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**Comments**

This review was originally published on [H-Genocide](#) in August 2023.

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**Benjamin Thorne.** *The Figure of the Witness in International Criminal Tribunals: Memory, Atrocities and Transitional Justice.* Transitional Justice Series. Abingdon: Routledge, 2022. 228 pp. \$52.95, e-book, ISBN 978-1-00-320013-0.



**Reviewed by** Art Blaser (Chapman University), Trinity Huynh (Chapman University)

**Published on** H-Genocide (August, 2023)

**Commissioned by** Lucy J. Gaynor

Benjamin Thorne's *The Figure of the Witness in International Criminal Tribunals: Memory, Atrocities, and Transitional Justice* tells readers a lot about witness memory in atrocity trials and post-modernist jurisprudence. Thorne's book demonstrates problems of professional analysts' parallel conversations that too seldom intersect: social theory and jurisprudence, on the one hand, and practice and law, on the other. Within each, scholars and practitioners are convinced that others "don't get it." Thorne offers a case for humility, so often missing in a parallel universe of mass atrocity scholarship. Ideally for scholars and practitioners, atrocity victims could benefit from scholarship and from tribunal activity. As Thorne acknowledges, the privileged outsider too often operates from a limited perspective.

For advocates of eclectic approaches, it is useful to think of approaches as existing along a continuum in which useful aspects of a wide range of works can be appreciated. Part of the teaching and learning process in which many H-Genocide readers are engaged is making sense of what initially

makes little sense. In that light, Thorne has provided a useful approach to understanding witness memory applied to the International Criminal Tribunal on Rwanda (ICTR). Thorne's analysis challenges the assumptions that advocates and analysts may also apply to other tribunals, such as the International Criminal Tribunal on the former Yugoslavia (ICTY), the International Residual Mechanism for Criminal Tribunals (IRMCT), and the International Criminal Court (ICC).

The book is an extension of Thorne's doctoral dissertation at the University of Sussex School of Law.[1] It benefited from his work as a visiting researcher with the University of Oxford Centre for Socio-Legal Studies and two months of field research in Rwanda. As Thorne suggests in his introduction, the analyst should "not ... be limited by law's need for singularity and progress, and therefore puts front and centre the plural and multi-directional nature of remembering atrocities" (p. xxviii).

Thorne grapples with his absence of “lived experience.” He convincingly argues that fieldwork and archival research (“discursive textual analysis”) can provide valuable insight (p. 148). Thorne observes that few practitioners, particularly very few lawyers, are accustomed to painstaking discursive textual analysis. The national and international practitioners of global criminal justice are even less likely to do so. Many practitioners engage in a parallel, incommensurate conversation, contending that “trial truth” is limited.[2] As Thorne and many observers of “criminal justice” at all levels point out, there are economic, social, and bureaucratic constraints that keep them from doing better, and will likely continue to do so in the future.

Between his detailed introduction and conclusion, Thorne’s chapters include “Memory, Witnesses and International Criminal Institutions,” “Conceptualizing the Way Legal Witnesses Remember Atrocities,” “The Discursive Battleground of Legal Witnessing, Or, The Active Witness and Their *‘Right to Truth,’*” “Memories of Violence and the Limitations of Law,” “Critiquing Liberal Legality and Collective Memory,” and “Fragments of Legal Memories.” Two appendices describe Thorne’s interviews and cases of primary focus. It is a well-organized book, both within and across chapters.

Thorne’s book is an excellent example of systematic, exhaustive analysis of trial transcripts. Readers are acquainted with philosophical approaches to atrocity set forth in the writings of Hannah Arendt, Giorgio Agamben, and Paul Ricoeur. Thorne also draws on contemporary accounts of witnessing from Mark Osiel, Ruti Teitel, and others. Thorne champions “discursive analysis” especially in his fourth and fifth chapters. He readily acknowledges the limitations of his study. While criticizing the limits of Western legal institutions, he grants that his approach is also interwoven with rigidity, subjectivity, and distortion.

Early chapters describe the likelihood of distortion in reacting to atrocity, such as a “grey zone” from Agamben’s description of Holocaust witnessing (p. 34). Survivors who had witnessed the atrocities that Agamben describes have a moral obligation to share their experiences. However, simultaneously, survivors bear the guilt and trauma of surviving. Trials oversimplified their trauma. Thorne compares the terms “witnesses” and “victims” and describes the universality of “the right to truth” as problematic due to the collective categorization of victims.

