is one such example. In the aftermath of the genocide, an abundance of evidence has surfaced to link the media, specifically *Kangura* magazine and Radio-Télévision Libre des Mille Collines (RTLM), to a systematic extermination campaign that encouraged Hutus to rise up against their Tutsi neighbors. In the years leading up to the genocide, Rwanda was caught in a civil war between the Tutsi-led Rwandan Patriotic Front (RPF) and the Hutu government of Juvénal Habyarimana. The RPF and the Habyarimana government reached a cease-fire with the Arusha Accords in August 1993. On April 6, 1994, however, everything changed when the plane carrying President Habyarimana and Burundian President Cyprien Ntaryamira went down. Over the next three months, the Hutu *interahamwe* militias killed roughly 800,000 Tutsis and moderate Hutus. Moreover, as lawyer Christina Carroll points out, "thousands of people were raped and tortured[,] and over three million refugees were forced to flee from the country."[8] Based on this historical example, I argue that incitement exists, that it should be taken seriously in discussions of morality and criminal law, and that an understanding of incitement within a broader picture of violence requires a degree of moral and legal accountability for both inciters and individual actors in clearly identifiable cases.

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[8] Christina M. Carroll, "An Assessment of the Role and Effectiveness of the International Criminal Tribunal for Rwanda and the Rwandan Justice System in Dealing with the Mass Atrocities of 1994," *Boston University International Law Journal* 18(2000): 170.

A striking feature of the Rwandan genocide is the amount of evidence that has linked the media to the killings. The material leading up to, and certainly during, the genocide suggests that *Kangura* and RTLM created a pervasive climate of fear and divisionism that set neighbor against neighbor. The sustained, explicit, and vitriolic media campaign sent a clear message that years of ethnic conflict could only be solved through systematic extermination of the Tutsis. As Canadian General Roméo Dalliare, the commander of the United Nations Assistance Mission to Rwanda (UNAMIR), later recalled, the "hate media were essentially the soundtrack of the genocide and were deployed as a weapon."[9] Not only did the media tell people whom to hate, but also whom, specifically, to kill. In some cases, they even went farther than that. Specific recordings and transcripts from Rwanda make a strong case for incitement.

Before the genocide, both *Kangura* and RTLM were full of anti-Tutsi propaganda. Both frequently used the ethnic slurs *inyenzi* (cockroaches) and *inkotanyi* (warriors) to describe Tutsis. Ngeze stopped publishing *Kangura* a month before the genocide, but its publications before April 6 were quite explicit. For example, an article called "The Ten Commandments of the Bahutu" opened by calling Tutsis "bloodthirsty and power-hungry" and asserted that "Hutus must cease having pity for the Tutsi[s]."[10] The same article then listed a long line of offenses that made any Hutu a traitor, including anyone "who espouses a Tutsi woman, who takes a Tutsi woman as a concubine, who takes a Tutsi as his secretary or his protégée . . . who makes an alliance

[9] Allan Thompson, ed. *The Media and the Rwandan Genocide* (Ann Arbor, MI: Pluto, 2007), 3.
[10] Hassan Ngeze, "Appeal to the Bahutu Concscience (With the Hutu Ten Commandments)," *Kangura*, no. 6 (1990), http://www.rwandafile.com/Kangura/k06a.html.

with Tutsis in business, who invests his money or the State's money in the company of a Tutsi, who lends or borrows money from a Tutsi, [or] who gives favors to Tutsis in business."[11] Another issue opened with a picture of a machete (the weapon of choice for many of the perpetrators of the genocide once it was underway) and the title "What weapons shall we use to conquer the *Inyenzi* once and for all?"[12] In *Kangura* No. 40, Ngeze even published "an official list of 123 names of suspects . . . with an express warning that the government was not adequately protecting [Hutus] from these people and that they needed to organize their own self-defence to prevent their own extermination."[13] Messages like these appeared frequently in the magazine.

Although it was not published during the genocide, *Kangura* produced many volumes full of propaganda that set the stage for the hateful messages that RTLM would later broadcast to the nation. Moreover, the magazine's publisher, Hassan Ngeze, "worked very closely together [with RTLM's Jean-Bosco Barayagwiza] in the CDR,"[14] even though Ngeze did not play a direct role in the station's creation.[15] Because of its timing, *Kangura* played an indirect role in the genocide, but it maintained a consistent and extreme position of Hutu Power.

RTLM started off more moderately, but even its early broadcasts were far from innocent. As ICTR expert witness Alison Des Forges recalled:

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[11] Ibid.
[12] "Cover Illustration," *Kangura*, no. 26 (1991), http://www.rwandafile.com/Kangura/k26.html.
[13] "List of People Who Have Joined the Inkotanyi," *Kangura*, no. 40 (1993), http://www.rwandafile.com/Kangura/k40v.html.
[14] The Coalition pour la Défense de la République, an extremist Hutu political party.
[15] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Summary 14.

> From late October [1993] on, RTLM repeatedly and forcefully underlined many of the themes developed for years by the extremist written press, including the inherent differences between Hutu[s] and Tutsi[s], the foreign origin of Tutsi[s] and, hence, their lack of rights to claim to be Rwandan, the disproportionate share of wealth and power held by Tutsi[s] and the horrors of past Tutsi rule. It continually stressed the need to be alert to Tutsi plots and possible attacks and demanded that the Hutu[s] prepare to 'defend' themselves against the Tutsi threat.[16]

As RTLM repeated these messages, many people throughout the nation began to accept this logic, even if they did so reluctantly. As one witness testified, "I did not believe Tutsi[s] were coming to kill us . . . but when the government radio continued to broadcast that they were coming to take our land, were coming to kill the Hutu[s]—when this was repeated over and over—I began to feel some kind of fear."[17] RTLM had not yet explicitly called for murder, but it had stirred fear and distrust among the population.

That message changed its tone at the very beginning of the genocide. Just a few hours after Habyarimana's plane went down, the explicit message to kill became clear. On April 6, one broadcast declared that "the graves [were] not yet full" and asked, "Who is going to do the work and help us fill them completely?"[18] In the months to follow, RTLM frequently broadcast overt calls for Hutus to exterminate Tutsis. One broadcast

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[16] Alison Des Forges, "Call to Genocide: Radio in Rwanda, 1994," in *The Media and the Rwandan Genocide*, ed. Allan Thompson (Ann Arbor, MI: Pluto, 2007), 45.
[17] Frank Chalk, "Hate Radio in Rwanda," in *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire*, ed. Howard Adelman and Astri Suhrke (New Brunswick, NJ: Transaction, 1999), 99.
[18] Ibid., 98.

"called on Hutu[s] 'to rise up as a single man' to defend their country in what was said to be the 'final' war."[19] Another told the people to "rise up, stand fast, and fight the *Inkotanyi* using stones, machetes and spears, while rejoicing that in the end the *Inkotanyi* would be exterminated."[20] Another declared that "the [Hutu] revolution of 1959 [was] not over and must be carried through to its conclusion." Just a few hours after Habyarimana's death, RTLM had already begun a clear call for vengeance.

Against the backdrop of years of civil war and an assassinated president, it would not be surprising for the media to discuss who might be responsible for such an attack, nor would it be surprising to implicate the RPF as a suspect.[21] However, RTLM did much more than that. For starters, the station's calls for extermination targeted Tutsis as a whole, not just members of the RPF. One announcer made it clear that "the reason we will exterminate them is that they belong to [another] ethnic group."[22] The same announcer then told listeners to "look at the person's height and his physical appearance. Just look at his small nose and then break it."[23] Another announcer declared that "the cruelty of the *inyenzi* can only be cured by their total extermination."[24] Furthermore, when the RTLM used euphemisms like "go work" and "go clean," Hutus understood

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[19] J. F. Dupaquier Jean-Pierre Chrétien, and M. Kabanda, *Rwanda: les medias du genocide* (Paris: Karthala, 1995).Quoted in Des Forges, "Call to Genocide," 48

[20] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Barayagwiza Indictment 20.

[21] It is important to note, however, that the facts surrounding the plane crash are mysterious and uncertain. To this day it remains unclear who shot it down, and a number of conspiracy theories exist.

[22] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Judgment 7.

[23] Ibid.

[24] Jean-Pierre Chrétien, *Rwanda: les medias du genocide*: Quoted in Des Forges, "Call to Genocide," 48.

these euphemisms to mean to kill Tutsis.[25] The station repeatedly encouraged the Hutu *interahamwe* militia to commit acts of violence and murder.

Moreover, both *Kangura* and RTLM identified specific targets. RTLM often "identified certain individuals who were described as accomplices and told the militiamen to find and execute them."[26] But the announcers did not stop there. They even told people where to attack. On many occasions, RTLM listed off Tutsis' hiding places and directed the militias to attack them and kill everyone inside.[27] Perhaps more than anything else, broadcasts that targeted specific individuals show a direct link between the media and the killings.

Finally, the radio even praised those committing the genocide on the air. One announcer, for example, expressed satisfaction at the large number of *Inyenzi* killed in the country."[28] In one case, "an announcer urged people guarding a barrier in Kigali city to eliminate Tutsi[s] in a vehicle just nearing the checkpoint" and then "congratulated the killers, praising their vigilance and telling them to continue their work with greater vigour."[29] RTLM's commendation of killers thus encouraged more attacks.

Although incitement can sometimes be an elusive concept, the evidence against the media in Rwanda makes a pretty clear case. The newspaper and radio encouraged both the extermination of a whole ethnic group and the execution of particular individuals. Not only did they tell their audiences whom to kill, but they also gave

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[25] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Barayagwiza Indictment 19.
[26] Ibid., 20.
[27] Ibid., 20-21.
[28] Ibid.
[29] Ibid., Barayagwiza Indictment 21.

advice about where to go and how to do it. Evidence suggests that RTLM's endorsement of killers on air further contributed to violence on the ground. For those who deny the existence of incitement, the events in Rwanda present a significant challenge.

The ability to recognize even what seems like a clear case of incitement to genocide, however, is more of a starting point than an endpoint when it comes to questions of ethics, as genocide on its own is a complicated matter. Political Philosopher Larry May argues that, "in many ways, genocide in international law presents some of the most significant philosophical challenges of all of the areas of international criminal law."[30] As he later explains, genocide "raises significant questions of how to think about individual culpability because the crime of genocide is both in act and in intent a collective crime."[31] When many people act together as part of a large effort, it is difficult to sort out who did what.

The tension between individual and collective acts certainly comes to light in the aftermath of the Rwandan genocide. Just the sheer efficiency of the killing and the number of accused genocidaires in Rwanda presents a great challenge to those who wish to assign responsibility. As Michael Barnett explains:

> In one hundred days, between April 6 and July 19, 1994, [Rwandan Hutus] murdered roughly eight hundred thousand individuals. For the statistically inclined, that works out to 333½ deaths per hour, 5½ deaths per minute. The rate of murder was even greater during the first four weeks, when most of the deaths occurred. The Rwandan genocide, therefore, has the macabre distinction of

[30] Larry May, *Genocide: A Normative Account* (New York, NY: Cambridge University Press, 2010). 2.
[31] Ibid.

> exceeding the rate of killing attained during the Holocaust. And unlike the Nazis, who used modern industrial technology to accomplish the most primitive of ends, the perpetrators of the Rwandan genocide employed primarily low-tech and physically demanding instruments of death that required an intimacy with their victims.[32]

To accomplish this efficiency required roughly a one-to-one ratio of killers to victims, a massive scale on both ends.[33] Even though the "everyone is doing it" excuse does not justify individual actions, when such a large number of people act in concert with one another, the threat of punishment at least appears to diminish significantly. Simply put, it is very difficult to assign moral and legal culpability under these circumstances.

If genocide alone is complex, then adding the abstract concept of incitement to it makes it even more complex, as incitement implies an ambiguous relationship among individuals and a vicarious execution of motives. If one person's words can be said to incite another person or group to action, then who is responsible for the final outcome? Where do the speaker's words end and the listener's actions begin? There are several possible answers to these questions.

One such answer has already been discussed; that is, to place blame entirely on individual actors. Yet, as both abstract theory and the concrete example of the Rwandan genocide shows, this answer falls short on a number of levels. Another answer lies in the other extreme; that is, to place blame entirely on the inciters. Like its counterpart, such

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[32] Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca, NY: Cornell University Press, 2002). 1.

