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The American University in Cairo

School of Public Affairs

**HOW READING CAN SHAPE US AS LITERARY,  
COGNIZANT, AND ETHICAL HUMAN BEINGS, NAMELY  
WITNESSES**

A Thesis Submitted to

the Cynthia Nelson Institute for Gender and Women's Studies

in partial fulfillment of the requirements for

the degree of Master of Arts

by Yukiko Yamasaki

B.A. English and International Communication, Kansai Gaidai University, 2004

(under the supervision of Professor Alejandro Lorite Escorihuela)

December 2009

## **DEDICATION**

This thesis is dedicated to all my friends, family, faculty, and mentors, for all of the support, guidance, and love they provided along the way.

## ACKNOWLEDGMENTS

“Make me a witness/Take me out/Out of darkness/Out of doubt”  
--Sarah McLachlan, *Witness*

While working on a thesis is one of the most challenging activities imaginable, I was never truly alone while going through it. I had the constant support and encouragement of family, friends, colleagues, professors, and mentors. I cannot even begin to express my gratitude for their willingness to put up with me.

I am tremendously thankful for all of my family and their love. I am especially appreciative of my mother’s willingness to be online for me so that we can communicate whenever I wanted to. I would not be who I am today without her. I will translate this text into Japanese so that she might receive and read it.

When friends ask about my supervisor, I refer to Alejandro Lorite as *sensei* (meaning Teacher in Japanese). Thanks to Professor Tanya Monforte and her incidental arrangement, I have had the great fortune of reaching out to this *sensei* who has accepted my request to act as a supervisor. While I had never been his student at Law department previous, he believed in me, guided me, and shaped me with boundless patience and encouragement. His meticulous engagement with my ideas and support of my endeavors is what made this process worth it.

I have had the great fortune of working with two readers in my thesis committee. Professor Martina Rieker and Professor Amy Motlagh have helped me find rooms of improvement in my writing at the thesis defense. They provided ongoing counsel about researching gender violence and helped me believe in what I was doing. Since the time of my defense, the thesis committee has been there to challenge me to think wider and

deeper while providing ongoing mentorship and support.

During my entire MA study, I had the great fortune of exploring a few different communities. The Institute of Gender and Women's Studies (IGWS) was an intellectually stimulating environment where I grew as a scholar. I was lucky to learn from brilliant faculty in the Anthropology and Sociology departments and to be surrounded by a fantastic cohort of fellow Master students. My fellow Master students at AUC were key in exposing me to new ideas, and I am especially grateful to Azita Azargoshab, Jesse McClelland, Rebecca Munz, Sarah Stefano, and Elsa Elmahdy. Taking the class "Human Rights and Identity Groups" at the AUC Law department helped me to get the inside scoop on how law intersects with the body, identity, and gender. I am particularly indebted to Professor Tanya Monforte, Michelle Strucke, Mallory Wankel, Elham Eidarous Al-Kassir, and Gwendolyn Roeske for having me in the class. I am also grateful to Diana Van Bogaert for inviting me to attend various seminars at Law department whose efforts made me undoubtedly at home whilst being in the 'alien' academic space.

It was a blessing to embark on this project based on the class "Women's Rights, Human Rights," which I took at the very beginning of my MA study at AUC. The class enabled me to form some of my major thematic and analytical inquiries in this thesis. In that sense, the class became my *field* and the thesis my *fieldwork*. I am indebted to Professor Barbara Harlow and Professor Martina Rieker for providing the ideal intellectual space for working out the puzzles in my thesis.

I am beholden to Azita Azargoshab, my reader, for tirelessly tracking down my writings and to Patsy Gasperetti, my copy editor, for making sure the text is legible. All of my mistakes in this text are my fault.

Finally, and most important, I want to acknowledge the various texts I analyzed in this thesis, all of which contributed to my becoming a witness. Without those texts and their authorship, this project would be meaningless. It is my hope that this text will, in turn, reach the authors of those works and help them to witness the presence of a critical reader.

## ABSTRACT

The American University in Cairo

### HOW READING CAN SHAPE US AS LITERARY, COGNIZANT, AND ETHICAL HUMAN BEINGS, NAMELY WITNESSES

by

Yukiko Yamasaki

(under the supervision of Professor Alejandro Lorite Escorihuela)

The juridico-symbolic violence, which includes or excludes the survivors of the Holocaust and wartime rape in Bosnia from the legal category of a *witness*, shapes the reader's bodily engagement with texts. The MA program of Gender and Women's studies and the institutional networks with the English and Comparative Literature and Law department at AUC have facilitated my reading of three main texts: a novel about wartime rape in *Bosnia S.: A story about the Balkans*, a particular world map rendering of the former Yugoslavia, and the judicial opinions found in a landmark case regarding wartime rape in Bosnia, *Kunarac*. My work aligns with these texts in their crying out for an interdisciplinary approach that can cast light on the subjectivity, fluidity, and uncertainty of the *witness*.

