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A Feminist Postsocialist Approach to the Intercultural Communication of Rape at the ICTY

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Jennifer A. Zenovich & Leda Cooks

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- Q22:** Au: Please provide missing [State/Country] for [Stover, 2005].
- Q23:** Au: Please provide missing [State/Country] for [Todovora et al., 2010].

TABLE OF CONTENTS LISTING

The table of contents for the journal will list your paper exactly as it appears below:

A Feminist Postsocialist Approach to the Intercultural Communication of Rape at the ICTY

Jennifer A. Zenovich & Leda Cooks

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A Feminist Postsocialist Approach to the Intercultural Communication of Rape at the ICTY

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- Q2** This article argues for postsocialism as an added consideration to postcolonial theory in analyzing and enacting intercultural and international relations of/for social justice. We theorize the need for feminist and communication studies of rape and sexual assault that consider how rape occurs in relation to institutions, bodies, and times that offer varying positions and possibilities to different identities, cultures, and groups. Our study of an international rape trial asks how survivors of rape can have their experiences validated in androcentric international judicial systems. Theorizing Yugoslavia through the prism of rape, we center our analysis on women as property. Utilizing concepts of relationality and performativity, we imagine how the temporal, cultural, and geographic positionalities of women's experiences of rape can critique patriarchy and global capitalism. 5
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- Q3**

Recently, stories of the fall from grace by those accused of rape or sexual assault, such as Harvey Weinstein, Steve Wynn, Larry Nasser, Matt Lauer, Brock Turner, Donald Trump (among almost 100 others¹), have been front-page news. Alongside these headlines are their claims that they were framed, that their lives and the lives of their families were ruined, and that the U.S. (among others, such as the U.K. or India) justice system favors victims on the basis of unwarranted claims and circumstantial evidence (Jolly, 2017; Jordan, 2004; Kreighbaum, 2017). In the United States, even as the #MeToo² movement has brought down powerful men and given people of all genders a platform to discuss their experiences of sexual violation, the penalties for 20

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narrating experiences of rape weigh differently on different bodies, in different cultural contexts. Across cultures and nations international media have given increased attention to rape as a cultural or a feminist issue (Roychowdhury, 2013), though one tied to traditional practices (subjugation of women and people identifying/identified with non-normative sexualities) (Muganyizi, Nyström, & Axemo, 2011) rather than (in the U.S.) mediated and mythologized practices of objectification and sexuality (Jenkins, 2009; Jordan, 2004). While it may be reported, analyzed, or narrated through a cultural lens, rape is an interpersonal violation against bodies and identities that crosses cultures and borders.

“Rape” is also performative: as a discourse and practice it signifies the enactment of violence, a violence that necessitates discrete categorization for definition and sanction. While institutional cultures (university, legal, media) give shape to the definitional dimensions of the problem (Boux & Daum, 2015) and methods of determining sanction, the increasing call for studies of the discourses and communicative practices that define, enact, and perform sexual assault (Botta & Pingree, 1997) gives increased importance to communication studies of rape discourse, as well as its related embodiment and performance. From this perspective, communication is not solely a matter of institutions, objects/texts (laws, media content) or people (perpetrators, bystanders, victims) but is comprised in the ways we make sense of and act on all of these relationally.³ Our communication about rape, whether viewed as mediated, interpersonal, or institutional (among other modes of conveyance) is always also cultural. Communication constitutes our understanding of what rape does and should mean, yet its specific characteristics of violence, violation, and pain make it difficult if not impossible to express from a personal standpoint, much less on a global stage. This discursive slippage, for people of all genders who have been raped, but specifically in our study involving women, is not accidental but is embedded in intimate and global relations of power. Our study of an international rape trial, specifically the Kunarac⁴ case at the International Criminal Tribunal for the former Yugoslavia (ICTY), shows the need to examine the framing of rape within and among institutions, cultures, and (gendered, sexualized, raced) bodies and spaces—that is, as each is enacted and given meaning in relation to the other.

With this perspective in mind, we might question the associated policies and presumptions about justice denied or served to the celebrities named above. Who is central to these stories? How are subjects (their voice, agency), relationships, institutions, and spaces made present or absent from discussion? Where and who are women in relation to the body/ies of the stories? We might ask how, in these narratives, is rape both normalized and made a spectacle? Women’s (and others who have been raped) stories and experiences of pain, whether heard/audienced or absent, often lead to narratives that serve to normalize the perpetrators’ potential to become a good citizen or which are exacerbated to claim that rape or sexual assault only happens in extraordinary circumstances. In these major news stories, women become material and symbolic property in a performance of male dominance. Given these discursive relations, how can survivors of rape be emplaced or recognized as subjects with the potential to become a citizens or to have their experiences validated

in an androcentric liberal judicial system? Just as these women and their embodied experiences of sexual assault and rape in the United States are made invisible or only visible in their relation to their attackers, the Kunarac case at the ICTY demonstrates the precarious⁵ relationship women have to narrating their experiences as their own. 70