[33] According to Nicholas A. Jones, "Recent [2010] estimates of those alleged to have participated in the genocide suggest that projections place the number between 760,000 and one million." Nicholas A. Jones, *The Courts of Genocide: Politics and the Rule of Law in Rwanda* (New York, NY: Routledge, 2010). 28.

an approach is at least hypothetically plausible. Once we grant that incitement could exist, it might be tempting to view it—or any communicative message, for that matter—as a pure, linear, cause-and-effect transmission of a message. Indeed, many colloquial expressions of communication (i.e. "he got the message," "her point was clear," "communication between them broke down") reflect an understanding of communication as such.

But this approach (often termed the "hypodermic needle," "magic bullet," or "conduit" metaphors in communication literature)[34] is also extreme in that it fails to capture many of the interactional aspects of the process of communication. First, such an approach presumes that incitement will automatically produce its intended effects, when the reality is that it often fails. Second, it implies a passive audience with no escape route from unwanted messages, no critical thinking skills or resistance efforts, and most importantly, no responsibility for its actions. To place blame squarely on the inciters is to treat those who actually commit the crime as helpless victims who were "just following orders"—the classic Nuremberg defense. The "hypodermic needle" model of incitement falls short because it presumes a simple cause-and-effect relationship when the reality is that communication is often more complex. More importantly, however, it pardons everyone who actually engages in immoral and criminal acts.

If neither of these extremes fully captures the nature of incitement, then a middle ground must be reached. Neither those who encourage extermination nor those who try

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[34] See Katherine Miller, *Communication Theories: Perspectives, Processes, and Contexts*, 2nd ed. (New York, NY: McGraw-Hill, 2005); Stephen R. Axley, "Managerial and Organizational Communication in Terms of the Conduit Metaphor," *Academy of Management Review* 9, no. 3 (1984).

to cause it should be free from moral responsibilities. An approach that balances these two extremes will make room to hold both inciters and individual actors accountable for their actions. Unfortunately, as is often the case, the middle ground between these two extremes is murky.

If the prevention of genocidal violence is the ultimate goal of moral and legal accountability, then a reconceptualization of different types and causes of violence can help assign culpability to multiple parties. Here, some recent work in micro-sociology shows some promise. Sociologist Randall Collins suggests that many common assumptions about violence are inaccurate. In particular, Collins struggles with the idea that some individuals are naturally more likely to engage in violence than others. In his effort to identify the causes of violence, Collins argues that sociologists, psychologists, and others interested in violence have overemphasized background conditions and personality traits that lead to violence. He argues that "it is a false lead to look for types of violent individuals, constant across situations. A huge amount of research has not yielded very strong results here."[35] Rather than looking for stable, identifiable traits that produce violent tendencies, Collins instead shifts his attention to violent situations. In his broad micro-sociological study of violence across a wide variety of contexts—soldiers in combat, domestic abuse, bullying, fictional entertainment violence, sports riots, terrorism, etc.—Collins argues that situational characteristics, as opposed to personality traits and background conditions, predetermine more accurately whether violence will occur.

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[35] Randall Collins, *Violence: A Micro-sociological Theory* (Princeton, NJ: Princeton University Press, 2008).

Collins concedes that "conditions, such as being subject to poverty, racial discrimination, family disorganization, abuse, and stress" might contribute to a person's motive to commit violence, but he argues that these conditions "are not sufficient . . . [and] are far from determining whether violence will happen or not."[36] Indeed, it is easy to identify many people who live under one or more of these conditions who do not engage in violence and also to identify many who come from backgrounds free of these conditions who do. Some important limitations to such theories, then, include the objections that they are overly deterministic and do not account for all types of behavior.

Collins's critique of these theories extends these objections in order to challenge another common assumption that the theories perpetuate. "My objection across the board," he writes, "is that such explanations assume violence is easy once the motivation exists. Micro-situational evidence, to the contrary, shows that violence is hard."[37] To support this claim that violence is difficult to carry out, Collins cites military and police studies, conducts photographic analysis of people engaged in violence, and examines narrative testimony from a variety of sources all over the world. His significant body of evidence points to the same conclusion: that violence is difficult to execute unless the situation unfolds in a way that makes violent actors confident in their ability to succeed.

Based on this evidence, Collins argues for the existence of "confrontational tension and fear" that inhibits humans from engaging in most violent acts:

> [V]iolence is a set of pathways around confrontational tension and fear. Despite their bluster, and even in situations of apparently uncontrollable anger, people are

[36] Ibid., 20.
[37] Ibid.

> tense and often fearful in the immediate threat of violence—including their own violence; this is the emotional dynamic that determines what they will do if fighting actually breaks out. Whether indeed that will happen depends on a series of conditions or turning-points that shape the tension and fear in particular directions, reorganizing the emotions as an interactional process involving everyone present: the antagonists, audience, and even ostensibly disengaged bystanders.[38]

As Collins argues, this confrontational tension and fear is very difficult to overcome. It is precisely for this reason, he suggests, that previous theories have fallen short. "No matter how motivated someone may be," Collins argues, "if the situation does not unfold so that confrontational tension/fear is overcome, violence will not proceed."[39] In other words, situational context matters more than stable socio-psychological traits.

Such an understanding of the nature of violence helps explain why economically disadvantaged Hutus engaged in genocide precisely when they did. The colonial history of Rwanda makes it easy to construct a narrative of the violence based on systemic inequality. When the Belgians ruled Rwanda, they privileged Tutsis over their Hutu counterparts. As Paul Rusesabagina recounts, "Tutsi[s] were told over and over that they were aristocratic and physically attractive, while the Hutu[s] were told that they were ugly and stupid and worthy only of working in the field."[40] Although Hutus comprised a majority of the population, Tutsis comprised Rwanda's elite. No doubt systemic

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[38] Ibid., 8.
[39] Ibid., 20.
[40] Paul Rusesabagina, *An Ordinary Man* (New York, NY: Penguin, 2006). 23.

inequality gave Hutus a reason for violence. To be sure, economic disparity provided a motive for Hutus to rise up against Tutsis, and widespread violence did erupt at several points after Rwanda gained independence.

Yet, Hutus did not have a monopoly on this violence before 1994; Tutsis also engaged in massacres of Hutus. Thus, even though Hutus constituted a majority of Rwanda's population, widespread Hutu violence always carried with it a threat of Tutsi retaliation. Before 1994, Rwanda had extremist speech and incidents of violence, but the majority of Hutus did not participate in either. Moral reservations undoubtedly contributed to many Hutus' abstention from the ethnic conflict before and even during the genocide. But a substantial number of individuals suddenly engaged in violence after April 6. For these individuals, something else must explain why so many Hutus abstained from violence until April 6. If Collins's theory holds, then these Hutus could have possessed the motive to engage in genocide, but "confrontational tension and fear" previously inhibited them from action. In order to engage in genocide (or any violence), a group must have a way to overcome confrontational tension and fear.

How does that happen? Collins lists several possible mechanisms. One partial explanation is simply that distance from the enemy increases a person's confidence that he or she can attack without much risk of being attacked. As those who engage in violent confrontations approach one another, confrontational tension and fear increases. For example, military studies indicate that shooters at close range often do not fire,[41] and

[41] Collins, *Violence*: 48.

even soldiers who aim well in training often miss in battle.[42] Distance also helps explain why snipers are generally more effective than other shooters[43] and why gang members engage in drive-by shootings.[44] Yet, in Rwanda, where the militias executed much of the violence with machetes (about as close-range as fighting individuals can get), the distance explanation fails.

Another partial explanation that Collins offers is that "social organization is a huge component in determining the amount of violence that takes place."[45] By "social organization," Collins means physical "organizational techniques for keeping [people] fighting, or at least not running away, even though they are afraid."[46] In other words, the physical arrangement of people engaged in a fight, whether in an army formation or in a fistfight enclosed among group of spectators, often produces more fighting because people cannot physically escape the situation. In other words, if fighters go into fight-or-flight mode, social organization takes away the flight option. Furthermore, even if a fighter successfully maneuvers out of the crowd, he or she will be shunned as a coward.

The militias in Rwanda certainly fit the social organization part of Collins's theory. Simply by definition, the militias acted as groups that kept each other fighting. But social organization alone does not explain why Rwanda erupted in violence precisely when it did. Rwanda's Tutsis had long been a minority, comprising roughly 11 percent of the total population at the time of the genocide.[47] As a sheer numbers game,

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[42] Ibid., 78.
[43] Ibid., 58.
[44] Ibid., 61.
[45] Ibid., 28.
[46] Ibid.
[47] Cohen, *One Hundred Days*: 1.

Hutus could have formed militias at any point and had an organizational advantage. However, there is a bigger problem here, in that social organization really only matters in the moment. It does not explain how violence erupted in the first place. In short, it may account for some of the sustenance of the violence, but it is only a small part of the bigger picture.

Something else must be able to explain how a community shifts from genocidal intent to genocidal action. It is certainly logical to argue that a traumatic event (such as the assassination of a president) might be enough on its own to move people to action. Certainly Rwanda experienced a heightened emotional state after its president was killed. Yet, under many circumstances, assassinations of prominent leaders do not result in mass killings. Traumatic events can easily factor into climates that lead to violence, but they, too, are incomplete explanations.

A rhetorical explanation might explain more clearly how genocidal intent shifts to genocidal action. As Kenneth Burke argues, rhetoric has the power to reshape social order:

> In pure identification there would be no strife. Likewise, there would be no strife in absolute separateness, since opponents can join battle only through a mediatory ground that makes their communication possible, thus providing the first condition necessary for their interchange of blows. But put identification and division ambiguously together, so that you cannot know for certain just where

> one ends and the other begins, and you have the characteristic invitation to rhetoric.[48]

Before Habyarimana's death, Rwanda had been divided, but Hutu extremists failed to influence the majority of other Hutus to join their cause. When the president's plane went down, it shifted the rhetorical situation. A crisis such as this created an opportunity to reinforce and capitalize on the hateful themes that *Kangura* and RTLM had developed for years. Just a few hours after the plane crash, RTLM made unambiguous calls for absolute Hutu unity, and the killing began. The words over the radio also may not fully explain the shift from Hutu division to Hutu unity, but, at the very least, they reinforced it. For this reason, incitement is not inconsequential.

As a rhetorical explanation for violence, however, incitement explains more than just how a genocide starts; once genocide is underway, incitement plays yet another important role in fueling the fire. Collins argues that even in the situations in which violence does erupt, it is difficult to sustain. "When [individuals or groups] do actually come to violence," he argues, "the determining conditions are overwhelmingly in their short-term interaction."[49] Not only is violence difficult to produce, but once it happens, "it takes continuous social pressure to keep a fight going."[50] In his view, it is exhausting to overcome confrontational tension and fear perpetually. Thinking of violence as situational rather than psychological helps explain the both the efficiency and duration of violence.

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[48] Kenneth Burke, *A Rhetoric of Motives* (Berkeley, CA: University of California Press, 1962). 25.
[49] Collins, *Violence*: 337.
[50] Ibid., 14.

In Rwanda, some of the most incriminating pieces of evidence against the media include transcripts of calls to exterminate specific individuals and exposure of group hiding places. When *Kangura* or RTLM circulated the names and/or locations of various individuals, it gave the militias a clear advantage and handed the targeted individuals a virtual death sentence. Furthermore, when the radio spread anti-Tutsi propaganda or celebrated the militias' actions, it added to the atmosphere of Hutu solidarity. Inflammatory messages and explicit directions certainly help explain the efficiency and duration of the violence.

If Collins's situational approach more accurately describes how violence occurs than previous sociological and psychological theories, then it can also be a useful tool to explain how genocide operates. A key challenge to the study of genocide is to explain how so many people can engage in sustained, organized, efficient, and brutal killing of their neighbors. Here I have argued that incitement can be an important tool that contributes to this process. It is certainly not the only tool that causes or fuels genocide, but its role as a catalyst is powerful enough that it must not be ignored. As a way to overcome Collins's confrontational tension and fear, incitement helps to explain how a group can enter into and sustain a campaign of systematic extermination.