This thesis documents how my bodily engagement with the texts provides access to a constellation of theoretical and methodological vantage points—*my self-reflections* and *witnessing of others vis-à-vis the Other of oneself*. My three sensibilities—passion for the novel *S.*, confusion for the world map, and alienation for the legal document *Kunarac*—

are examined and woven through the discussion.

My analysis centers on how a literary critic becomes a rhetorical witness who is simultaneously 1) situated not just in a particular frame of literary and textual spaces, but also across various genres and times and 2) reflecting, resisting, and subverting legal notions of witness.

While trying to enter into spaces of identification with both legally identified and unidentified witnesses, the rhetorical witness is, as yet, grounded amidst the hegemonic legal culture. This hegemony, in turn, yields political intents, as well as, aesthetic and ethical effects upon the rhetorical witness. The rhetorical witness develops discursive strategies for managing the complex and ideologically challenging potential of justice rendering and gender justice incurred by these texts. Texts reshape political, legal, and cultural life of readers, but empathic reading of texts also reconfigures the identity of the self-as-reader into the rhetorical witness. Concluding thoughts are proposed on the ethics of reading, and the space left for the rhetorical witness and her contribution to ethical dialogue.

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## PREFACE

### HOW READING CAN SHAPE US AS LITERARY, COGNIZANT, AND ETHICAL HUMAN BEINGS, NAMELY WITNESSES

Anxiousness as a state-of-mind is a way of Being-in-the-world.  
--Martin Heidegger, *Being and Time*

As I reflect on what motivated me to pursue a master's degree in Gender and Women's studies with a concentration on the Middle East and North Africa at the American University in Cairo (hereafter AUC), I am reminded of the countless people who have impacted my life. As my first American teacher of English as a Foreign Language in Japan told me, you should allow yourself to explore your interests, ambitions and anxieties in order to know which discipline 'fits' you before settling into a department because there will be times when you will question your sanity to occupy – to *exist* within – that particular space of the academe. The last ten years of my academic life has been lived according to this credo.

The department I entered, the Institute of Gender and Women's Studies (hereafter IGWS) at AUC, has fully allowed me to discover my interests, ambitions, and anxieties. Consistent with the curriculum, the interdisciplinary nature of Gender and Women's Studies plays an integral role in our learning. While we are exposed to diverse fields of study such as Law, Literature, Anthropology, and Sociology, extraordinary challenges persist as to how we integrate the knowledge we gain from different fields of study into a unique discipline.

The even greater challenge presented by an interdisciplinary study regime is its

tendency to precipitate and make necessary a more nuanced and varied practices of reading in order to defy an epistemological inquiry. This inquiry examines the act of reading vis-à-vis its treatment of different textual genres, notably, how we read what we read. In the course of my MA studies, I have been exposed to various texts and textual genres written in English, ranging from fiction to non-fiction, autobiography to biography, religious texts to legal documents, and a host of scholarly debates by feminists, non-feminists and post-feminists, female and male authors inside and outside the Middle East and North Africa. They all pertain to gender and contribute to a substantive critique of both mainstream gender discourse and a multifaceted gender literature.

Rather than simply celebrating the richness of gender scholarship I have spent the last two and half years investigating and considering the premise of *How Reading Can Shape Us as Literary, Cognizant, and Ethical Human Beings, namely Witnesses*, which takes as its subject a literary critic, namely, a rhetorical witness and her acts of reading about wartime rape in Bosnia. A rhetorical witness becomes haunted by a traumatic invasiveness of her ethical fascination with the ways in which she reads accounts of raped women. Stories of raped women thrived in post-war Bosnia. Privately published or unpublished diaries and memoirs, journalistic accounts, novels, and the emerging genre of legal documents are all replete with stories about witnesses. As Kirsten Campbell (2002) states in the article entitled “Legal Memories: Sexual Assault, Memory, and International Humanitarian Law,” “She is living proof of the wrong, which her memory evidences. As witness, she embodies the wrong before the court” (Campbell, 2002, p.166).