Theorizing the former Yugoslavia through the prism of rape, we center our analysis on women as property within a postsocialist and postcolonial world. Embedded in the national and the local is the larger context of global capitalism that is shaped by the reverberating legacies of colonization and socialism. These legacies work in discursive and performative relation to enforce corporeally gendered structures of erasure specifically in rape reporting, rape prosecution, and rape trial sentencing. Prior to the Kunarac trial, it was unprecedented for rape in war to be charged as a crime against humanity in an international court. Some scholars (Bergoffen, 2003, 2006, 2009; Engle, 2008) lauded the Kunarac rape trial as a monumental victory for women's rights because it declared rape a crime against humanity. Bergoffen (2003) even goes so far as to claim that this ruling substantiates a precedent where women's vulnerable bodies must be treated with the same judicial respect as men's. Bergoffen (2009) claims that the ruling allows women to become subjects with legal recourse, not simply objects of masculine discourse. 75 80 85

While we do not fully agree with Bergoffen's analysis, we do find the ruling of rape a crime against humanity a telling insight into how women's bodies enter inter/cultural discourse to seek international justice and remain critical of conditions that enable this judgment. From our perspective, this ruling is only possible when a woman's life and body are primarily valued in relation to men and the nation—where these relationships are always already a precarious effect of the conditions of capital. In addition to cautious celebration of this ruling, we follow Hasian's (2016) call to intercultural communication scholars to "Intervene in debates about global acknowledgements, apologies, reparations, repatriation of remains, land distribution and other forms of social redress" (p. 269). Using concepts of relationality and performativity, we imagine how the temporal, cultural, and geographic positionalities of women's experiences of rape can critique patriarchy and global capitalism. 90 95

To explain our use of the discourses and performances that constitute rape as a vehicle for troubling relations of capital and bodies, we first describe the context of the war and use of rape that led to the breakup of the former Yugoslavia. We then turn to our theoretical orientation and methodological approach: we discuss our use of postsocialist critique to examine the discursive relations that comprised the trials as performances of embodiment, cultures, and identities. Following Butler (1997, 2005), we analyze the transcripts and use of language in the text as performative of these discursive relations. A relational consideration of the material and symbolic dimensions of the trial positions it as a performative/doing of justice in an international and intercultural context and a performance/thing done, with consequences situated spatially and temporally for ownership and/of bodies. To do so, albeit within the constraints of a short essay, we analyze examples from over 6,000 pages of trial transcripts. These brief and difficult⁶ excerpts show our larger arguments for the recognition of postsocialism as an added⁷ consideration in theorizing and enacting 100 105 110

intercultural and international relations of/for social justice, and for the need for feminist and communication studies of rape and sexual assault that consider the ways its enactment occurs not in isolation from but in relation to institutions, bodies, spaces, and times that offer varying positions and possibilities to different identities, cultures, and groups. In what follows we consider how postsocialist theory might aid in thinking through feminist intercultural communication across borders. We imagine how the global condition of postsocialism might help us to analyze the postsocialist second world in the three-world metacartography of development under global capitalism.

Postsocialist Critique

At the end of Soviet socialism (1989) and the Cold War, it was clear that Yugoslav socialism would also soon come to an end. Although Yugoslavia was not part of the Soviet Bloc, the end of the Cold War affected all Eastern Europe and was especially consequential for the regional practice of socialism. Specifically, the fall of the Berlin Wall marked the beginning of a postsocialist global condition (Shih, 2012). More than a temporal marker of “The End of History” (Fukuyama, 1989) or of the uncontested triumph of a new world order under global capitalism (a Western liberal misnomer for democracy), postsocialist scholars have begun to interrogate the possibilities of postsocialism as a praxis of critique. Suchland (2011, 2015) and Atanasoski (2013) argue that the transition from socialism to capitalism lays bare the violent ways in which capitalism is materially and symbolically realized through the exploitation of marginalized, vulnerable, and precarious bodies. Postsocialist scholars argue that analysis of the structural relation of economic conditions of capital to social conditions must be addressed when critiquing the colossal and often catastrophic effects of capitalism (Gal & Kligman, 2000; Ghodsee, 2011, 2004; Todovora & Gille, 2010). Attempting to come to terms with the effects of failed socialist projects, postsocialist scholars argue that postsocialism can be considered a global condition (Atanasoski, 2013) undergirded by the material and symbolic allotments of precarity and property ownership (Zenovich, 2016) that coincide with racialized, sexualized, and gendered hierarchies made manifest in the transition from socialism to late capitalism.