More importantly, viewing incitement as part of a larger system of contextual violence makes room to hold both the inciters and individual actors accountable for their actions. Yet, once again, this brings up the question of culpability. To hold both inciters and individual actors accountable opens up another important question: to what extent

should each be held accountable? Once again, the navigation between extremes is not easy. In his discussion of the issue, May outlines this tension well:

> The question of what role individual intent should play in crimes that are by and large collective ones is a very difficult one. On one level it seems unfair to try to make an individual responsible for a crime perpetrated by a group upon another group. Indeed, the most appropriate thing to do is to hold the group responsible. But criminal law is not well set up for such proceedings. Criminal law is designed to deal with individual people in the dock. Normally, of course, this is not problematic if the individual is charged with a crime that he or she has fully committed on his or her own. But when an individual is charged with a collective crime such as genocide and that individual only did a part of the crime, something seems to have gone wrong. This is why the individual who is most deserving of conviction and punishment, if anyone is, will be the one who planned the crime, and only secondarily the one who merely participated in it.[51]

Indeed, May's approach, written long after the genocide, is consistent with the actual approach taken by the ICTR. The ICTR took on the leaders of the genocide, and it included senior media executives among those who helped orchestrate the genocide.

Meanwhile, the court relegated many of the individual actors to the local courts. Although May makes a good point that "the most appropriate thing to do is to hold the group responsible," the group is far too large to try in an international court.[52] To give hundreds of thousands of Rwandans fair trials in an international court would cost too

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[51] May, *Genocide*: 135.
[52] For that matter, it may even be too large even for local courts. I will discuss this in Chapter IV.

much money and take too long. At the same time, letting these individuals go scot-free absolves them from any kind of wrongdoing. As these moral and legal questions do not take place in a vacuum, it seems reasonable to use local legal systems to hold these individuals accountable.

Pragmatic issues aside, however, there is yet another reason to try inciters at a higher level than individual actors. As May points out, "The crime of genocide involves both individual intent elements and a collective intent element, the latter involving an intent to destroy a group."[53] Both inciters and individual actors can demonstrate individual intent, but, as May explains:

> The person who plans and initiates, or who incites, a genocide more clearly instantiates the collective intent than does the person who merely participates. The reason for this is that planning can organize the acts of others into a joint endeavor. Similarly . . . incitement can excite and 'organize' individuals to act together to reach a common objective. . . . For this reason the planners and inciters should be more clearly responsible for the collective crime than are those who participate, although those who participate can also instantiate the collective intent as well.[54]

Such reasoning is consistent with Collins's situational view of violence. If violence is difficult to produce, then it requires a way around confrontational tension and fear. Incitement can account for both the initiation and continuation of violence. Although genocide would not occur without individual actors (and those actors should be held

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[53] May, *Genocide*: 115.
[54] Ibid., 122-23.

morally and legally responsible for their actions), it also would not occur without organizers to unite said actors under a common cause. As planners and promoters of genocide, inciters should receive a larger portion of the blame for their actions.

The case of the Rwandan genocide demonstrates that incitement can play a serious role in violent crimes. However, as previously shown, the prosecution presented a strong case against Rwandan media executives. Although this case is pretty clear, other cases may not be. Despite the clarity of this case, incitement remains an elusive concept, and taking all allegations of the crime at face value might censor valuable speech. Therefore, a contextual approach to this category of speech might be more appropriate than a hard standard.

It is important to note that there is little international consensus about what constitutes incitement. Since laws about hate speech and incitement vary among nations, it might be difficult to determine whose law(s) to use. As Dina Temple-Raston points out, "the Supreme Court of the United States hasn't upheld a conviction for hate speech since 1951. . . . [By contrast,] Denmark outlaws racial slurs. Britain and Switzerland have similar prohibitions. And Germany has gone so far as to convict right-wing leaders of inciting racial hatred."[55] Therefore, if the UN plans to follow one overarching law, its current standard of "direct and public incitement to genocide" fails to account for significant, nuanced differences among various conflicting incitement laws.

Consequently, a major concern with this trial is its potential to draw the line for questions of incitement in cases large enough to merit international attention, particularly

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[55] Dina Temple-Raston, *Justice on the Grass: Three Rwandan Journalists, Their Trial for War Crimes, and a Nation's Quest for Redemption* (New York, NY: Simon & Schuster, 2005). 90.

since it was the first trial of this kind in more than fifty years and the second one in history. On the one hand, the case against Nahimana, Barayagwiza, and Ngeze was so clear that its use as a legal precedent might require an equally high burden of proof in subsequent cases. Holding other cases to this high of a standard, however, might dismiss other speech that clearly qualifies as incitement. On the other hand, a lower burden of proof might be too broad and therefore might punish speech that should be protected.

A similar concern to line drawing is the threat of producing a so-called "chilling effect" on speech. A chilling effect implies that the enforcement of laws that limit "bad" speech may also unintentionally limit "good" speech. In this case, the limitations regarding incitement could easily have a chilling effect either by the self-censorship of journalists or by governments that label critical speech as "incitement" in order to stifle opposition. Indeed, some have suggested that such a chilling effect has already occurred in Rwanda. "Rwandan law guarantees freedom of the press but it is not always protected," Carroll argues. "Journalists have difficulty getting licenses and they are harassed and sometimes even imprisoned if they express views counter to government opinion. Thus, self-censorship is common."[56] Moreover, as lawyer Diane Orentlicher argues, governments are quick to stifle opposition:

> [T]he misuse of hate-speech laws by repressive African governments may well be a greater threat right now than hate speech itself. Since 2002, the Committee to Protect Journalists has documented nearly fifty such cases in at least half a dozen countries

[56] Carroll, "Assessment," 197.

> including Rwanda, where the current government] has increasingly used allegations of ethnic 'divisionism' to silence critics, including those in the press.[57]

Orentlicher's concern that "the misuse of hate speech laws . . . may well be a greater threat right now than hate speech itself" might be a bit of a stretch, it is, nevertheless, self-censorship and abuse of the law are valid concerns shared by many African journalists. In any case, despite the judges' rulings about incitement, the concept remains somewhat elusive, particularly for cases in which the evidence is not so clear. Definitions of incitement, issues of line-drawing, and misuse of the judges' conclusions may continue to haunt both Rwandan and international law in the future.

However, a few contextual details taken from the Rwandan genocide and the "media trial" might serve well for a definition of incitement. However, given both the variety of international laws and the variety of situations that might come up, context may have to dictate whether they apply to other situations. This is not to say that this definition is completely exhaustive, that all parts of it must be fulfilled, or that it is arbitrary; in fact, the creation of a clear, comprehensive standard might tell those who plan genocide exactly how much they can get away with under international law. However, with limited precedent on what constitutes incitement, theorizing the factors that constituted incitement at Nuremberg and the ICTR definition might be useful for lawyers, journalists, and scholars.

Some of these factors include: (1) that the message is targeted toward specific individuals or groups, (2) that the message encourages people to act at a specific time (3) that the message is repeated to a level that it has created a pervasive culture of fear and divisionism, and (4) that the message occurs in an environment in which its listeners are not

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[57] Diane Orentlicher, "Criminalizing Hate Speech in the Crucible of Trial: Prosecutor v. Nahimana," *New England Journal of International and Comparative Law* 12(2005): 47.

subject to opposing viewpoints. Again, this list is not meant to be a checklist of factors that must be present in order to label something as incitement, but rather as tools that lawyers can use for clarification of an abstract concept.

The first two parts of this definition, targeting specific people, helps to avoid vague empty threats. Extremists like the Ku Klux Klan often make vague threats against whole groups of people, but the vagueness of the threats is unlikely to transfer into action. Moreover, as Lee Bollinger argues, there may be social and pedagogical advantages to protecting the speech of extremists.[58] However, one aspect of both *Kangura* and RTLM that made them particularly effective was that they targeted specific people. Not only did their hate propaganda expand from the RPF to all Tutsis, but they even went so far as to list names of specific individuals to find and kill. RTLM even announced where people on its lists were hiding so that the militias could hunt them down. Targeting specific individuals at a specific time makes the threat much more immediate and likely that words will transfer to actions.

Furthermore, the notions of repetition or climate may be useful to distinguish a one-time rally from a consistent message. As May points out, "Collective crimes do not generally arise overnight. Patterns of behavior develop including strong animus between various social groups. Public expressions of condemnation for such crimes would arguably stand a chance of lessening such animus."[59] This part of a definition of incitement may be useful in cases like Ngeze's, in which a time lapse occurred between words and action.[60] Indeed, drawing on precedent from Julius Streicher's case at Nuremberg, the ICTR recalled

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[58] Lee Bollinger, *The Tolerant Society* (New York, NY: Oxford UP, 2006).
[59] May, *Genocide*: 153.
[60] In Ngeze's case, this lapse was only one month, during which RTLM continued to spread his message.

that Streicher "was found to have 'injected into the minds of thousands of Germans' a 'poison' that caused them to support the National Socialist policy of a Jewish persecution and extermination."[61] Thus, even though Ngeze did not publish *Kangura* during the genocide, the court found that it "paved the way for the genocide in Rwanda, whipping the Hutu population into a killing frenzy."[62] Evidence that a publication's repetition of hate propaganda contributed to a culture of fear and division may be useful for claims of incitement, especially if there is a time lapse between words and action.

Finally, another useful part of incitement might be that listeners are not exposed to competing messages. In Rwanda, where RTLM was the only perspective heard on the radio, people only heard one side of the story, and they heard it consistently for months at a time. Furthermore, in Rwanda, which had virtually twice as many radios per person than the median of sub-Saharan African countries,[63] radio occupied a special niche. When RTLM went over the airwaves, it held a monopoly. As Chalk notes:

> Once the genocide was underway, there were no broadcasts by UNAMIR, VOA, BBC, or Radio Deutschwelle to warn the extremist Hutu forces that those who committed or abetted mass murder stood condemned in the eyes of the world and would be brought to justice. There were no broadcasts by third parties to the conflict urging Hutu villagers to defend their Tutsi friends and neighbors, to offer them refuge, or to combat the myth that the RPF were executing a genocide against Hutu Rwandese.[64]

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[61] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Summary 21.
[62] Ibid., Summary 7.
[63] Chalk, "Hate Radio in Rwanda," 97.
[64] Ibid., 101.

Without opposing viewpoints, the hateful messages coming from the radio may have seemed more persuasive, particularly in a moment of heightened tension after the assassination of a president. Absence of opposing views, therefore, may be an important part of establishing incitement.

Meanwhile, these lessons about incitement in Rwanda do not constitute an exhaustive list, nor should future cases be held to exactly the same standards. It seems best to continue to work with precedent but also to allow for context to dictate what does and does not constitute incitement. When a court does determine that incitement has occurred, however, a standard that holds both speakers and listeners accountable seems like the most reasonable approach.

CHAPTER III

"ACTUALLY 'DO SOMETHING'": THE INTERNATIONAL POLITICAL RESPONSE

In addition to what happened within Rwanda's borders, there is a larger discussion concerning the role of the international community. Academics, journalists, politicians, and writers inside and outside of Rwanda have pointed their fingers at the UN and a number of countries for their actions (or lack thereof) in relation to the genocide. After all, if the prevention of genocide is an international goal, then it cannot be merely a local issue. To the extent that the international community can learn from the past, such finger-pointing may be justified. Thus, it is not my primary intention here to continue pointing fingers, but rather to synthesize the lessons learned from how other countries contributed to the genocide.

Nevertheless, the finger-pointing discussions make a good starting place for analysis. A good portion of the finger-pointing has been directed at the United States. This criticism often targets US government officials and media for the nation's failure to act in Rwanda until far too late. For starters, if the US media had served their asserted watchdog role, then it might have been able to mobilize citizens to pressure the government; however, the story made very few headlines. More importantly, however, given the financial, military, and diplomatic power of the United States, it certainly could have done more to help.

Nevertheless, officials at the US State Department and the Pentagon decided not to intervene. The standard response offered by US officials for nonintervention in Rwanda is concern about exposing US foreign aid workers to serious danger after several peacekeepers were brutally and publicly murdered in Somalia in 1993. On October 3 of that year, members of the Somali National Alliance killed eighteen Americans, dragging one to death in the streets of Mogadishu. The images circulated through the media, and, as Cohen explains, "the disaster brought immediate criticism of the Clinton administration and this 'negative residue from Somalia' became the Congressional basis for opposition to the Clinton administration's foreign policy."[65] Many US government officials claim that this incident in Somalia made them think twice about committing US forces to other international operations.