This thesis aims to reveal the centrality of the rhetorical witness in reading accounts

of raped women and other accounts of the war such as the Holocaust, and uses myself-as-reader as a departure point to explore the constitutive relationship between my acts of reading as the rhetorical witness on the one hand, and the legal definitions, representation, and legitimization of the witness on the other. This study examines three main texts: a novel of wartime rape in Bosnia entitled *S.: A Novel about the Balkans* written in 2001 by Slavenka Drakulic, a particular world map rendering of the former Yugoslavia as a spatial and temporal entity, and judicial opinions found within the case transcripts of a landmark case regarding wartime rape in Bosnia, *Kunarac*, published in 2001 by the International Criminal Tribunal for the Former Yugoslavia (hereafter, ICTY). In the overlapping discourses of fictional narrative, visual storytelling of cartography, and legal testimony, I attempt to demonstrate both the extent to which these textual representations of raped women cry out for an interdisciplinary approach that casts light on the essential subjectivity, fluidity, and uncertainty of *witness* as a legal category, and the way by which various representations of raped women produce and reproduce political intentions as well as aesthetic and ethical effects upon the rhetorical witness who is committed to non-compliance with the hegemonic discourses being read.

The reader as rhetorical witness is neither an imaginative nor a figurative character. Rather, she is a *real* literary critic for the ways in which she reflects, resists, and subverts legal notions of witness, and simultaneously embodies her distinction from the hegemonic legal culture. The rhetorical witness is an authentic reproduction of the lawful witness who resists, invents, and endures in the hegemonic climate, but is also a reinvention of the legal notion *witness*, a reinvention in that it is not made something from scratch, let alone from someone's imagination. This thesis, I hope, serves as a

feminist intervention into the scholarship of witness inasmuch as it insists upon the centrality of rhetorical witness in feminist critical literary practices of justice-rendering in general and gender justice in particular.

When I began this project, I was attempting to argue two main points: first, that the rhetorical witness holds anxiety for an act of reading about wartime rape in Bosnia because she is a student of Gender and Women's studies with a concentration of the Middle East and North Africa, not with a concentration of Slavic studies.<sup>1</sup> Second, that a female-authored novel of wartime rape in Bosnia, *S.*, provides more substantive possibilities for the reader to bear witness to accounts on Bosnian Muslim raped women than both the legal narratives in *Kunarac* and the world map that are written, presumably, by male authors. I remain convinced of the first point, but over time I realized that regarding the second point, the meaningful contribution made by the novel *S.* to a discussion of the reader as rhetorical witness is, beyond its Croatian feminist authorship, that the author's sensibility in speaking for raped women—the very attempt of the author to position herself-as-novelist in the circumstances of raped women—creates an aesthetic mood which resonates the grim realities of wartime rape in Bosnia illustrated in the novel and, in doing so, evokes an empathy between the reader and the subject being read. I attempted to define and articulate the aesthetic and ethical effect it had upon me, which I call *passion*, and helped me to make sense of what critic Warwick Wadlington (1981)

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<sup>1</sup> The curious role of the proper names *Middle East* and *North Africa* in this matter does not remain confined to legitimating or illegitimizing the chosen topic of my thesis regarding the wartime rape in Bosnia; however, it remains crucial when taken into account the fact that the Gender and Women's Studies (IGWS) at AUC carries the larger geographic interests and challenges, namely, the contemporary global South, not limited to the geographical confinement of Middle East and North Africa. What is important here is that my *innocent* approach to the wartime rape in Bosnia turns out that it encapsulates wider geographic concerns of IGWS.

refers to as the novel's "inconclusive fate."<sup>2</sup> While the original focus of my analysis aimed for an interrogation of canonical categories such as *the witness*, it left unanswered important questions relating to my inherent preference for a female-authored novel and failed to sufficiently consider the effect of gender produces upon authorship inasmuch as readership.<sup>3</sup>

What fascinates me now is the broader range of sensitivities through which I become a rhetorical witness within the text I read. My endeavor is to tend to my sensitive reactions to each of the textual genres: passion for the novel *S.*, confusion for the world map, and alienation for the legal document *Kunarac*. Just as my feeling of passion for rereading about *S.* can be seen as an offshoot of—and here I borrow the phraseology from Wadlington—(*pathological*) *suffering*, so can my feelings of confusion in reaction to the world map and alienation from *Kunarac* be understood as offshoots of the hybrid, excessive, and fictional visual storytelling of cartography and legal narratives of judges. When beginning to resonate with my sensitivities, I thought that my emotional reactions to each text would prevent me from becoming a rhetorical witness to the subject of that