One objective of this article, then, is to analyze the ways in which postsocialist critique is relevant to the definition of rape and/at the ICTY; our larger goal is to demonstrate the need for more approaches to understand international and intercultural communicative practices in social justice contexts as performative of power, identities, and relationships that exceed and inform the boundaries of the context. Although we prioritize postsocialist theory in our consideration of the context of the trial and discursive positioning of women’s experiences, we acknowledge the global importance of postcolonial theory in understanding intercultural relations. Shome and Hedge (2002) explain that postcolonial scholarship provides historical and international depth to understanding cultural power by situating that power “within geopolitical arrangements, and relations of nations and their inter/nation histories” (p. 252).

Asking “Is the Post in Post-Colonial the Same as the Post- in Post-Soviet?”, Moore (2001) responds that postcolonial theory can be used in postsocialist spaces by claiming that Soviet power was colonizing. Moore’s premise is important, though his analysis is inaccurate: Yugoslavia infamously was expelled from the Soviet Union (1948) and later formed the Non-Aligned Movement⁸ (1961). While traditionally the third world is erased from view (Spivak’s (1998) subaltern), the conditions of erasure differ historically in colonization of the third world from the socialization of the second world. Suchland (2011) explains, “With the end of the Cold War and the elimination of capitalism’s other, postcolonial and third-world critiques were left to challenge neoliberal globalization while the former Soviet Union and Eastern bloc were left to the normalizing processes of democratization and Europeanization” (p. 846). In the postsocialist example the nation only becomes postsocialist in its new relationship to property. Specifically, the transition to capitalism required the termination of communal property ownership and the instantiation of private individual property ownership. These flows of property rearranged the economy, one’s relationship to the nation, as well as communal and individual relationships to identity and social hierarchy. The world post-World War II was part of the condition that enabled postcolonial critiques of universal modernity, whereas postsocialism did not produce such widespread critique. Suchland (2011) observes that “[p]ostsocialism gets lost because it is largely presumed to be a process of democratization or Europeanization and thus uncritically positioned vis-a`-vis the first world” (p. 839).

Ahmed (2015) warns that we must be diligent not to erase the lived histories and experiences of pain that form the basis of critical theoretical frameworks. We agree and believe that postsocialism offers an important view on power relations that allow for different mobilities toward and away from ownership of bodies and/as capital. To begin to theorize about feminist intercultural communication in postsocialist context, we provide the Yugoslav example and analyze the Kunarac ICTY case and the judgment of rape as constituting a crime against humanity. In analyzing transcripts from the trial we consider the way postsocialism might function to critique global capitalism. A postsocialist approach takes seriously the temporal, cultural, and spatial dimensions of identity formation at the convergence of these geopolitical markers. We offer a postsocialist feminist analysis to theorize possibilities for intercultural communication research and for justice that recognizes relations of (feeling, positioned) bodies, ownership, and capital.

We use performance studies to examine the productive possibilities at the intersection of postsocialist and postcolonial worlds and theories. Performance studies enable researchers to interpret how the effects of discourse are made real and/or accomplished through the symbolic communication of the body (see Bell, 1994; Conquergood, 1982; Madison, 1998, 1999). As metaphor-cum-theory, performance offers ways to think subjectivity and agency as embodiment, difference, and resistance to a symbolic order. Mendoza, Halualani, and Drzewieca (2002) explain that a performative approach to intercultural communication can direct us to the “interesting question of how particular conventions are transported across borders, infused with new meanings, and practiced in specific locations” (p. 319). Studying the ICTY

transcripts through a performative intercultural communication lens allows us to ask how different actors in these discourses are produced and how their communication about their experiences performs identity, community, domination, and resistance (Calafell, 2007). 200

In attending to the body, performance challenges discourses that assume identity is essential and/or innate. Although the Kunarac transcripts are text based, they speak volumes about the body. The transcripts speak the witnesses into being; they speak bodily harm and torture; and they speak rape, resistance, geopolitical formations, property, and ownership. We read the legal transcript as performative (Butler, 1997)—constitutive of identities—and see exchanges between the witnesses, defense, prosecution, and the judges as affected by and effecting the context of the testimony. Schneider (1997) asserts, “Performance implies an audience/performer or ritual participant relationship—a reciprocity, a practice in the constructions of cultural reality relative to its effects” (p. 22). The rules of the trial enact relational performances of cultural recognition by validating one side’s version of truth as well as the subject entitled to justice. Our selected texts analyzed below were part of a larger dissertation project, which consisted of quantitatively coding the Kunarac ICTY transcript for references to property, identity, and rape. Although not exhaustive, these examples show how discourses about justice and rape are performed and recognized through intercultural communication in the former Yugoslavia and at the ICTY. Performance studies, as a corporeal methodology with epistemological claims, views the body and recognition of embodiment as necessary to any social justice interventions. The next section contextualizes how women’s bodies came to communicate national property in the performative intercultural sexual violence of the Bosnian War. 205 210 215 220