These officials often justify their nonintervention in Rwanda based on the events that took place in Somalia. As Deputy Assistant Secretary Prudence Bushnell explains: "we had to put our blinders on and I do not apologize for that because we had to address our primary responsibility—American citizens . . . If Rwandans were being killed I'm sorry, but I had an obligation to get Americans out.'"[66] With bloody and gruesome images from Somalia on people's minds, Bushnell's concern may have seemed rational at the time. After all, nobody wants to knock on a mother and father's door to tell them that their child has been killed.

However, Bushnell's recollection is much more pleasant than stories coming from other US government officials, who suggest that Rwanda would have remained off

[65] Cohen, *One Hundred Days*: 50.
[66] Ibid., 75.

the radar regardless of what took place in Somalia. For example, one official recalls that Under Secretary of Defense for Policy Frank Wisner told him that "if something happens in Rwanda-Burundi, we don't care. Take it off the list. U.S. national interest is not involved and we can't put all these silly humanitarian issues on lists, like important problems like the Middle East and North Korea and so on. Just make it go away.'"[67] Although this comment came before the genocide was underway, similar stories from other officials suggest that Wisner was not alone in his sentiments even long after April 6, 1994. Many leaders in the US simply did not want to get involved.

To be sure, the US cannot police the rest of the world and certainly cannot solve all of its problems alone. As Madeleine Albright and William Cohen have argued, the "responsibility for genocide prevention and response does not fall to the United States alone"[68] and that the US "may not always have enough influence by itself to prevent genocide and mass atrocities."[69] Although they do not pardon the United States for its inaction, they add that:

> [O]ther governments have been willing to turn a blind eye to mass atrocities. Sometimes this indifference is a direct result of their own complicity, or a judgment that their own national interests override any concerns about mounting atrocities. Sometimes, governments seek refuge in the principle of a state's

[67] Ibid., 115.
[68] Madeleine K. Albright and William S. Cohen, *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington, DC: United States Holocaust Memorial Museum, American Academy of Diplomacy, and the Endowment of the United States Institute of Peace, 2008). 84.
[69] Ibid., 5.

> sovereign right of noninterference in its internal affairs at the expense of victims of mass atrocities.[70]

Although they concede that the US is not innocent, they argue that other countries are not either. To those looking for blame and trying to determine what went wrong, such a claim may sound like a red herring; however, the US cannot do everything, and certainly not alone.

Nevertheless, to absolve the US of the task to singlehandedly prevent genocide in Rwanda or elsewhere is not to excuse it from doing too little or nothing at all. Indeed, as a member of the UN Security Council and as a global superpower, the US could have used its power in a number of ways. As Samantha Power argues, "it is not hard to conceive of how the United States might have done things differently."[71] She argues that the US "could have agreed to Belgian pleas for UN reinforcements . . . or, if it had feared associating with shoddy UN peacekeeping, it could have intervened unilaterally with the Security Council's backing, as France did in June . . . [or] acted without the UN's blessing, as it would do five years later in Kosovo.[72] Furthermore, as I will explain later, the US could have jammed the radio in Rwanda if it did not want to commit troops for a ground attack. In short, critics have attacked the US for its failure to act until it was far too late.

At the same time, Albright and Cohen have a point that if we must place blame somewhere, then other countries also must share part of the blame. Certainly the US is

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[70] Ibid., 95.
[71] Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York, NY: Harper Collins, 2002). 382.
[72] Ibid., 382-83.

not the only country that could have done more to halt the Rwandan genocide. Many critics like have also pointed their fingers at France. Whereas the US has been charged mostly for its inaction, France has been charged with complicity. Indeed, the great degree of cooperation between the governments of François Mitterand and Juvenal Habyarimana has led many people to question France's actions leading up to and during the genocide. In fact, the relationship between the two leaders was so strong that "in Kigali the French president was laughingly called 'Mitterahamwe,'"[73] a clear reference to the *interahamwe* militia that executed much of the genocide. Daniela Kroslak argues that the French government "was heavily involved on the ground and maintained good relations with the elites that eventually committed the genocide."[74] Given the close cooperation between the governments in Paris and Kigali and France's limited action on the UN Security Council throughout most of the genocide, critics of the Mitterand government have questioned France's actions within Rwanda leading up to the genocide and its inaction on the UN Security Council.

For starters, in the years leading up to the genocide, France contributed heavily to Rwanda's military. Records show that "during 1991-1992, at least US$6 million of arms from France was sent into Rwanda: mortars, light artillery, armoured cars and helicopters. By 1993, Rwanda was receiving US$4 million military aid from France."[75] Additionally, Kroslak adds that "Paris also financed the supply of arms coming from third parties such as Egypt . . . [and] French agents acted as intermediaries to facilitate

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[73] Linda R. Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (New York, NY: St. Martin's, 2000). 49.
[74] Daniela Kroslak, *The Role of France in the Rwandan Genocide* (London, UK: Hurst & Co., 2007). 4.
[75] Melvern, *A People Betrayed*: 48.

the signing of a supply contract with South Africa for US $5.9 million."[76] The combination of diplomatic and military support for Habyarimana's government and later his inner circle puts France in a tough position.

Based on this evidence, critics have been very skeptical of France's involvement in Rwanda. Linda Melvern argues that:

> The evidence against France was damming. France, of all the countries in the Security Council, possessed the most detailed knowledge of what was going on in Rwanda; the French had helped to arm the regime, and French soldiers were intimately involved with the Rwandan military, training the militia and helping to train the Presidential Guard. When the genocide began, French soldiers had helped to evacuate Hutu Power extremists, giving many of them, including Agathe Habyarimana, a military escort to the airport.[77]

Furthermore, she adds, the findings at the French Embassy in Kigali were also suspect: "Five days after the 1994 genocide began, the French embassy in Kigali was abandoned. Left behind was a huge pile of shredded documents, almost filling a room."[78] Despite this evidence, Kroslak notes that "the French government still insists, despite the overwhelming evidence to the contrary, that it bears no responsibility for the genocide in Rwanda . . . [and] has been at pains to stress that it was the only country that intervened and did anything during the genocide."[79] The evidence against France, however, is overwhelming.

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[76] Kroslak, *Role of France*: 140.
[77] Melvern, *A People Betrayed*: 233-34.
[78] Ibid., 48.
[79] Kroslak, *Role of France*: 271-72.

In addition to the US and France, people concerned about where the weapons of genocide came from point fingers elsewhere. France certainly contributed a great deal of military support, but another significant contribution came from a different source. Melvern points out that in 1993:

> half a million machetes and other agricultural tools were purchased and distributed throughout the country, including hundreds of thousands of hoes, axes, hammers and razor blades. . . . The machetes came from China, supplied between 1992 and 1994 by a company called Oriental Machinery. . . . According to bank records, US$4.6 million was spent on agricultural equipment in 1993 by Rwandan companies not usually concerned with agricultural tools. . . . A total of US$725,669 was spent on 581,000 machetes; one machete for every third adult Hutu male."[80]

In other words, virtually all of Ngeze's "weapons . . . to conquer the *Inyenzi* once and for all" came from the same source, a manufacturer in China. The import of over half a million machetes over such a short period of time should have set off some alarms; sadly, this was not the case. Disturbingly, the primary weapons of this genocide cost a little over $1 apiece. If critics point fingers at the United States and France, then perhaps they should point them at China as well.

Yet the blame game does not stop at state governments; a great deal of it has also been directed at the UN. Michael Barnett, a former officer of the US Mission to the UN

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[80] Melvern, *A People Betrayed*: 64-65.

argues that "the UN bears some moral responsibility for the genocide."[81] One criticism of the UN comes from its decision to withdraw most of its forces once the genocide had begun. Barnett explains that "there were twenty-five hundred United Nations peacekeepers on the ground, and indeed, soon after the killing began, the UN's force commander, Canadian General Roméo Dallaire, pleaded for a well-equipped battalion to stop the slaughter. Yet the UN immediately ordered its forces not to protect civilians."[82] Through a combination of reaction to the militia's ambush of ten Belgian peacekeepers and the noncommittal attitudes of several individual member states, the UN decided to withdraw all but 270 of its peacekeepers in Rwanda, a force far too small to complete the task of keeping the peace.

Barnett points out that "many decisionmakers have claimed ignorance, insisting that the situation was highly uncertain,"[83] yet he argues that many of these claims do not hold up under close examination. In response, he finds fault with both the bureaucratic structure of the UN and, more importantly, the individuals who use that structure to exempt themselves from moral responsibility. He argues that "their excuses point to a troubling truth: the larger and more complex the organization, the more difficult it is to recover individual responsibility. A nearly bottomless history of small decisions amassed to make a particular outcome almost inevitable."[84] Influenced by Hannah Arendt's notion of the "banality of evil," Barnett is troubled that individuals have come to blame a

[81] Barnett, *Eyewitness to a Genocide*: 20.
[82] Ibid., 2.
[83] Ibid., 19.
[84] Ibid.

"bureaucracy [that] is best understood as 'the Rule of nobody.'"[85] If no one is to blame and the ills are projected onto a system larger than the individuals that compose it, then the same problems can continue to occur.

At the same time, Barnett concedes that the UN has many consequences to consider when placed in tough situations:

> [T]he UN is a multidimensional, not a unidimensional, ethical space. Underlying any indictment of the UN is the presumption that it had a moral responsibility to stop the genocide, a duty to aid and protect the innocents. . . . [T]he UN, like all institutions, assumes at any single moment a multitude of responsibilities and obligations. . . . The UN had responsibilities not only to Rwandans but also to UN personnel who were at risk in the field and to the integrity of an institution that might be severely damaged by another Somalia-like failure in the field.[86]

However, these alternate commitments and concerns are unsatisfactory given that the UN could have done more to prevent or slow the genocide.

In particular, one problem that Barnett identifies is a lack of consensus within the organization:

> As a collection of related units and subunits, the UN contains subcultures that have distinct interpretations of how the rules and standards of appropriateness can and should be applied. Hardly synchronized in their movements or thoughts, the Secretariat, the council, and the field can have very different ideas about what is appropriate, how they should prioritize their commitments and responsibilities,

[85] Ibid., 9.
[86] Ibid., 6.

> and what constitutes an acceptable level of risk. These three UN elements disagree among themselves over the meaning of neutrality, impartiality, and consent—disagreements that have their roots in rival interpretations of recent history and present circumstances.[87]

Although consensus itself can sometimes be a problem, lack of consensus among leaders within the UN can translate into the withholding of key information and stalled negotiations.

A second problem that he identifies is the mystery of how the UN operates and the distance it maintains from even well-informed and well-educated members of the international public. In the search for moral responsibility, Barnett points out that:

> Investigators have struggled to understand how an institution shaped by the Genocide Convention, one that had peacekeepers on the ground from start to finish, could stand by and do nothing. Their searches involve a desire to know not only how this was possible but also who was to blame. As they attempt to draw back the Oz-like curtain of the 'United Nations,' a curtain that concealed the individuals who contributed to the decision not to intervene, they discovered a highly complicated story of individuals who knew too little and too much, of individuals who leaned on well-established precedents they acted meekly in response to possible threats, and of a UN that functioned effortlessly to

[87] Ibid., 11-12.

> coordinate the desire of states and UN staff to remain uninvolved. Blame seemed so widely distributed that it proved nearly impossible to recover.[88]

Indeed, the "Oz-like curtain" Barnett describes is one of the reasons why its members can hide from responsibility.

An additional problem that critics have raised is the role of member states rather than individual UN employees. They argue that "we must recognize that the United Nations and other international institutions are made up of national governments whose primary concern is the retention of political support from their domestic constituencies." If government officials fear involvement in international conflicts, then they will find ways to justify nonintervention. "Consequently," they add, "the key to mobilizing international support is to first garner domestic support."[89] Of course, creating domestic support is easier said than done, but, as I will explain later, it may be justifiable if leaders emphasize long-term, rather than short-term, consequences.

Amidst all of the international finger-pointing, however, it is important not to lose sight of the local context and the role of individual Rwandans discussed in the previous chapter. Although the international community certainly could have done things differently, its role in the genocide remains secondary to the role of the genocidaires in Rwanda. As US State Department Political Advisor Tony Marley points out, "the primary responsibility lies within the Rwandans themselves. The international community was not killing Rwandans, it was Rwandan killing Rwandan."[90] The limited

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[88] Ibid., 15-16.
[89] Frank Chalk et al., *Mobilizing the Will to Intervene: Leadership to Prevent Mass Atrocities* (Montreal, QC, Canada: Montreal Institute for Genocide and Human Rights Studies at Concordia University, 2010).
[90] Cohen, *One Hundred Days*: 176.

international response to the Rwandan genocide certainly did not help matters, and hindsight makes it easy to imagine how things could have unfolded differently; however, the international community's reaction to genocide in Rwanda must be understood as exactly that—a reaction—to actions that were premeditated and implemented on a very large scale.