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<sup>2</sup> In his work "The Sound and the Fury: A Logic of Tragedy," Warwick Wadlington (1981) wrote a commentary on American author William Faulkner's (1921) novel *The Sound and the Fury*. Wadlington urges us to reconsider the term *pathos* in relation to the term *tragedy*. While the term *tragedy* contains the sense of sufferings, which is resulted primarily from the protagonist's action, and thus is 'naturally' considered heroic, the term *pathos* is considered to have the lesser elements of suffering than tragedy. In Wadlington's view, this lack of understanding is derived from the etymologies of pathos, namely, 'passion' and 'suffering.' Tragedy includes the sense of 'pathos,' which is arising directly from the protagonist's heroic action. Wadlington problematizes that *tragedy* is losing its neutral and descriptive connotation, and instead, gaining another linguistic form of "pathos" such as "pathetic." Wadlington reminds us of Aristotle's emphasis on actions of human beings' and this philosopher's notion that actions could arouse in human beings certain passions and, in turn, release certain tension. "In pathos," Wadlington argues, "there is no final crisis, no resolution and emotional disburdening. Passion is the inconclusive fate" (Wadlington, 1981, p.411). I will incorporate the Wadlington's views on passion into my acts of feeling passionate about reading the novel *S.*

<sup>3</sup> Jennifer Doyle (2006)'s *Sex Objects: Art and the Dialectics of Desire* explore the gender dynamics of readership as well as authorship.

text: that my sensitivities would ground assumptions about which feeling is appropriate to a text and textual genre and would craft new rendering of privileges to limited types of experience. To some extent, this notion has proven correct, in that monitoring my sensitivities provides access to a constellation of themes and narrative patterns—including witness, jingoism, and legal fictions—in ways that are associated with certain knowledge and attaining that knowledge carries academic privileges.<sup>4</sup> It is not coincidental that my emotions—alienation in *Kunarac*, in particular—which I tend to describe, reflect upon, and try to explicate in detail, reveals my sensible reaction to alienating legal narratives.<sup>5</sup> Despite the important ways in which my sensitivities, which have been addressed in this thesis break open and into technical narratives, plots, and storytelling, I have found that my acts of reading about wartime rape in Bosnia continue to assist my ability to witness the subject in lieu of the disciplinary expertise which a navigation of each text requires to some degree.

Throughout this study, I present and represent the rhetorical witness, using my self-as-reader as a reference point for understanding other subjects, places, and points in time that I have encountered throughout this study, both inside and outside literary and textual

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<sup>4</sup> The American historian Yosef ben Jochannan's (1972) developed the concept of *cultural genocide* in his *Cultural Genocide in the Black and African Studies Curriculum*. The term *cultural genocide* refers to the hegemonic academic tradition of knowledge production and reproduction, as well as, false uses of the hegemonies by the academe. Here I am suggesting, not without taking into account this ben Jochannan's view, that we should not as well undermine the value of fostering expertise knowledge within the academe.

<sup>5</sup> What I mean by the alienating mode of legal narratives will be further explained in Chapter Four. For now, I refer to a structuralist Marxist Louis Althusser (1971) who uses the term *alienation* in *Lenin and Philosophy and Other Essay*. By *alienation*, he considers the material relations of capitalist production. The hard conditions of capitalist production, according to Althusser, impose upon people to form or rely upon representations and escape the harsh realities they are in. Such representations, nonetheless, further distance and alienate them from the realities. The double distancing involved here—the alienation of alienation—continues to make people suffer. I adopt this notion of “the alienation of alienation” and recount the difficult material conditions in the legal document of *Kunarac*.

spaces. The rhetorical witness is situated not just in a particular frame of literary and textual spaces. Rather, she moves freely between and beyond them in a spatio-temporal continuum, across genres and times. The spatio-temporal continuum in which the rhetorical witness is situated allows the reader to move between various modes of reading to accommodate various textual tones.

My educational placement at AUC is a process of identifying myself-as-reader and becoming that identity within various contested literary and textual spaces. A class in Literature and Gender Studies, “Women’s Right, Human Rights,” has provided a foundation for me to construct a theoretical framework of *my self-reflections* upon encountering, examining, and contemplating three main texts and textual genres as a growing literary critic, namely, the rhetorical witness. The class has also enabled me with a methodological framework of *witnessing* that addresses the ways in which I approach others who are or are not legally identified as witnesses, only to find that I have borne witness to the Other of one’s self who is consciously self-identifying as rhetorical witness. The constellation of my theoretical and methodological vantage points suggests the underlying complexity of enacting the intersubjectivity of bearing witness.