*The Context of War*⁹

The precarity of unemployment in Yugoslavia after Tito’s death (1980), coupled with the federal allotment of monies to certain republics instead of others, increased national, ethnic, and gender tensions, which culminated in the end of socialism and exploded in the Bosnian War of the 1990s. The murderous nationalism embedded in the sexual violence of the genocide exemplified how sexual violence enforces and disrupts national boundaries. Feminist researchers looking for language to name the how and why of such violence point to ancient tribal hatreds, religious divides, ethnic antagonisms, militarized hyper-masculinity, and the naturalization of women as reproducers of nation for the rape and massacre of an estimated 60,000 women (Stiglmyer, 1994). Women in Bosnia were representative of nation (national property) in such a way that their bodies became the borders of states: their sex preceded by ethnicity and their babies owed to effects of military penetration (Hromadzic, 2007). 225 230 235

The goal of mass rape during the war was to produce a technique of genocide developed from discourses of patrilineal bloodlines and inheritance (MacKinnon, 1993). If successful in impregnating their victims, Serbian soldiers constructed new

Serbian nations within Bosnian women's bodies. Her raped body, signifying the space before the rape (Bosnia) is transformed by this violation, so the properties of her body now signify (Serbian) nation. Women became "homeless in her own body," producing male property (children) to construct national borders without claim to their own selfhood (i.e., dispossession) (Copelon, 1994, p. 202). One witness, while gang raped, was told she would never know which Serb was the father but she would know the child was Serbian¹⁰ (Kunarac, p. 6243). Systematic rape aimed to erase the woman's ethnicity, but not her entire self, because she was the vessel needed to reproduce the Serbian capitalist nation. Sexual violence is integral to the development of the capitalist state because it intersects with gender in postsocialist nations (Suchland, 2015). The erasure of women through rape is, and has always been as postcolonial and indigenous scholars note, crucial to nation building (Anzaldúa, 2012; Deer, 2015; Yuval-Davis, 1997). Although nations are constituted and colonized through sexual violence (Calafell, 2007; Spillers, 1987) and sexual violence is normalized within the nation, the Bosnian rapes were made a spectacle on a global stage.

International outrage at the situation in Bosnia forced the UN to create the ICTY¹¹ to bring justice to the victims of war. Some critique the Tribunal as an apologist apparatus for Europe and the U.S.'s reluctance to intervene and the UN's gruesome negligence at Srebrenica¹² (Stover, 2005). Others claim the Tribunal was the proper way to punish the War criminals and make victims whole again after psychic, spiritual, corporeal, and property losses (Women in the Law Group, 1993). While the ICTY's enactment of justice offers possibilities for empowerment, it also performatively reconstitutes former international and intercultural relationships to/of power. The next section analyzes excerpts from the Kunarac trial, placing emphasis on the communication of bodies in relation to institutions, cultures, and the structures and performances that maintain them.

Sexual Violence and the Construction of International Justice

For Kunarac to be tried by the ICTY, potential violations of international war treaties were presumed to have taken place. Kunarac was tried for crimes against humanity (rape, torture, enslavement, and outrages upon personal dignity) punishable under Article 2, 3, and 5 of the Statute of the Tribunal. The conditions that enabled rape to count as a crime against humanity¹³ and to come before the court were: the war was between nations, the accused (Kunarac) violated the Geneva Convention, and the systematic rape of women in Foča, Bosnia, violated Article 5 section G of the Statute of the Tribunal.¹⁴

The fact that women were targets of rape is something that must be contextualized within the cultural frameworks of the former Yugoslavia. Bergoffen (2006) explains how Serbs mobilized patriarchal cultural scripts about women's worth that enabled rape to function as ethnic cleansing. She explains, "insisting on women's powerlessness, the Bosnian Serbs demonstrated their ability to abuse the women of the enemy community in order to render its men worthless" (p. 26). This strategy had

little to do with destroying women, although it did; rather, the purpose was to use women's bodies to deliver messages to men.¹⁵ Women's representation was manipulated and refracted across cultures as the community that the Serbs intended to annihilate. As the Muslim women were corralled, abused, raped, and kept as slaves, they embodied the property of men who raped them (Serbs) and of men who could not protect them from rape (Bosnians). The rape of these women communicated symbolic as well as material dominance: the rape of their nation, ethnicity, religion, gender, and sexuality. While this sort of dehumanization was typical, some Serb soldiers took this torture to another level by making the women perform Serb ethnicity. For example, one witness explained,

He took me to his mother's apartment, and he asked me to introduce myself as a Serb, to say that my name was (redacted), to say that I was from Ustikolina, that—I don't know—that my mother and father were also Serbs. And that's what I had to do. I kept quiet all the time. He talked for me... We sat there for about two hours like that. They even brought me some brandy to drink. I never drank alcohol, especially at that time, when I wasn't even 17 years old. They knew that very well, that Muslim women did not drink alcohol, for the most part. And he changed my name. He wanted me to be his Serb girl that night... He took me to his room. He raped me four hours, for sure, in succession (p. 1271).