Thorne offers an alternative perspective to the predominant legal frameworks of understanding memory and legal witnessing. Through proposing a conceptual legal framework using concepts from Michel Foucault, Agamben, and Ricoeur, Thorne expands on preexisting notions, norms, and transitional justice legal scholarship. Through analyzing contributions from transitional justice scholars and practitioners, he probes the role of international legal institutions and legal memory interpretation.

Another strength is the exposure of sometimes overly simplistic romanticism and legalism. As Thorne suggests, trials and witnessing will often not serve as a basis for rebuilding after atrocity. He persuasively argues that appraisals of reforms, such as the Gacaca reform (Rwanda’s community-based proceedings in 2002-12, a less formal process than court trials), have been judged “failures” when viewed within a narrow Western lens. The appraisals may reflect differences more than similarities in thought from human rights and legal experts, on the one hand, and Rwandan people, on the other.

Thorne presciently characterizes the field of transitional justice as “under-theorized” and in need of conceptual, methodological, and empirical analysis (p. 150). Adding rigor and deeper theorizing sometimes comes at the cost of inaction, with the result of increasing impatience of advocates and activists. Thus, the greatest strengths of ana-

lyses like Thorne's may also be perceived as weaknesses.

Also problematic is the introduction of especially important concerns without full development or any indication of what full development might look like. For instance, Thorne mentions the Akayesu case at the ICTR as reflecting a superficial and inadequate approach to massive campaigns of forced rape due to a "discursively restrictive process of what memories of violence could be heard" (p. 148). There is no mention of Navi Pillay, the judge directing the rewriting of the indictment, leaving readers to wonder where the ICTR's inadequacies came from and how some might be better addressed in the future.

In places, dense prose, inaccurate word choice, or missed errors in proofreading obscure important points. For example, "self-filling prophecy" is used to describe how regimes may use witness testimony (p. 96). Presumably, the word should be "self-fulfilling." The phrase "interest of justice" would have "a," rather than "as," much more significant role than to get lawyers "out of a bind" (p. 104). Thorne's conceptual insights are relevant to responses to mass rights violations rather than "mass right violations" (p. 121). "Convicting the crime of rape" either has a word missing or should refer to "prosecuting" (p. 122). Sympathetic readers will "autocorrect," but other readers will be frustrated. This is partly a factor of modern publishing technology. All of these examples would elude a spell check. All might, however, be detected with wider use of audio technology.

Thorne is persuasive in arguing for humility and a decoupling of transitional justice from tribunals that rely so much on witnessing and memory. Similar discursive analysis applied in a greater variety of contexts may suggest feasible alternatives. It may instead, however, suggest that, however limited, such tribunals as the ICTR and ICC, given major bureaucratic, financial, and political constraints, combined with such alternatives

as truth commissions, will enable humanity to muddle through.

Thorne frequently suggests or provokes questions that may be the basis of future inquiries about atrocity. For instance, his focus on witnesses invites analysis of the selective and frequently diminishing memories of such perpetrators as Félicien Kabuga in Rwanda and other perpetrators of atrocities in Cambodia, Chile, and elsewhere. National tribunals in Rwanda and elsewhere would have many similarities but also perhaps some key differences from Thorne's ICTR examples.

Thorne's book would be a valuable acquisition for research libraries and scholarly activists interested in jurisprudence, law, and justice. It will be most useful for advanced undergraduates and graduate students in law, politics, and the liberal arts.

#### Notes

[1]. Benjamin Thorne, "Legal Witnessing and Mass Human Rights Violations: Remembering Atrocities" (PhD diss., University of Sussex School of Law, 2020).

[2]. Fergal Gaynor refers to "trial truth" as a more feasible alternative to searching for complete truth in situations of mass atrocity. See, for instance, Fergal Gaynor, "Evidence, Truth, and History in Atrocity Trials," *Boston College Law Review* 63, no. 9, Electronic Supplement I (2022): 37-47.

If there is additional discussion of this review, you may access it through the network, at <https://networks.h-net.org/h-genocide>

**Citation:** Art Blaser, Trinity Huynh. Review of Thorne, Benjamin, *The Figure of the Witness in International Criminal Tribunals: Memory, Atrocities and Transitional Justice*. H-Genocide, H-Net Reviews. August, 2023.

**URL:** <https://www.h-net.org/reviews/showrev.php?id=58857>



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