The identification of the witness has been almost always performed by external social forces such as legal, political, and religious authorities.<sup>6</sup> While the rhetorical

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<sup>6</sup> For a meticulous investigation of the ways in which institutional decisions of witness operated by legal, political, and religious authorities, see, for example, Muhammed Fadel’s (1997) “Two Women, One Man: Knowledge, Power, And Gender in Medieval Sunni Legal Thought.” In this article, Fadel examines the Islamic *Shahada* (meaning testimony in Arabic) in the medieval period. He argues the “credibility of women’s testimony” at that era and juxtaposes his opinion with that of the leading feminist scholar Leila Ahmed (1993). See Ahmed’s *Women and Gender in Islam*. While taking into account the limited admission of female testimony in Islamic law, Fadel argues that the testimony of witness is as much political as the judge’s verdict to the extent that “the consequences of each are immediate, tangible, and binding, irrespective of the consent of the party who contests either the facts

witness encompasses less homogenous, compulsory legal definitions of witness, the importance of rhetorical witness resides in recognizing what is at stake in a passive acceptance of the term *witness*, as it is today commonly used in the discourses of law, human rights and cultural memory.<sup>7</sup> Since the rhetorical witness partakes in an ongoing juridico-political contestation, the subject position must be contextualized in diverse geographical locations, reading different themes and narratives not limited to wartime rape in Bosnia. The bulk of scholarly work on witness as a legal concept comes in large part from the study of the Holocaust. As such, I examine philosopher Giorgio Agamben's (2002) *Remnants of Auschwitz: the Witness and the Archive* to explore his narratives about and representations of the hallmark of post-war Holocaust writer and chemist Primo Levi. I contend that Agamben's interlocutory narratives in observing Levi demonstrate his unintended role of a rhetorical witness.

The tensions and pitfalls between legal authorities who determine *the* witness and those who are not legally identified and thereby consciously self-identify themselves as witnesses become more apparent if we consider Primo Levi who stands in the midst of the tensions. As a survivor of the Holocaust, Levi, who, despite his surviving to tell the story of Auschwitz, was never summoned to a courtroom to testify, and therefore excluded from assuming the identity of a witness. Levi endured physical and emotional abuse in the war camp; he believed in bearing witness to what he saw and experienced;

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presented by the witnesses or the rule of law applied by the judge" (Fadel, 1997, p.5). The gender implications of his arguments on witnesses in the medieval Islamic period remain a fascinating and open questions.

<sup>7</sup> Sonali Thakkar's (2008) article "The Knitting Lesson" is instrumental to explore the ways in which issues of witness have been interwoven into the discourse of cultural memory. Thakkar's "Placing Memory: Time, Space and Verification of the Past in Claude Lanzmann's *Shoah*" further enables us to understand the larger scope of the literature on witness, ranging from human rights to cultural memory, trauma studies to the Holocaust studies.

and he considered it essential to narrate his survival accounts and memoirs in books with a sense of emergency with, I believe, a great desire to be read and recognized by the reader as a witness to these great atrocities.<sup>8</sup>

The disconnect between legal definitions of witness and those of legally-unidentified witnesses such as Primo Levi is where the rhetorical witness becomes situated, envisioning texts and contexts in which legally-unidentified witnesses are recognized as such. One locus of similarity between the rhetorical witness and the legally-unidentified witness is that whilst the rhetorical witness can move freely between and beyond textual spaces, genres and times, she is, as yet, grounded amidst this hegemonic legal culture. Crucial to the argument I am advancing here is that while those who are or are not legally identified as witness at two historical sites—the Holocaust and wartime rape in Bosnia—might look remarkably similar, each camp of witnesses is essentially very different from each other in terms of its relationship to entrenched political and legal authority, and also in terms of the kind of rhetorical witness which each one performs. As a literary critic, the rhetorical witness is grounded in entirely different historical contexts, with different cultural references and subject positions from legally-unidentified witnesses. For the legally excluded witnesses such as Primo Levi, the Holocaust informs a process of recollection, that is, history or loss of it whereas for the rhetorical witness, who has never experienced such horrendous crimes, the Holocaust narratives become a *text* of history. The practice of reading this text calls the rhetorical witness into an ethical being. In an attempt to position the self in the position of legally-unidentified witnesses, the rhetorical

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<sup>8</sup> In this thesis, I do not touch upon Primo Levi's own writing about his survival accounts on the Holocaust. For the purpose of studying Levi's own narratives about surviving the Holocaust, see, for example, *Survival in Auschwitz*.

witness as reader persists despite a history of exclusion from and by the hegemonic legal culture and its renderings of the seemingly legitimate and illegitimate witnesses.