Another witness recounted,

He was old. He was awful. He had a knife. He said to me, "You will see, you Muslim. I am going to draw a cross on your back. I'm going to baptize all of you. You're now going to be Serbs" (p. 1278).

The real bodies of the witnesses were eclipsed in their representation and manifestation as male national property while their function interculturally was explicit in their descriptions of sexual violence. The court accepted and perpetuated this definition of woman as property to be exchanged by men on the conditions that enabled the case to come before the court, and as documented during the proceedings of the case. However, the communication of women as property was not only symbolic it was equally manifested in lived experience. For example, two girls (12 and 17 years old) were sold to Montenegrin/Serb soldiers for 500 German Marks and soap (Kunarac, 0000, p. 1881). Describing how she was traded as the literal chattel of men, the witness explained, "They were laughing among themselves, and saying 'See how much you're worth'" (p. 1879). While the court admonished Kunarac for treating women as property,¹⁶ the court also communicated that women's bodies were equal to property through the conditions that enabled prosecution.

The ICTY prosecuted Kunarac because rape was essential to the Serb ethnic cleansing project. Insofar as women and women's raped bodies were only intelligible to the ICTY through the prism of ethnic cleansing, the court reified the performative trope that women are men's property and that women's experiences are only accessible through androcentric language, which situate women again through male ownership, without the ability to speak for their bodies and their trauma (since the court treated the trauma as the belonging to the nation). If rape had not been marked as crucial to the pan-Serbian war strategy but the rapes still occurred, the case would not

have come before the court.¹⁷ In this way, abuse and rape of women did not make one culpable for crimes against humanity, but the performative meaning of women's bodies animated by men to communicate to other men the destruction of one's possessions *did*. Relating the ICTY to racial contours of the U.S. context, Hesford (1999) argues that, "Trauma is projected onto the (white) female body, but the projection remains an extension and property of the (white) male" (p. 205). The destruction of property as the masculine nation (as *performed* through/on the body of the woman) was on trial in the Kunarac case. What happened to the actual women, the brutality and cruelty they suffered, could only be communicated in their relation to Bosnian and Serbian men. Engle (2008) explains, "These decisions served to reproduce many assumptions about women's (lack of) agency" (p. 943). The institutional performance of justice (or handling of rape), once again, erases women and the possibilities for agency within this masculine discourse in favor of rendering women the property of men. Important for this analysis, these proceedings communicated liberal neocolonial claims on a global stage about what constitutes the human/e.

In the disposition delivered by Judge Mumba, she states, "Indeed it is opportune to state that in time of peace as much as in time of war, men of substance do not abuse women" (Kunarac, p. 5848). Mumba's attempt to communicate what makes a *man of substance*, or a *civilized man*, was part of the disciplinary and intercultural work of the court to differentiate the illegitimate Balkan other and the legitimate western European subject/citizen/man. Judge Mumba juxtaposed normalized rape with the spectacle of rape in the former Yugoslavia to admonish Kunarac, but in so doing she rearticulated Muslim women's objectified relationship to men by accepting the rapists' premise for the meaning of rape. She explains,

You have shown the most glaring disrespect for the women's dignity and their fundamental human right to sexual self-determination. On a scale that far surpasses even what one might call, for want of a better expression, the 'average seriousness of rapes during wartime.' You abused and ravaged Muslim women because of their ethnicity (p. 5855).

Colonial origins of the court limited its ability to address the women without invoking or, at the least, *reflecting* on the trope of women as property. Chastising Kunarac about the mishandling of his property/women, the court accused Kunarac of failing his duty as a liberal subject. Judge Mumba's statements performatively delineated the parameters of the good citizen for Kunarac and for the former Yugoslavia. By submitting to the judge's ruling, "inhabitants of those regions marked by atrocity [must] declare their belief in its principles and procedures if they are to regain the world's recognition as properly human once again" (Atanasoski, 2013, p. 186). Formed to deliver justice to the uncivil Balkans, the Tribunal interpellated the former Yugoslavia into the global capitalist order by colonizing postsocialist bodies into the court's jurisdiction.