Keeping this focus in mind, my goal here is not to add to the finger-pointing and blame but rather to contribute to a larger conversation about lessons that the international community can learn from what happened in Rwanda. One of the consistent lessons that emerges from this finger-pointing is the refusal to call Rwanda what it was: genocide. The 1948 Genocide Convention defines genocide as:

> any part of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.[91]

Although this definition might seem clear, sufficient, and relatively straightforward, those who want to get around it can, and, as the international community's response to Rwanda shows, do. As Power argues, this definition contains some inherent weaknesses:

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[91] "Convention on the Prevention and Punishment of the Crime of Genocide," in *78 UNTS 277* (1948).

> 'Genocide,' as defined in the UN treaty, suffered then (as it suffers now) from . . . what might be called a numbers problem. On the question of how many individuals have to be killed and/or expelled from their homes in order for mass murder or ethnic cleansing to amount to genocide, there is—and can be—no consensus. If the law were to require a pre-specified percentage of killings before outsiders responded, perpetrators would be granted a free reign up to a dastardly point. The law would be little use if it kicked in only when a group had been entirely or largely eliminated. By focusing on the perpetrators' intentions and whether they were attempting to destroy a collective, the law's drafters thought that they might ensure that diagnosis of and action against genocide would not come too late. The broader, intent-based definition was essential if statesmen hoped to nip the crime in the bud."[92]

Although the broader definition might be more inclusive, it allows people to interpret the definition's meaning on their own terms and for their own purposes.

Flexible interpretation of the Genocide Convention explains how leaders justified nonintervention in Rwanda. With careful use of language, world leaders frequently borrowed ideas from the Genocide Convention's definition to describe what was happening in Rwanda but in a way that strategically avoided labeling the killings as "genocide." This failure to call Rwanda a genocide has been a large part of the charge against the US. As Melvern recounts, "in Washington every attempt was being made to

[92] Power, *A Problem From Hell*: 65.

avoid the word genocide."[93] This charge is not an exaggeration, nor was this effort unintentional. Several US government officials have suggested that they knew the killings in Rwanda constituted genocide but that their colleagues did not want to intervene. As one State Department official recalls:

> After two weeks [following the April 6 assassination of President Habyarimana] we knew that this was a systematic effort to exterminate Tutsi, this was a genocide. I was reluctant to draw such a conclusion because we didn't know enough yet, and we didn't know enough of the details. We just knew that a hell-of-a-lot of people were being killed. By April 21, 22, 23, we were certain that this was genocide.[94]

Despite this recognition by some officials in the State Department, others refused to label this killing as a genocide because this finding would have international legal and political consequences that would compel the US to act. Consequently, those who did not want to intervene searched for legal loopholes. One released government document even said to "be careful" with "language that calls for an international investigation of human rights abuses and possible violations of the genocide convention" because a "genocide finding could commit USG [United States Government] to actually 'do something.'[95] Rather than calling the killing "genocide," lawyers urged officials to use the watered-down term, "acts of genocide." As Cohen explains:

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[93] Melvern, *A People Betrayed*: 178.
[94] Cohen, *One Hundred Days*: 134.
[95] Office of the Deputy Assistant Secretary of Defense for Middle East/Africa Region, "Discussion Paper," ed. Department of Defense (May 1, 1994). Quoted in Cohen, *One Hundred Days*: 136.

> The Secretary of State was assured that 'a USG [U.S. Government] statement that acts of genocide have occurred would not have any particular legal consequences. It was believed that 'acts of genocide' is different than 'genocide' in that the former implies that only some of the actions fit the Genocide Convention definition of 'genocide,' while the latter implies that a coordinated campaign is underway. Therefore, 'acts of genocide' is considered less severe because it does not imply that the violence as a whole is genocide.[96]

This loophole allowed the US to express some concern about the events in Rwanda without being compelled to act.

Of course, the use of "acts of genocide" in place of "genocide" left many people dissatisfied and uneasy. A conversation between Christine Shelly from the US State Department and Alan Elsner exemplifies this discomfort:

> Elsner: What's the difference between 'acts of genocide' and 'genocide'?
>
> Shelly: Well, I think the—as you know, there's a legal definition of this. . . . Clearly not all of the killings that have taken place in Rwanda are killings to which you might apply that label. . . . But as to the distinctions between the words, we're trying to call what we have seen so far as best as we can; and based, again, on the evidence, we have every reason to believe that acts of genocide have occurred.
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> Elsner: How many acts of genocide does it take to make a genocide?

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[96] *One Hundred Days*: 139.

Shelly: Alan, that's just not a question that I'm in a position to answer.[97]

Given the broad language of the Genocide Convention, that may be a question that nobody is "in a position to answer." Of course, the answer could just as easily be "one." Nevertheless, on a pure semantic level, the use of "acts of genocide" in place of "genocide" apparently meant enough to avoid commitment. As Marley explains, "those that wanted nothing done didn't even want to acknowledge the fact that it could be genocide because that would weaken their argument that nothing should be done."[98] Not calling the events in Rwanda a genocide allowed the US to shirk from responsibilities.

In addition to the US, however, leaders at the UN also refused to call the events in Rwanda a genocide. When New Zealand Ambassador Colin Keating proposed that the UN should label the killing in Rwanda as genocide, British Ambassador David Hannay objected. Hannay "argued that were the statement to be used in an official UN document, then the Council would become a 'laughing stock'. To name this a genocide and not to act on it would be ridiculous."[99] Consequently, Keating redrafted his statement to avoid using the word "genocide." The new proposal affirmed that:

> The Security Council condemns all the breaches of international humanitarian law in Rwanda, particularly those perpetrated against the civilian population, and recalls that persons who instigate or participate in such acts are individually responsible. The Security Council recalls that the killing of members of an ethnic

[97] Power, *A Problem From Hell*: 363-64.
[98] Cohen, *One Hundred Days*: 135.
[99] Melvern, *A People Betrayed*: 179-80.

> group with the intention of destroying such a group in whole or in part constitutes a crime punishable by international law.[100]

In other words, "the word 'genocide would not be used, but the definition would remain."[101] The UN, like the US, virtually called the killing in Rwanda a genocide in order to condemn it but found a loophole that would allow it to do so without the compulsion to intervene.

These case studies leave those who wish to prevent genocide with a painful irony; that is, as Cohen observes, "that a convention that was designed to have diction used to encourage states to intervene actually became the most valuable tool for nations to justify not intervening."[102] Through avoidance of the term "genocide," governments and other institutions manipulated the letter of the law to avoid, as the released State Department document says, "commit[ting] . . . to actually 'do something'" about it. This avoidance, however, also violated the spirit of the law. In order to take genocide prevention seriously, world leaders must be comfortable using the Genocide Convention for its intended purpose.

A second area of criticism from Rwanda, and one that more directly relates to incitement, is that the US and other nations did not utilize the option to jam the radio. If media executives use hate radio as a catalyst for genocidal intent, then interrupting the radio might slow or even stop a genocide. Indeed, one reason why RTLM worked as well as it did was that it had no competition. As noted in the previous chapter, "there

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[100] Cohen, *One Hundred Days*: 137.
[101] Ibid.
[102] Chalk et al., *Will to Intervene*: 37.

were no broadcasts by third parties to the conflict urging Hutu villagers to defend their Tutsi friends and neighbors, to offer them refuge, or to combat the myth that the RPF were executing a genocide against Hutu Rwandese.[103] A broadcast like this would support Supreme Court Justice Louis Brandeis's famous assertion that "if there be a time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[104] Perhaps with a multiplicity of viewpoints and with warnings to those involved in the genocide, fewer people would have taken up machetes and other weapons.

Nevertheless, no such broadcasts existed. In the absence of alternative viewpoints and in the presence of desperate times, censorship may be a feasible option. Even Brandeis, directly after he made the making the previous claim, conceded that "only an emergency can justify repression."[105] The mass killing by the *interahamwe* could easily constitute such an emergency, and this link opens up the possibility of a radio jam. Indeed, the US State Department considered three options of jamming the radio in Rwanda: "(1) Transmit counterpropaganda from a US aircraft with Loudspeakers, (2) Block Radio Rwanda and RTLM from broadcasting their Messages, and (3) Destroy the radio antennas."[106] With a link between RTLM broadcasts and the actions of the militia, these options could have slowed or even put a stop to the killing on the ground.

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[103] Chalk, "Hate Radio in Rwanda," 101.
[104] *Whitney v. California*, 274 US 357 (1927).
[105] Ibid.
[106] Cohen, *One Hundred Days*: 152.

However, US State Department officials considered but ultimately rejected all three options. Even "before the genocide," Monroe Price points out, "NGOs sought US assistance in jamming as a preventative measure. Though knowledgeable State Department officials agreed with the need, requests were denied on the ground that jamming went against the principles of freedom of expression and respect for national sovereignty."[107] This logic endured even once the genocide was underway. According to Des Forges, "at the height of the genocide, the response was that Rwanda is a sovereign state, the airwaves belong to that sovereign state and we cannot intervene. Sovereignty became an instrument for not doing something."[108] Consequently, RTLM's influence remained unchecked.

In the aftermath of the genocide, some scholars have questioned the US government's decision not to intervene. For example, in an article in the *American Journal of International Law*, Jamie Frederic Metzl traces the main arguments the US used against radio jamming:

> There are three main reasons why the United States Government chose not to jam Rwandese radio broadcasts, as it clearly had the power to do. First, it would have been practically very difficult and potentially very expensive. Second, in the aftermath of the perceived debacle in Somalia in which eighteen U.S. servicemen were killed, intervention in obscure African countries, apparently for little direct national benefit, was expected to be politically unpopular. . . . [Third,]

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[107] Monroe E. Price, *Media Sovereignty: The Global Information Revolution and Its Challenge to State Power* (Cambridge, MA: MIT Press, 2002). 177.
[108] Des Forges, "Call to Genocide: Radio in Rwanda, 1994," 18.

> government lawyers asked to consider the issue apparently concluded that jamming was illegal under international telecommunications law and international conventions regarding the freedoms of information and expression and was a violation of states' sovereign rights.[109]

However, when put to the test, these arguments against radio jamming do not hold up very well. For starters, the concern about a repeat of Somalia is likely a false analogy, as (1) the operation would be a fight against technology more than the militia itself and (2) it could easily be explained if it were to succeed. To the concerns about cost and international law, Metzl concedes that "jamming a small mobile transmitter from such an airplane . . . would have been extremely expensive and highly visible . . . [and] jamming from the ground . . . would have required a strong energy source to power the blocking devices, as well as permission to operate from local leaders."[110] However, he adds, the international prohibitions on radio jamming could "be superseded by action authorized by the UN Security Council as a Chapter VII response to a "threat to international peace and security.[111] Moreover, the benefit of saving human lives should, on its own, outweigh the costs associated with a radio jam; however, if that logic is insufficient on its own, then Rusesabagina points out that the "U.S. aid package [given to refugees after the genocide] totaled more than sixteen times what it would have taken to electronically jam the hate radio." In short, none of the arguments against jamming RTLM hold up.

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[109] Jamie Frederic Metzl, "Rwandan Genocide and the International Law of Radio Jamming," *American Journal of International Law* 91(1997): 629-35.
[110] Ibid.
[111] Ibid., 635.

Metzl makes a good case for the US to at least consider the option of a radio jam. However, he does not argue that the U.S. should use radio jamming whenever it desires. Instead, Metzl argues that "a narrow exception to the general international standard supporting the free flow of information should be established for clear cases of incitement to genocide where the occurrence of that genocide appears imminent."[112] To determine when such action would be appropriate, he proposes an international standard based on established free speech traditions in the US and Canada:

> The *Brandenburg* standard, which allows expression to be curtailed when it incites or produces 'imminent lawless action,' and section 319 of the Canadian Criminal Code, which criminalizes 'inciting hatred against any identifiable group where such incitement is likely to lead to a breach of the peace,' provide useful models for a standard that might be appropriate. Because a high standard of proof is required to limit free speech under *Brandenburg* or to apply section 319, successful prosecutions dependent on these standards have been extremely rare. Elevated to the international plane, both *Brandenburg* and the Canadian code would seem to parallel a strict system that penalizes incitement to imminent mass violence or genocide and, in doing so, authorizes and justifies responsive action including jamming."[113]

This logic, which would limit the acceptable use of radio jamming to very particular circumstances, would grant members of the international community permission to act in limited situations in which it is likely that speech will result in mass violence.