The rhetorical witness attempts to carry on empathic reading and to enter into spaces of identification with legally-excluded witnesses, spaces that ironically challenge the gulf between the rhetorical witness and the subjects being witnessed, including her very own Other within. Departing from the discourse of lexical and ideological formations and representations of *witness* by emphasizing the role of law and judgment that instantiate an authoritative vision of witnessing and determine who is or is not the witness. Thus, by interweaving the rhetorical witness into the constellation of my theoretical (i.e., my self-reflections) and methodological (i.e., witnessing of others vis-à-vis the Other of oneself) positions, this thesis demonstrates the ways in which the essential subjectivity, fluidity, and uncertainty of the legal category *witness* yield political intents, as well as aesthetic and ethical effects upon the rhetorical witness.

Interrogating an act of reading itself tends to be grounded in the periphery of the dominant discourse of literary criticism; as intellectuals, we assume a role as reader and consent to being circumscribed by academic environments, which we use to make sense of our self-understanding, the subjects being read, and the responsibilities of reading. While it is outside the scope of this study to define explicitly what constitutes ethics, this thesis does participate in recent feminist and post-feminist interventions in ethics—the ethics of writing, ethics of thinking, and most importantly, ethics of reading. A genre traditionally regarded as ethics has not been incorporated in the dominant discourse of academe. The philosopher and critic Avital Ronell (2008) raises the question of the ethical effects of reading and challenges the avoidance of ethical thinking. The subtle but

important, critic Gayatri Chakravorty Spivak (2004) postulates the concept of *righting wrongs* and Barbara Harlow's (1987) *resistance narratives* and *women's writing*, both of them can be aligned with the scholarship of witness because of similarities in their respective formal and thematic approaches to critical literary practices of the rhetorical witness. Many critical readings simplify the technical expertise of construing texts and textural genres, or fail to notice the complex and ideologically challenging potential of justice rendering and gender justice through critical practices of reading. In contrast, I strive to investigate the ways in which the rhetorical witness as reader can engage with, help to resist, and subvert legal notions and judicial consequences of determining *the* witness.

Situated simultaneously in the fields of literary, rhetorical, geographic, legal, and ethical studies, this thesis reads fiction, non-fictional narratives, and visual storytelling on, about, and around wartime rape in Bosnia in three different textual genres, individually and in relation to one another. I have chosen the three main texts in this thesis for their intersections and the ideological debate on witness they produce and reproduce when read together, and for a new avenue for the rhetorical witness where she emerges in and as the very event of righting wrongs and resistance. A novel of wartime rape in Bosnia *S.* reveals the author's attempt of describing the violated female bodies in an attempt of speaking for them, that, in turn, enables the reader to construct the identity of self-as-reader, perform the acts of reading, and face a tragic story of raped women. The world map, while I am inspecting into the former Yugoslavia, draws my attention to my Self as having the same intertextuality as the novel *S.* to the extent that it reveals the visual fiction at the heart of those textual spaces that impose upon the reader an awareness of

cartographers' artifact. The judges' narratives in the legal document *Kunarac* inform the nascent genre of legal reconstruction, namely, legal fictions. These three texts speak to, complement, and contest one another in my multivalent interrogation. My acts of reading about wartime rape in Bosnia, my self-as-reader and its transformation into the identity of rhetorical witness and its functions.

Informed by poststructuralist literary traditions, I read each three text as a piece of crafted literature; just as cartographers produce and reproduce a world map *as* an artifact, so do judges artifacts that pertain to legal fictions. I am interested in the ways in which the authors, however inadvertently, borrow strategies from various narrative forms and from one another, and how the meanings of each text and genre shift, when read together, in relation to certain variables, involving the identity of rhetorical witness and her performative acts of reading.