The judgment reenacted an epistemic colonization by providing androcentric ontological claims in the postsocialist space. The judgment had less to do with affirming women's humanity and more to do with resurrecting the borders of nation

through and upon women's bodies—over which women themselves were never sovereign owners. As Atanasoski (2013) explains, "Victims of all ethnic groups thus become evidence of the Tribunal's project of sanctifying liberal notions of common humanity" (p. 186). Thus, the court produced the liberal subject in the postsocialist context in a performative reenactment of former relationships of power through postcolonial juridical means. 370

Judges' reprimands to the defense for procedural infractions were emblematic of the structural impact the ICTY had on the communication of the former Yugoslavia in the global context. The transcript articulated the position of the Balkan body relationally: as simultaneously outside and within this European judicial model. The proceedings reiterated stereotypes of Balkan people as uncivilized tribal people with little control over their savage desires, offering the trial itself as the possibility of redemption from tribal and socialist pasts. Haskell (2009) argues the court's insistence that it bring order to social chaos enacts "hierarchical sets of relationships between America and Western European states and the rest of the world... securing and maintaining relationships rooted in a colonial past" (p. 64). Because the defense was based on damaging the credibility of the witnesses, the defense read as deceitful or (at best) evasive of trial rules. For instance, many witnesses elected to have image and voice alteration and to use numerical pseudonyms (which also objectifies, although differently) to avoid harassment for testifying. Over the course of the trial the defense "accidentally" mentioned identifying information about various witnesses, which resulted in death threats and intimidation for witnesses and their families (Sharrat, 2011). The judges scolded and shamed the defense lawyers into performing the rules of the court while the prosecution, already embodying the court's imagined liberal subject, was never admonished. 375 380 385 390

Administrative minutia, such as presenting evidence in the correct order, seemed to merit much attention from the judges. The privileging of the administrative over the continued protection of vulnerable witnesses' identities demonstrated the court's priority to discipline the Balkan body into the liberal subject. As exemplified in another exchange (much of which has been cut because of space limitations), 395

JUDGE MUMBA: Mr. Prodanovic, may we stick to the case, please. And Witness 33, you are here to answer questions from the counsel and you are answering questions to the Court. I know that when you are speaking the same language you forget that you are answering questions for the Court. This is not a conversation between you and him (p. 460). 400

Here, Judge Mumba disciplined the witness and defense to teach them to speak and behave in a way that positioned the UN (an institution that, arguably, often embodies and performs Western power on the global stage) as omniscient while punitively contorting Balkan postsocialist subjects into liberal European subjects. 405

Arasaratnam (2011) defines intercultural space as "a symbolic representation of an instance when communication between individuals is affected by differences in a way that would not have been noteworthy in the absence of those differences" (pp. vii–viii). Although the international context of the ICTY was evident, the communication

of culture and power in the enactment of justice was perhaps obscured in the rush to celebrate the judgment. The ICTY and its proceedings excerpted above functioned to: (a) create postsocialist liberal subjects: capitalist subjects constituted communicatively through the discursive exchange of bodies and/or the property of the nation; (b) marginalize Balkan bodies by ruling what makes these bodies savage in relation to the actions of “men of substance”; and (c) position the liberal judicial system as the only place where the right kind of international justice can be served and bodies and property can be restored. Research on the impact of the Tribunal on witnesses and nation-building supports this reasoning: rules for performing identification of witnesses or witnessing itself *properly* or *truthfully* reinscribed Western colonial relations and the production of liberal civilized subjects (Atanasoski, 2013; Bergoffen, 2006; Haskell, 2009; Sharrat, 2011).

Conclusion

Rape is a global tool of interpersonal violence that becomes spectacularized when, among other acts, it is committed by celebrities or by soldiers commanded to do so as part of wartime strategy. While named as a crime perpetrated on a victim, rape is performed (inter)culturally, through discursive framing, categorizing and institutional sanctioning. These performances also destroy identities, relationships, and bodies, with material consequences for lives and livelihoods. That rape is constitutive and enacted through the discourses that identify and punish those identities is perhaps not new, but in this article we have endeavored to draw connections between institutional discourses that define and sanction rape, the proceedings through which such determinations are made, and how liberal postsocialist subjects and their nationalities are produced interculturally on the global stage.

Rape is always relationally enacted, not just as intimate interpersonal violence but as utterance that dialogically calls forth structures for and strictures on corporeality and therefore (national, social, cultural, political) identities. In global liberal capitalism, the separation of the individual from the structural conditions that produce precarity maintains power hierarchies that reproduce the status quo by blaming individuals for their oppression. At the ICTY, victims were not blamed for state-sponsored sexual violence, but rape and the meaning of these rapes were only possible within the larger relational contexts of postsocialism and postcolonialism that situate women's bodies as precarious property of the nation. That narration of sexual violence also takes up its meaning relationally. It could still be argued that the ICTY definitively ruled that rape is a crime against humanity, and in so doing, offered international recognition for the crime, its perpetrators, and victims.