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[112] Ibid.
[113] Ibid., 648.

Furthermore, this discussion of the power to jam technology should not be limited to radio. Since the Rwandan genocide, internet technology has, for better or worse, provided a new tool through which information can be transmitted quickly, publicly, and even anonymously. Although the technology itself may be neutral and although it provides a multiplicity of viewpoints as a whole, it also could very well become a tool used to plan mass violence and genocide. Accordingly, there may come a time when it would be appropriate to censor part or all of the internet.

So far, this discussion has led to some significant conclusions. First, although many critics have played the blame game to figure out who should bear responsibility for the Rwandan genocide, their finger-pointing is only useful insofar as future generations can learn from their mistakes. Second, a major obstacle to the international community's handling of the Rwandan genocide was its failure to call it by its rightful name, genocide. Albright and Cohen argue that in order to try to prevent genocide, the international community must be willing to use the Genocide Convention as originally intended. As they argue, "invoking the word *genocide* . . . has unmatched rhetorical power. The dilemma is how to harness the power of the word to motivate and mobilize while not allowing debates about its definition or application to constrain or distract policymakers from addressing the core problems it describes."[114] This task, they admit, is not easy, but it is essential.

Third, in conjunction with identification of genocide, the international community must recognize and take advantage of its options for preventing genocide.

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[114] Albright and Cohen, *Preventing Genocide*: xxi.

One such option, particularly in identifiable cases of incitement, is to find ways to jam technology. Although it may be costly and objectionable to those who support free speech, this option can disrupt the organization and execution of mass killing. The world will never know how many lives could have been saved if RTLM could no longer broadcast its messages; however, it is reasonable to assume that a radio jam would have helped.

The primary obstacles to intervention identified here include the commitment of money and military personnel. However, these commitments need not (and probably should not) be unilateral. If these costs explain why leaders of countries and international organizations do not want to intervene, Albright and Cohen accuse those who take the passive route of shortsightedness. They argue that the costs of non- or delayed intervention result in greater costs, as "genocide and mass atrocities . . . feed on and fuel other threats in weak and corrupt states, with dangerous spillover effects that know no boundaries."[115] These "spillover effects," they say, include "[political] instability . . . terrorist recruitment and training, human trafficking, and civil strife . . . refugee flows . . . [and growth in] humanitarian needs . . . And the longer we wait to act, the more exorbitant the price tag."[116] Using Rwanda as a prime example, they argue that:

> The economic costs of intervention are always higher once mass atrocities are underway. More than fifteen years after the Rwandan Genocide ended, the spillover of mass atrocities into the DRC continues to set back the progress of peace and security in the Great Lakes region of Africa. The Mission of the Congo

[115] Ibid., xv.
[116] Ibid., xx.

> (MONUC) has the largest annual peacekeeping budget in the world, exceeding US$1.4 billion in 2009. The United States' share of the MONUC budget was estimated at approximately US$300 million in 2008.[117]

Thus, if leaders are concerned about the political ramifications of serious financial and military commitments, they should think about and emphasize the long-term consequences of nonintervention.

Despite Marley's claim that "the international community was not killing Rwandans," the rest of the world certainly could have done more to make the situation better. Moreover, if Albright and Cohen are correct in their assessments of post-genocidal consequences, it would have been in the best interests of the international community to do everything in its power to prevent, or at least intervene in, genocide. Despite the events that took place in Rwanda, there is some hope that through self-reflection, the international community can change how it responds to the problem of genocide.

In a 1998 speech in Kigali, former President Clinton exemplified some of this hope. Although his speech may have fallen on deaf ears in Rwanda, given that his remarks came four years after his administration abandoned the idea of intervention, it contains a message of remorse and reflection for the international community. Looking toward the future, Clinton argues that:

> [T]here is only one crucial division among the peoples of the Earth. And believe me, after over 5 years of dealing with these problems, I know it is not the

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[117] Ibid., 29.

> divisions between Hutu and Tutsi or Serb and Croatian; and Muslim and Bosnian or Arab and Jew; or Catholic and Protestant in Ireland, or black and white. It is really the line between those who embrace the common humanity we all share and those who reject it."[118]

Furthermore, he admits that:

> The international community . . . did not act quickly enough after the killing began. We should not have allowed the refugee camps to become safe havens for the killers. We did not immediately call these crimes by their rightful name: genocide. We cannot change the past, but we can and must do everything in our power to help you build a future without fear and full of hope."[119]

Indeed, the best future the international community can provide for Rwanda is one that learns from the mistakes of the past. To fail to do so is to turn its back on Rwanda a second time.

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[118] William Jefferson Clinton, "Remarks to the People of Rwanda" (Kigali, Rwanda, May 25, 1998).
[119] Ibid.

CHAPTER IV

"IMPERFECT MECHANISMS . . . YET WHAT IS THE ALTERNATIVE?": INTERNATIONAL LAW AND INCITEMENT

In addition to questions about how to prevent genocide, or how to halt it once it is underway, important questions also arise in the aftermath of genocides that have already occurred. Although there are many important questions that warrant attention after the fact (for example, how to best help individual survivors cope with their grief and continue living their daily lives), broader socio-political questions about how to rebuild societies that have been torn apart may be of particular interest to scholars of rhetoric, history, and law. For example, some of these questions might include: Is it possible to restore order out of chaos? Should those who orchestrate and perpetrate genocide be held responsible for their actions, and if so, how? Is the law an effective way to bring about justice? If so, what legal system(s) are best for handling crimes as large and severe as genocide? What constitutes an appropriate punishment for genocide-related crimes? These are not easy questions, and they likely do not have easy answers; nevertheless, they are too important to dismiss.

Questions like these have been pivotal for Rwanda since 1994. As Nicholas Jones explains:

> The aftermath of the genocide left Rwanda, a country among the poorest in the world, in a state of ruin and turmoil that was highlighted by insecurity. The necessity for the maintenance of peace and the establishment of personal

> security—to an acceptable level, allowing for the advancement of policies and programmes designed to seek justice and hence reconciliation—was of the utmost concern.[120]

In Rwanda, as in many post-genocidal countries, life after death has not been easy.

An important question in the aftermath of genocide is whether any legal system, particularly an international legal system, is an appropriate way to respond to those who commit genocide. Within the legal tradition, , it seems that the only appropriate way to respond to crimes that cannot be resolved at one level is to take them to a higher level; by this logic, crimes that transcend national laws would naturally go to a larger international legal system. In other words, crimes committed *by* a state, across international borders, or by a system too large for a state's judicial system to handle would require an international court to resolve disputes.

Skeptics of this tradition might raise important objections here, however. First, with many different legal systems throughout the world, a unified international system can be exclusive. Second, if the UN contributed to the problems in Rwanda, what gives it the authority to adjudicate the crime? Third, if the international court is the highest living form of justice, then what happens if it makes mistakes? Because of its supreme power, it may be tempting to think of the international legal system as a universal and unquestionable authority. It is important to remember, however, that the international legal system, like any legal system, is not infallible. Indeed, law and justice are not perfect, and too much reverence for the law can be dangerous insofar as the law

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[120] Jones, *Courts of Genocide*: 29.

privileges certain voices over others, convicts the innocent, exonerates the guilty, and resists change and flexibility. As such, it is necessary to recognize that operations within the legal system at any level are, as Kurt Saunders has argued, "rhetorical, practical, and culturally constructed."[121] Keeping in mind the argumentative features that guide the creation and enforcement of law, recognition of the potential flaws in the legal system introduces humility into the law's interpretation and application.

Furthermore, as "practical" entities, legal systems generally have to operate under conditions of at least some uncertainty, and uncertainty is, for many people, uncomfortable. Indeed, given the hatred toward accused genocidaires and the severity of punishment likely to accompany convictions for crimes of war and genocide, there is at least some concern about the rights of the accused to a fair trial. However, as Wayne Booth argued, "Nobody ever gives equal weight to every voice. What satisfies us in practice, though the practice always can and should be refined, is the discovery that a given belief that fits our own structures of perception and belief is supported by those qualified to know,"[122] in this case, lawyers who have proven their merits elsewhere. This reasoning can provide some confidence in international law. Meanwhile, it is also important to note that the ICTR has acquitted and released some of the accused and includes an appeals process.

Furthermore, despite the potential flaws of international law, its supporters defend it on a number of grounds. For example, in *A Moral Theory of Political*

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[121] Kurt M. Saunders, "Law as Rhetoric, Rhetoric as Argument," *Journal of Legal Education* 44, no. 4 (2006): 567.

[122] Wayne Booth, "From *Modern Dogma and the Rhetoric of Assent*," in *The Rhetorical Tradition: Readings from Classical Times to the Present*, ed. Patricia Bizzell and Bruce Herzberg (Boston, MA: Bedford / St. Martin's, 1974/2001), 1503.

Reconciliation, Colleen Murphy argues that "a primary task of political reconciliation . . . is to cultivate a mutual respect for the rule of law."[123] Although the law itself may be imperfect, Murphy argues that an international justice system can foster stability and protect individuals from the abuses of governments and other organizations:

> The rule of law is instrumentally valuable . . . because in practice it limits the kinds of injustice that governments could pursue. Thus the erosion of the rule of law is morally concerning and damaging to political relations, insofar as it entails an erosion of important conditions for relationships to express reciprocity and respect for agency, and creates an environment conducive to injustice.[124]

Similarly, Kingsley Chiedu Moghalu points out that international law can be a tool by which to unify a deeply divided society through reconciliation. In his view, it is "precisely because international criminal justice addresses *mass* crimes, which inevitably dislocate societies, [that] its ultimate aim is to heal fractured societies and help establish peace and reconciliation by addressing the root cause of such destabilization—impunity.[125] Although the process may not be easy or direct, international justice can help fractured societies come back together when the future looks bleak.

Long-standing international conflicts can sometimes create the illusion that those involved will never make peace. However, examples like the process of Truth and

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[123] Colleen Murphy, *A Moral Theory of Political Reconciliation* (Cambridge, UK: Cambridge University Press, 2010). 41.
[124] Ibid.
[125] Kingsley Chiedu Moghalu, "Reconciling Fractured Societies: An African Perspective on the Role of Judicial Prosecutions," in *From Sovereign Impunity to International Accountability*, ed. Ramesh Thakur and Peter Malcontent (Tokyo, Japan: United Nations University Press, 2004), 197-98.

Reconciliation in South Africa demonstrate the possibilities of such moves toward reunification in the face of skepticism and uncertainty. As Erik Doxtader points out:

> South Africa is now an international symbol of reconciliation. A source of tremendous surprise and inspiration in the global community, the transition from apartheid has been taken as evidence of reconciliation's power and a basic indicator of its values for countries struggling to overcome legacies of deep division. Indeed, the form of South Africa's turn to democracy has played a key role in moving the concept of reconciliation from the margin to the centre of debates over how conflict-torn societies can redress the costs of violence, support democratisation, and promote the protection of human rights.[126]

Furthermore, Doxtader adds, the process by which reconciliation occurs should be of interest to rhetorical scholars and historians:

> [T]he history of reconciliation is held in a host of words that announce, trouble, and constitute the work of history-making. Far more than a law or commission that proceeded its name, reconciliation took shape with(in) words, a varied set of calls, arguments, and deliberations in which speech about reconciliation defined the contours of its practice and performed its work of (re)turning and (re)figuring the form (and content) of human (inter)action. Found in the midst of violence that appears to breach the very conditions of creative expression, the matter of reconciliation's role in South Africa's transition is the rhetorical question of its

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[126] Erik Doxtader, *With Faith in the Works of Words: The Beginnings of Reconciliation in South Africa, 1985-1995* (East Lansing, MI: Michigan State University Press, 2010). 5.

> unfolding and enfolding capacity to invent the power of speech from within moments of its apparent foreclosure.[127]

Because of its rhetorical and constitutive power, the process of reconciliation helped to reestablish unity when many doubted that it would be possible to do so. Although the TRC took a different approach from the ICTR, the context was not one of genocide. In a similar manner, however, international criminal courts also possess the capacity to reopen discussion even when dialogue seems virtually impossible.