I take a performative and deconstructive critical literary approach to texts, reading each text as a non-structured narrative written within a particular historical moment.<sup>9</sup> Whilst the rhetorical witness can perform, produce, and reproduce ways of witnessing the Other of oneself, this thesis interrogates the processes in which the literary critic assumes the identity of rhetorical witness by necessarily situating the self-as-reader in the hegemonic legal culture and puzzling over the complex interactions of justice rendering and gender justice which occur there. The self-examination in my acts of reading about wartime rape in Bosnia plays an integral part in considering the ways in which one can

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<sup>9</sup> I follow Derrida's claim that the term *deconstruction* "acquires its value only from its inscription in a chain of possible substitutions, in what is too blithely called a 'context' (Derrida, 1985, p.1). See Derrida's "Letter to a Japanese friend" written for a Japanese philosopher Toshihiko Izutsu upon his queries on how the term *deconstruction* can be translated into Japanese.

come to terms with the self-as-reader and assimilate the Self into that of rhetorical witness. Writing the thesis on my acts of reading about wartime rape in Bosnia is not just about engaging with a difficult story or different historical accounts or a site of undoing gender injustice, but about reconfiguring how to take responsibilities of ourselves-as-reader vis-à-vis treatments of different texts and textual genres. Finally, and fundamentally, although I still have so many stories to read, this thesis offer me the chance to read and to tell some compelling stories regarding the accounts of raped women and legally-excluded witnesses whose voices reach out to us and shape our own ways of reading and witnessing.

The first chapter, “The Birth of a Rhetorical Witness,” traces the processes that shape my approach towards this critical literary study. It begins with an analysis of my encounter with the novel of wartime rape in Bosnia *S.*, and then analyzes the ways in which my amnesiac modes of reading the text are challenged, subverted, and shaped into performative acts of reading. This chapter considers Judith Butler’s (1993) notions of *identity* and *performativity*, and explores the ways in which my performative acts of reading have constituted the identity of myself-as-reader. It then offers a consideration of Jacques Derrida’s (1990) notion *performative violence* to signal that my discursive practice is influenced by this particular deconstructivist tradition. I review the multiple layers of the association of bearing witness with the notion of testimony. I contest Butler’s notion of *fabrications* by which the speech act of claiming an identity as such is overtly undermined and in which this doubt in one’s testimony is replicated in Butler’s study. The chapter demonstrates the ways in which my testimony, as expressed through my passion for reading about the novel *S.*, becomes my bodily engagement, and that I can

only bear witness to the testimony upon myself to my Self. In doing so, this chapter demonstrates the ways in which the notions of bearing witness and testimony give rise to the critical literary practice of rhetorical witness.

Each of the following chapters considers various literary and textual portrays from the perspectives of rhetorical witness. Chapter two, “The Legal Alien: Giorgio Agamben’s Reading of Primo Levi,” examines philosopher Giorgio Agamben’s (2002) narratives and his representations of the survivor of the Holocaust Primo Levi. In particular, I tend toward Levi’s autobiographical plea of wanting to be identified as witness. I am particularly interested in Agamben’s narratives on Levi and the ways in which the narratives encapsulate Agamben’s non-appropriative version of acting as a rhetorical witness.

Contrary to his empathic reading for Levi who was legally-unidentified as witness, the tone of Agamben’s narratives regarding the criminal of the Holocaust, Adolf Eichmann, reveals Agamben’s frustrations and anxiety over this seemingly illegitimate yet legally identified witness. Agamben’s narratives reveal the fact that Eichmann testified, in his plea of guilt for facilitating the Holocaust, before God. Eichmann turned to the rhetorical strategies of bearing witness to render the guilt upon his Self and crafted his apologia before God. Despite Eichmann’s attempt to render his guilt outside of human significations, as he did in confessing before God, the testimony was ultimately considered a confessional plea rather than a legal ruling. Eichmann’s admission of his guilt, with a wishful testimonial that sought evidence from a divine figure, tells us something about contradictions regarding this witness’ political position. Further, Eichmann’s appealing of guilt before God demonstrates the complex social, legal, and

ethical attitudes toward his position before Law.

Levi's autobiographical plea for wanting to be identified as witness emerges from the legal authority and its pitfalls in failing to identify this seemingly *legitimate* witness. This chapter examines the methodological cue of *testing drive* suggested by a philosopher and critic Avital Ronell (2006) and challenges Eichmann's acts of bearing witness with it.

Chapter three, "Inconclusive Fate: Reading the Novel *S.* and the World Map," turns to a comparative treatment of the novel *S.* and the world map rendering of the former Yugoslavia as a spatial and temporal entity. These two texts have, on the surface, little in common. Yet, it is critical to identify rather than dismiss the relationship between the novel *S.* and the world map, explore how my reading of the accounts on raped women in the novel is transferred into the world map, and create a new intertextual space. Likewise, this chapter demonstrates the ways in which the world map partakes in the same intertextuality as the novel *S.* as it simultaneously contains the means by which to critique the agency of raped women it demarcates.