The ruling does not offer us institutional justice in terms of the mundane acts of rape that occur every minute of every day around the world because state actors must be involved to constitute a crime against humanity. As we note above, “rape” is performative: in this case, animated by men via women's bodies to communicate to other men the destruction of one's property. According to Edkins (2008), terror and

trauma expose our vulnerable bodies to governmentality in moments of pain and grief by laying bare the relationship of the body to citizenship to the nation. Thus, rape, no matter the context or judicial weighing of consequences, is always an act both of intimate violence and a re-membling of (inter)national and (inter)cultural power relations. From a critical intercultural communication perspective, we act collectively as citizens through our interaction with the institutional entities and social identity categories that name and are named as oppressor/perpetrator or target/victim. These interactions are also enactments of discourse and embodiment and, as such, offer the possibility of change. We are not suggesting that feminist or performance studies immediately give agency to all or magically erase the violence of rape, but they show gaps in theorizing and legislating social justice and offer opportunity to act otherwise.

No countries have enacted legislation that recognizes the state violence of all rape, and few people in marginalized groups see the legal process as a remedy for changing the social, economic, and political relations that make rape possible. Still, women and men around the world have increasingly turned to social media as a kind of collective performance of resistance that takes the individual and affective embodiments of shame, guilt, depression, and anger and, through displacing the focus from individual perpetrators or victims, point outward to demand accountability on the part of legal, social, and cultural institutions (Cardin, 2014). They do so not only to change the inequitable treatment of marginalized groups but to represent these as models for institutional accountability toward a productive citizenry. This is not to recommend social media vigilantism that collectively shames or target perpetrators (Wong & La Ganga, 2016); though such acts may serve as retributive justice and are perhaps helpful to the individual, they do not lead performatively to the collective changes we envision.

Our essay has sought to reckon with the communicative dimensions of culture and power in the intercultural and international discourses on rape at the ICTY. Furthermore, we hope to offer a feminist postsocialist perspective on rape across borders. The postsocialist and postcolonial condition of our world gives imperative to feminist intercultural communication scholars to critique the structural and individual sexual violence enacted by global capitalism across borders. We call for performances that lead to critique of the ownership of bodies as property linked to capital and for the imagination and agency to dismantle the old relations among institutions, economies, and social identities that have led to injustice and war throughout history. We hope to participate in new communicative practices that prioritize bodies in relation to land and collective, rather than individual/group/national ownership of property. While such visions have long been corrupted for political gain, we propose that if the articulation of women to property in postsocialist discourses of property ownership is the performative linchpin of oppression as well as resistance, then dis/locating this linchpin is one viable place to start.

Notes

- 1 The list continues and is constantly being updated. Here is a list as of February 8, 2018, from *The New York Times*:

- (<https://www.nytimes.com/interactive/2017/11/10/us/men-accused-sexual-misconduct-weinstein.html>). These high-profile cases importantly bring attention to sexual harassment and rape in the workplace, although access to this platform is enabled and constrained by race, class, gender, sexuality, and ability. 495
- 2 The #MeToo movement was started by activist Tarana Burke (<https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html>) and was re-invigorated by actresses posting the hashtag on twitter in response to a *New Yorker* expose (<https://www.new-yorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>) about Hollywood producer Harvey Weinstein's abuses and rapes of the actresses he employed. 500
- 3 We use this term to denote a relational approach to communication: one that places primacy on the ways meaning resides not in subjects/people or objects (messages, structures, institutions) but in the interaction among all these phenomena (Condit, 2006). While meaning making has material consequences, and thus should be critically studied, it is not embedded in these materialities and therefore may be changed or altered. 505
- 4 Dragoljub Kunarac was a general for the Bosnian Serbian Army who led an ethnic cleansing campaign to exterminate Bosnian Muslims in the Bosnian town of Foča. His tactics included murdering men outright and taking women to "rape camps" to systematically rape, torture, dehumanize, and send messages to the remaining men in the community. As part of the war strategy, he commanded his unit to rape women and he himself participated in the rape and torture of many women. Because these orders were produced hierarchically, the ICTY found him culpable for his soldiers' actions and declared the rapes egregious crimes against humanity that did not need to be classified under other statutes of the Geneva Convention, such as torture. Thus, while previous courts had admonished other war criminals for rape, for this first time in international history, rape was declared a crime against humanity in the Kunarac case. This decision set precedent for all future International Criminal Tribunal cases involving rape and for determining the enactment of justice in wartime rape through juridical means. 510 515 520
- 5 We follow Butler (2004) and understand precariousness, precarity, and precarious labor as a condition of living wherein certain bodies are more vulnerable to exploitation and lack the material conditions needed to live a "liveable life." She explains, "One reason I am interested in precarity, which would include a consideration of 'precaritization,' is that it describes that process of acclimatizing a population to insecurity. It operates to expose a targeted demographic to unemployment or to radically unpredictable swings between employment and unemployment, producing poverty and insecurity about an economic future, but also interpellating that population as expendable, if not fully abandoned. These affective registers of precaritization include the lived feeling of precariousness, which can be articulated with a damaged sense of future and a heightened sense of anxiety about issues like illness and mortality" (Butler & Athanasiou, 2013, p. 43). 525 530
- 6 These excerpts are difficult to read, to write about, and to fathom for level and degree of violence they describe. Our analysis is in no way intended to dilute, objectify, or trivialize the extent and level of violence inflicted during the war and its aftermath.
- 7 In addition to postcolonialism, which is more often called for and recognized as important theoretical perspective (see Shome, 2006). 535
- 8 Along with India, Indonesia, Egypt, and Ghana, the former Yugoslavia formed the Non-Aligned Movement to politically opt out of the Cold War politics that saturated East/West geopolitical dynamics of the time. Although the goal was to opt out of the Cold War, Yugoslavia did not escape the U.S.-bound implications of being a socialist nation during the Cold War. 540
- 9 We acknowledge that although there are other versions of this story that could be told, we are offering a particular and a particularly feminist version.