In addition to offering the hope of reconciliation, international law holds important implications for public memory. In regions torn by years of heated conflict, vernacular historical accounts can easily break down into competing histories of "us vs. them." Although it is important to recognize the value of vernacular challenges to dominant historical narratives, it is equally important to recognize that alternative accounts can be co-opted by groups who wish to continue to promote violence and hatred (say, by self-proclaimed "revisionist historians" who deny the Holocaust). As Murphy points out:

> Denial is a source of concern in transitional contexts. The changes required to rebuild political relationships in ways that support capabilities, the rule of law, and reasonable political trust depend on cooperative efforts among both individuals and citizens. Denial and resistance from either citizens or officials may undermine the ability of transitional societies to work toward such change. . . . Official forms of acknowledgement are a direct way to counteract official

[127] Ibid., 6.

> denial. They can often also set the stage for countering denial among citizens insofar as they change the contours of public discussion and debate, and influence public discourse.[128]

In this regard, a more officially recognized form of history within the particular context of transitional justice may be useful in order to break the style of they-said-we-said interpretations of conflicts that typically perpetuate violence. Similarly, Martti Ahtisaari points out that international trials can have a healing power. "A criminal trial brings past suffering into the public arena," he argues. "It may thus enable a victimized community to deal with trauma and, perhaps, to create the conditions for future social life.[129] This historical function of the international justice system offers a point of departure from previously intractable conflicts.

Keeping these arguments in mind, the "Media Trial" at the ICTR makes a fascinating and complex case study that exemplifies many of the greatest strengths and weaknesses of the burgeoning international legal system. To render a pure value judgment of the trial as effective or ineffective is to miss a great number of contextual factors and nuances. Consequently, I will lay out some of the cases for both sides here, beginning with the positive case.

Several aspects of the ICTR and its handling of this trial showed great potential. For starters, as an international body, the ICTR successfully captured, tried, and convicted these three men. These were not easy tasks, given that Nahimana,

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[128] Murphy, *A Moral Theory*: 129-30.
[129] Martti Ahtisaari, "Justice and Acountability: Local or International," in *From Sovereign Impunity to International Accountability: The Search for Justice in a World of States*, ed. Ramesh Thakur and Peter Malcontent (Tokyo, Japan: United Nations University Press, 2004), xv-xvi.

Barayagwiza, and Ngeze had all fled the country after the genocide. The ICTR likely succeeded where Rwanda would have struggled if forced to undertake this mission alone. As discussed in the previous chapter, the problems that exist in the aftermath of genocide extend far beyond just the number of people killed. Aside from mass killings, genocides often lead to mass emigration of both the innocent and the guilty.

Consequently, the legal and political systems of countries affected by genocide may not be left well equipped to handle the heavy burdens of finding, capturing, detaining, and trying high-level criminals outside of their borders. In the aftermath of the genocide, Rwanda's legal system lay in ruins. Carroll notes that "out of the 800 lawyers and judges of the national and provincial courts, only 40 were alive and in the country after July 1994. Thus, an international tribunal was needed to begin prosecuting offenders while the Rwandan government rebuilt the domestic judicial system."[130] UN jurisdiction over the crimes committed in Rwanda helped take some pressure off of Rwanda's legal system, which had been decimated by both the genocide itself and the subsequent mass exodus of refugees.

Additionally, the ICTR aimed to create and reinforce messages of unity, reconciliation, and stability for a nation torn apart by both machetes and broken social relations. Consistent with Moghalu, Doxtader, Ahtisaari, and Murphy's reflections on the purposes of international law, the ICTR helped to mitigate conflict. As Power explains, the ICTR helped to bring a divided people together:

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[130] Carroll, "Assessment," 172.

> [M]any tribunal staff . . . thought the proceedings were increasingly delivering messages essential to reconciliation. . . . [T]he perpetrators of genocide and crimes against humanity were being forced to appear before a court of law, where their self-serving arguments could be formally challenged. If Serbia's Slobodan Milosevic and Rwanda's Théoneste Bagosora once insisted that 'uncontrolled elements' were carrying out the killings, the prosecutors at the Yugoslav and Rwanda tribunals had the opportunity to dismantle these claims, showing that these men were very much in control. The evidence proved that what were once called 'failed states' were in fact all too successful in implementing their designs.[131]

International accountability helped ensure, to the best of the UN's ability, that those who orchestrated the genocide in Rwanda would not go unpunished, an important step in helping the nation to come to terms with its history and to move forward.

However, despite some of these accomplishments, the ICTR has also generated a long list of grievances. For starters, as Power points out, the tribunal might not have been called into existence without a sense of obligation to acknowledge Rwanda after Bosnia:

> It was a year after the Hague tribunal came into existence that Rwandan Hutu militants and their foot soldiers butchered some 800,000 of their Tutsi and moderate Hutu compatriots. With a UN court in place to hear charges related to the killing of some 200,000 Bosnians, it would have been politically prickly and

[131] Power, *A Problem From Hell*: 499.

> manifestly racist to allow impunity for the planners of the Rwandan slaughter, the most clear-cut case of genocide since the Holocaust."[132]

Power's charge here is clear: Rwanda, a small African country of little strategic interest to many Western powers in comparison to the former Yugoslavia, had been off the radar while it occurred; without the UN's previous establishment of the International Criminal Tribunal for Yugoslavia, it may have remained that way.

Even in the initial debates over the establishment of the tribunal, however, some important obstacles came up. The fourteen votes for the ICTR looked like a clear landslide compared the one vote against it. Ironically, however, the one dissenting vote came from Rwanda itself. As Temple-Raston recounts, "seven months after the genocide had begun, in November 1994, the [UN] Security Council voted overwhelmingly in favor of the tribunal plan, with the exception of one of its temporary members. Rwanda voted no."[133] Ironically, the tribunal would go through for the one country that opposed it.

Why would Rwanda vote against the ICTR's creation? Three significant issues complicated the creation of the tribunal. First, leaders at the UN demanded that the tribunal would not take place in Rwanda. Many Rwandans objected to the removal of the tribunal from their country. To do so would literally and figuratively distance the trial and its findings from the Rwandan people. However, the UN determined that "any trial in Rwanda of a high-level *genocidaire*, or genocide mastermind, would be, by definition,

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[132] Ibid., 484.
[133] Temple-Raston, *Justice on the Grass*: 74.

unfair."[134] Perhaps so. Nevertheless, despite the wishes of many Rwandans, the UN strategically placed the ICTR in an obvious foreign site: Arusha, Tanzania, the site of the former peace accords between the Habyarimana government and the RPF.

Although Arusha was a logical choice for the court to reinforce a message of peace and reconciliation, the physical distance of the court from Rwanda also created an emotional distance from the tribunal. As Power observes:

> Citizens in Rwanda and Bosnia paid almost no attention to the court proceedings. Israelis recall the days when they huddled around their radios to hear for the first time the details of Nazi horrors, whereas Bosnians and Rwandans just shrug when the courts are mentioned. They are deemed irrelevant to their daily lives. Ignorance is rife."[135]

Although the ICTR tried to provide closure for the Rwandan nation, many Rwandans found it difficult to follow trials that took place on foreign soil.

Second, Rwandans expressed concerns about who would have jurisdiction over the tribunal. Even though placing the trial in Rwanda easily could be unfair, Rwandans worried that UN jurisdiction could be equally unfair. The Rwandan ambassador expressed concern that "judges from certain states (like France and Belgium) would be biased . . . [and] would only appease the conscience of the international community rather than respond to the expectations of the Rwandan people."[136] Although this problem had an easier fix—choosing Norwegian Judge Erik Møse and Sri Lankan

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[134] Ibid., 72.
[135] Power, *A Problem From Hell*: 496.
[136] Ibid., 485.

judges Navanethem Pillay and Asoka de Zoysa Gunawardana—the problem of who would preside over the hearings was a cause for concern and an important one to address.

These issues, however, were not the most important reason behind the Rwandan ambassador's objection. A larger concern for many Rwandans consisted of the UN's refusal to allow the option of the death penalty for those whom the ICTR found guilty. Rwandan courts allowed this option, and, "without the possibility of a death penalty, the Rwandan ambassador said, his nation couldn't support it."[137] Ironically, when the UN granted Rwanda power over lower-level cases through the *gacaca* court system, it meant that many of the leaders and organizers of the genocide received long sentences or life in prison while Rwandan national and *gacaca* courts have put many lower-level perpetrators to death. UN jurisdiction over the high-level cases thus inhibited Rwanda's ability to try its own criminals on its own terms and on its own soil.

The questions surrounding the ICTR's initial establishment, however, only marked the beginning of problems that the tribunal would face. Shortly after its creation, the ICTR learned that tracking down and bringing the accused to Arusha would not be easy. As previously mentioned, Nahimana, Barayagwiza, and Ngeze all fled the country after the genocide. Nahimana and Barayagwiza were arrested in Cameroon, but President Paul Biya delayed their release until 1996; Ngeze was captured in Egypt, but not until 1997. Furthermore, their alleged co-conspirator, Félicien Kabuga, remains at large nearly twenty years after the genocide. To be sure, Rwanda acting alone would likely

[137] Temple-Raston, *Justice on the Grass*: 74.

have a harder time tracking down fugitives; nevertheless, finding and prosecuting those involved with the genocide has been challenging even with an international court.

Furthermore, since its establishment, the ICTR's work has been neither quick nor easy. Carroll points out that "the ICTR has suffered from a number of physical, legal, and procedural impediments that have led to delays."[138] Particularly since the UN created the tribunal from scratch, it has been slow and costly. Furthermore, several complications have made much of the process unstable, even to several points at which it nearly collapsed entirely. As Temple-Raston points out:

> The process, it was clear, was going to be slow in spite of the fact that this was a court running against the clock. There was a deadline on this tribunal. It would meet until 2006 and then its money would run out, the United Nations had said. It was as if on that date all the justice available for Rwanda would be dispensed and when the appointed hour struck, everyone would go home.[139]

The 2006 deadline has come and gone, but the ICTR did not cease its work as projected; as of December 2011, the court's "trial work is expected to be finished by June 2012 and appeals work is on track to be completed by the end of 2014."[140] If that deadline is met, twenty years will have passed since the genocide occurred.

One way that the ICTR has tried to speed up its process is through the reintroduction of Rwandan *gacaca* courts. As Jones explains:

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[138] Carroll, "Assessment," 181.
[139] Temple-Raston, *Justice on the Grass*: 76.
[140] Khalida Rachid Khan, "Six-Monthly Report on the Completion Strategy of the International Criminal Tribunal for Rwanda " (New York, NY).

> The Gacaca represents a uniquely Rwandan response to the genocide. It is a modernized version of a traditional dispute resolution mechanism wherein people of the community who had a grievance would present it before the Inyangamugayo, and it would be discussed and a decision reached. . . . It is the task of these courts to encourage reconciliation and national unity while also attending to the processing of the remaining 760,000 genocide cases.[141]

Nevertheless, this process, too, has been slow. In 2000, for example, Carroll noted that "if the Rwandan courts continued at their current pace, it would take 150 years to try all the accused."[142] Although this process is an innovative way to handle the lower-level perpetrators, it may not be fully equipped to handle the large number of accused criminals.

Meanwhile, the ICTR's handling of bigger cases has not been easy. The process of bringing these men (especially Barayagwiza) to trial created legal challenges even after they were extradited to the court. As Temple-Raston notes:

> When [Barayagwiza] finally arrived in Arusha, he cried foul. He had been held in jail in Cameroon for nearly a year without an indictment, he said, which was against international law and the bylaws of the ICTR. The former jurist demanded his own release. Sputtering about his unfair detention, he called the tribunal a farce.[143]
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> Although his protest was likely just an attempt to get away scot-free, Barayagwiza's criticism of the court was not completely unwarranted; in fact, his appeal of his

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[141] Jones, *Courts of Genocide*: 8-9.
[142] Carroll, "Assessment," 190.
[143] Temple-Raston, *Justice on the Grass*: 81.

> indictment 'nearly resulted in his release before trial."[144] Even after it had Barayagwiza in custody, the court struggled to keep him detained.