- 10 The transcript reads as follows: “The accused, who raped the witness, first humiliated the trembling woman by saying that she had to enjoy what he was doing. And when the witness put her hands on her eyes, he told her that she had to look a Serb in his eyes while he was raping her. The victim was then also raped by the other two soldiers. While this happened, the accused Kunarac taunted the witness by telling her that she would have a son not knowing who the father was, but most important, that it would be a Serb child” (Kunarac p. 6243). 545
- 11 Graphic media coverage of ethnic cleansing and violence in Bosnia brought the conflict to international attention and prompted international response. The response varied, from international peace talks hosted by the United States in Dayton, Ohio, to NATO bombing campaigns on Serbia led by the United States and President Clinton, to international feminist debate and advocacy. In the aftermath of the war, the United Nations (UN) formed a tribunal to punish former Yugoslav commanders that violated the Geneva Convention by enacting genocide. The court for the former Yugoslavia was under the larger International Criminal Court (ICC) at the Hague in the Netherlands. The court creates a new tribunal for each genocide, hence, the International Criminal Tribunal for the Former Yugoslavia (ICTY). The purpose of the court is contested; some feel it is only symbolic while others feel that it provides justice for war-torn countries. Nonetheless, the ICC is an international and intercultural space that operates by using six official languages, can sentence people to prison, and represents an international community wherein the decisions made by the court impact discourses surrounding international and intercultural justice. For more about the scope and history of the court, see its Web site (<https://www.icc-cpi.int/about>). 550 555
- 12 Dutch UN Peacekeepers at Srebrenica in Bosnia were responsible for watching after refugee Bosnian Muslim men and boys to protect them from murder by Serbian soldiers. The space in Srebrenica was declared a safe space by UN Peacekeepers and this was agreed upon by the Serbian army. However, in July 1995 the Serb army killed 8,000 refugees in the camp, making it one of the worst massacres of the war. Some claim that the Dutch let this happen and that the UN was to blame for the deaths of Muslim men and boys. 560 570
- 13 “The charge of rape is based in the indictment on various provisions—Article 7(1) of the Statute, direct participation in rape, 7(1) of the Statute again, but in a different respect, allegations of aiding and abetting rape; 7(3) of the Statute, namely, an allegation that he is responsible as a commander for rapes committed by subordinates and, again, then under Article, rape as a crime against humanity, widespread assault, rape as a part of a widespread assault on the Muslim population of Bosnia (p. 31). 575
- 14 “The Prosecution is claiming that you committed rapes and/or failed to stop a rape being committed by your subordinates and, in this way, you have perpetrated a crime against humanity. Now, what is meant by a crime against humanity? I am sure that your legal counsel has already explained everything. You are aware of that. That means a serious attack on human dignity—a very serious attack on human dignity, which may take the form of murder, rape, enslavement, extermination and so on, in this case rape, which has a target of civilians, so not committed against soldiers but against civilians. This is the second legal ingredient, so a very serious attack on human dignity in the form which I have just set out, then, having as a target one or more civilians, and the third legal ingredient of this offence is that this serious attack on human dignity is part of a widespread or systematic practice in the area or in the country where the offence has allegedly been committed” (p. 37). 580 585
- 15 Yuval-Davis (1999) makes this argument by insisting that women’s bodies are the first to be symbolically mobilized as representative of the nation in war. 590
- 16 “What the evidence shows are Muslims, women and girls, mothers and daughters together, robbed of their last vestiges of human dignity, women and girls treated like chattels, pieces of property at the arbitrary disposal of the Serb occupation forces, and more specifically, at the beck and call of the three accused” (Kunarac, p. 6560).

- 17 “So the standpoint of the Prosecution, as put forward in the closing brief that the accused 595
was in uniform or that he was armed is not based—because without this fact, rape cannot be
seen as a war crime. So the fact that he was in uniform and that he was armed cannot be
taken as an element of the crime and at the same time as an aggravating circumstance,
because had there been no war, there would have been no criminal offence” (Kunarac,
p. 6450). 600

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