Barayagwiza's story brings up an interesting challenge to criminal law; that is, when criminal law fails to meet its goal of retributive justice, it also can be counterproductive for its goal of reconciliation. As Moghalu notes:

> [R]ecording past injustice and creating the conditions for national reconciliation are not always best realized through criminal law. The available evidence, even of massive violations, may not always fulfil[l] the formal criteria of criminal accountability. . . . [A] criminal trial may not always be the best instrument for memory and healing—especially if the leader has to be released because of the lack of formal evidence."[145]

Had the court released Barayagwiza, particularly on technicalities related to his incarceration rather than for a lack of evidence for his crimes, it likely would have been highly counterproductive.

Additionally, Ngeze's story also raises some interesting questions about the nature of the crime of incitement, particularly as it relates to timing. His lawyer, John Floyd III, expressed concern about the temporal delay between Ngeze's words and the genocidaires' actions. "*Kangura* wasn't even published during the genocide," Floyd noted, "so how can [Ngeze] be guilty of inciting it?"[146] This question presented a tough challenge for the prosecution.

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[144] Carroll, "Assessment," 183.
[145] Ahtisaari, "Justice and Accountability," xv-xvi.
[146] Temple-Raston, *Justice on the Grass*: 89.

Indeed, as with many trials, this one contained several moments of uncertainty. As Stephen Rapp, the lead prosecutor on the "media trial" case recalls:

> I remember that while making the closing argument I was afraid that the judges would decide that a person like Nahimana—who may never have gone near a roadblock during the killing, who certainly never raised a machete, and who likely saw very little or no bloodshed—was somehow less guilty than one of the thousands who had killed their neighbors with their own hands.[147]

Nevertheless, Barayagwiza, Nahimana, and Ngeze eventually stood trial, and the ICTR unanimously convicted them of genocide, direct and public incitement to commit genocide, complicity in genocide, and two crimes against humanity.[148] However, the slow pace of the tribunal's proceedings added a temporal distance to the already established physical distance. Even though all three men were in custody by 1997, their trial did not begin until 2001. Furthermore, the court did not deliver its sentence until December 3, 2003, nearly a decade after the genocide took place, and it granted them an appeal in 2007. Nevertheless, even though it took some time and energy, the court could at least claim that it had successfully captured, tried, and even convicted these three men.

As the first international media incitement trial since Nuremberg, the court's ruling was both authoritative and controversial. Not surprisingly, given the quality and quantity of evidence, the court reaffirmed that incitement to genocide was a serious offense under international law. "The power of the media to create and destroy fundamental human values comes with great responsibility," it declared. "Those who control such media are

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[147] Stephen J. Rapp, "Achieving Accountability for the Greatest Crimes: The Legacy of the International Tribunals," *Drake Law Review* 55(2007): 280.

[148] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*, Judgment 28-29.

accountable for its consequences."[149] Despite all of its complications, the 'media trial' managed to provide some closure for Rwanda—at least for those who were able to follow the story—and reopened legal questions that had not been addressed on an international level in more than fifty years.

The court's 2003 ruling seemed like an end to a long and exhausting story; from a legal standpoint, however, it was only a beginning. Although it provided some closure for Rwanda, the trial asks more legal questions than it answers. In particular, it questions traditional assumptions about incitement, media ethics, the international legal system, and free speech. It challenges the UN to define the concept of incitement and to determine who should have jurisdiction in applicable cases; moreover, it tests the limits of free speech.

One question that the "media trial" leaves unresolved is the question of local and international jurisdiction. To be sure, the situation in late 1994 left little choice between local and international jurisdiction. Additionally, taking an international approach to questions of incitement does have its benefits. For example, as Carroll suggests, the threat of international justice might deter individuals from committing crimes:

> The ICTR, as well as the International Criminal Tribunal for Yugoslavia (ICTY) and other criminal tribunals, could deter future international humanitarian law violations by sending the message to individuals that the international community will step in and hold those guilty of serious human rights violations accountable for their actions.[150]

For Rwanda, in particular, scholars have argued that the lack of messages about international consequences to counter the RTLM's propaganda contributed to people's willingness to

[149] Ibid., 3.
[150] Carroll, "Assessment," 173.

partake in the genocide. By this logic, if the UN consistently takes incitement to genocide cases to an international court, it makes a clear and consistent threat of prosecution to both senders and recipients of messages of incitement.

Furthermore, as the Rwandan genocide demonstrates, a country's legal system may not be equipped to handle cases of incitement or other genocidal crimes in the aftermath of widespread killings and mass exodus of refugees. Thus, international jurisdiction may be the only viable option. Moreover, even though it took significant amounts of time and energy the ICTR successfully brought Nahimana, Barayagwiza, Ngeze, and many others to court, whereas Rwanda might have struggled to do so if left completely to its own devices. Therefore, international jurisdiction shows some promise.

At the same time, an international approach also might be problematic, so there may be good reason to maintain at least elements of local jurisdiction. For starters, by holding long, drawn-out trials from remote locations, international courts risk unfairness to the accused and, more importantly, a lost sense of urgency, immediacy, care, and closure for the victims. Additionally, international courts might undermine local legal customs, such as Rwandan support for the death penalty in extreme cases; therefore, they might upset the very people whom they aim to help. Therefore, as May argues, the international community may need to listen more carefully to local concerns:

> [W]hen international courts make such pronouncements of condemnation, the effect on various societies will depend on how much moral authority is bestowed on these courts by the members of the society in question. This is one good reason to make

> sure that international courts and tribunals are established with maximal support, rather than to be resented by the folks back home.[151]

In this regard, the UN may need to reassess some of the concerns Rwandans expressed as it deals with future cases.

Meanwhile, despite some of the problems of the ICTR, it still accomplished many important goals. Furthermore, as the international legal system is still in a nascent stage, it provides hope for the future. As Moghalu argues:

> There are few perfect options for confronting impunity and effecting reconciliation. The process of criminal trials, national or international, is no different. Utilizing justice as an element of conflict resolution is not as straightforward a process as might be assumed. International tribunals are less than perfect mechanisms for dealing with mass atrocities for a number of reasons: only a relatively small number of people can be tried, though even trying modest numbers of persons may contribute significantly to the reconciliation process if those tried are the planners and leading perpetrators of mass crimes as opposed to minor culprits; and trials are unavoidably lengthy because of the intricacies of judicial proceedings conducted in several languages. These trials also tend to be perfectionist in aspiration because of the need to respect due process and the accused's right to a fair trial. All of this can tax the patience of victims and observers and raise questions about the true deterrent

[151] May, *Genocide*: 153.

> effect of trials. . . . Yet what is the alternative? Do nothing and raise the spectre of self-help vigilante justice?"[152]

As this case has shown, international trials may be imperfect, but not wholly problematic. However, as Rapp states:

> The hope of those of us involved in this process is for a future where there will no longer be impunity for war criminals, and where there will be something at the international level similar to the process in national justice systems. Of course, national systems are not perfect, as the courts never convict all the criminals or deter all crime. Yet a national system need not prosecute all crimes in order to have a deterrent effect. Prosecuting selected cases, particularly when dealing with actors attuned to the possible consequences of their conduct, can be very effective."[153]

Perhaps the world will arrive at a world free of war crimes someday; in the meantime, however, the international community can learn from the past and strive for better ways of preventing and responding to genocide.

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[152] Moghalu, "Reconciling Fractured Societies: An African Perspective on the Role of Judicial Prosecutions," 214-15.
[153] Rapp, "Achieving Accountability," 284.

CHAPTER V

CONCLUSION

In *Metahistory*, Hayden White discusses four "modes of emplotment" for describing worldviews.[154] Borrowing literary language from Northrop Frye, he discusses romantic, comic, tragic, and satirical frames for telling stories about human nature. Romance, he argues, emphasizes "the hero's transcendence from the world of experience, his victory over it, and his final liberation from it . . . the triumph of good over evil, virtue over vice, light over darkness, and the ultimate transcendence of man over the world in which he was imprisoned by the Fall."[155] In Comedy, White explains, "hope is held out for the temporary triumph of man over his world by the prospect of occasional *reconciliations* of the forces at play in the social and natural worlds."[156] Tragedy focuses on "the nature of resignations of men into the conditions under which they must labor . . . [which] are asserted to be inalterable and eternal."[157] Finally, White describes Satire as "a drama dominated by the apprehension that man is ultimately a captive of the world rather than its master, and by the recognition that . . . human consciousness and will are always inadequate to the task of overcoming definitively the dark force of death, which is man's unremitting enemy."[158] White suggests that these four "modes of emplotment" extend beyond how we tell fiction stories to how we tell non-fiction stories.

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[154] Hayden White, *Metahistory* (Baltimore: Johns Hopkins University Press, 1973). 7.
[155] Ibid., 8-9.
[156] Ibid., 9.
[157] Ibid.
[158] Ibid.

To use White's metaphors, I suggest that Romance, Comedy, Tragedy, and Satire can explain how we understand and theorize genocide. A romantic view of genocide is that espoused by those who argue "never again." Those who hold this view imagine a peaceful world in which genocide is no longer a possibility. The criticism of this viewpoint, however, is that despite claims of "never again," genocide has become a recurring phenomenon. Although it sounds very pleasant, a romantic view of genocide might be overly optimistic.

A tragic, or even satirical, view of genocide is one similar to the ideas expressed by many international leaders in response to Rwanda. Specifically, Frank Wisner's comment that "we can't put all these silly humanitarian issues on lists"[159] suggests that genocide will happen and there is little that people can do to prevent them. Indeed, given events in Cambodia, the former Yugoslavia, Rwanda, and elsewhere, there is reason to be skeptical. Tragic and satirical views of genocide, however, are pessimistic and, as I argued in my third chapter, short-sighted.

I espouse a comic framework toward genocide here (an odd combination of words, indeed). This approach recognizes the reality of genocide but hopes that humanity will learn from previous mistakes. Although less optimistic than a romantic worldview, it acknowledges that some of the limitations that have hitherto interfered with genocide prevention may continue into the future. Furthermore, it avoids some of the traps from the less optimistic plots that have led to nonintervention and the consequences that accompany it. Consequently, it is "hope . . . by occasional

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[159] Cohen, *One Hundred Days*: 115.

reconciliations of the forces at play in the social and natural worlds" that drives my analysis of the trial of Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze.

First, in terms of morality and culpability for incitement, I argue that incitement to genocide is possible and should be a punishable offense. Understood as situational violence with malicious intent and vicarious action, the concept of incitement is a useful legal term that explains why both speakers and listeners are responsible for the final outcome. The prosecution at the ICTR presented abundant evidence that Nahimana, Barayagwiza, and Ngeze incited the Rwandan Hutu population. At the same time, the case against these three executives was so strong that it might set too high of a burden of proof for future cases. Consequently, lawyers, journalists and scholars can identify what constituted incitement in this case, but may need to adopt a contextual approach in the future.

In terms of politics, I concur with Bill Clinton's remarks in Kigali that the international community "must have global vigilance . . . never again must we be shy in the face of the evidence . . . [and] we must, as an international community, have the ability to act when genocide threatens."[160] In order for these words to mean anything, however, they must not fall upon deaf ears. It is easy to point fingers and place blame after something like genocide occurs; however, this game is only valuable insofar as the parties involved can reflect upon their (in)action and change their ways. In particular, two related lessons from Rwanda include the willingness to call genocide by its rightful

[160] Clinton, "Remarks to the People of Rwanda."

name and, more importantly, to accept the duty to act after doing so. The second lesson may be difficult for world leaders to accept, but, as Albright and Cohen and others have argued, the long-term costs (financial, political, and, most importantly, human) of denial and inaction outweigh the short-term costs of financial and military support.

Finally, with regards to the trial itself and international law, I argue that the developing international legal system is an imperfect but nevertheless useful tool for reconciliation of a divided public. The "media trial" contained many strengths and weaknesses, but to render a pure judgment about its effectiveness is to miss important parts of the story. It successfully brought these three men to justice, offered closure to a dark chapter of history, and sent a message to those who wish to commit genocide and mass atrocities elsewhere; at the same time, it was slow, distant, and sometimes inconsiderate of the very public it aimed to help. A better question than whether the trial was "good" or "bad" might be whether it "worked." To this question, I cautiously reply in the affirmative. At the same time, I argue that it was, as Moghalu says, an "imperfect mechanism," but one that we can learn from and reform. Fortunately, a comic attitude toward this trial allows room to reflect upon the past and prepare for the future.

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