This chapter focuses on the rendering of the former Yugoslavia in the cartography. The lack of the language signifying *the former Yugoslavia* on the surface of the world map confuses me due to the fact that I anticipated finding it. In turn, this confusion enables me to understand the former Yugoslavia as a legal concept. From this consideration, the world map opens up the understanding of what Derrida (1990) calls the *juridico-symbolic violence*, which becomes clear in the course of my interpretive processes in these two texts. In contrast to the world map, the novel *S.*—the story of raped women in the war camp—embodies the violated female bodies. The Croatian feminist novelist gives the testimonial accounts of rape for raped women through her

narratives in the novel. In contrast to the novel *S.*, the rendering of the former Yugoslavia on the world map challenges orthodox formulations of the gendered body as subaltern (e.g., cannot speak for themselves) due to the lacks of its historical account given by cartographers. I extend my analysis to the extent that the world map, when read together with the novel *S.*, gives the reader an opportunity to develop critical distance on visual storytelling on the world map, such that the reader can reconstruct text-based presuppositions and draw text-based inferences from the novel *S.* in order to make sense of the occurrence of wartime rape in Bosnia.

The fourth chapter, “The Attempt of a Self-Conscious Foreigner: Reading out of the Alienation of Alienation,” offers my self-reflections on my acts of reading about the legal document *Kunarac* and narrates some of my expectations for contemporary feminist legal scholars about their writings on *Kunarac*. Despite my lack of legal knowledge, the identity of myself-as-reader prompts the act of reading as a non-legal expert. With this subjectivity, this reader finds judges’ mode of writings in *Kunarac* alienating—alienating to an extent that she feels isolated from the *intended* readership. I thus tried to seek an explanation from some feminist legal scholars for the ways in which 1) wartime rape in Bosnia is defined as a crime against humanity, and 2) the raped women are identified as witnesses. This chapter demonstrates the ways in which I suffer not only from the alienating spectacles of the judges’ writings, but also from feminist legal scholarship on *Kunarac*. The double alienations cast light on my high expectations for feminist legal scholarship.

In *Kunarac*, judges create the accounts of raped women and use initials to describe the raped women, and at times, call them *witnesses*. From these characteristics, I

conclude that the legal document aims toward the same overtly didactic and regulatory goal that legal fictions do. Some of the feminist critical readings of the legal document simplify the technical expertise *Kunarac* requires from the reader, or fail to impose upon the legal documents the complex and ideologically challenging potential of justice rendering and gender justice. Against this backdrop, I try to claim my expectations for feminist legal scholarship and propose that critical practices of the rhetorical witness, can engage with, help to resist, and subvert legal notions and judicial consequences of identifying the raped women as *the* witness. In doing so, this chapter concludes that the non-legal expert can and should exercise her or his interpretative skills to the extent that comprehension depends upon the reader's ability to relate information from the text to her or his self-understanding of the subject being read. Before the non-legal expert can make efficient use of the legal document such as *Kunarac*, I contend that the non-legal expert needs to acknowledge her or his own inevitable subjectivity as the *ordinary people* or the *self-conscious foreigner*, as reflected in our value laden choices concerning our acts of reading.

Finally, in the epilogue, concluding thoughts are proposed on the ethics of reading, and the space left for the rhetorical witness and her contribution to international ethical dialogue. As such, I will explore the challenge of a telephone in our modern technological era and the impact it might have upon us when the idea of calling is considered and used as a tool of witnessing the Other of oneself.

## CHAPTER 1

### The Birth of a Rhetorical Witness

There could be no witness—not only no witness who is present and one who perceives as witness but no witness who attests, who bears witness—without speech act, of course, but above all without someone who can be assumed to have at least a sufficient mastery of the language. This is an endless problem, a dramatic problem whose critical, political, and juridical dimensions it is not necessary to underline. To what extent can this competence be shared? How and on the basis of what metalinguistic criteria can it be evaluated? The analysis of this mastery would call for infinite refinement.

--Jacques Derrida, *The Instant of My Death*

#### 1. Varied amnesia

The roots of this thesis originate in a class I took in spring 2007 at AUC. The class title reflects my interest in the configurations of two separate rights: “Women’s Rights, Human Rights.” The question concerning diverse narratives which attempt to represent the violated female body as muted, voiceless or *subaltern* emerged by following several reading materials in this class.<sup>10</sup> The question relating to the problem of representing the violated female body did not emerge exclusively from within either a discussion of women’s rights or a human rights framework per se, or as a more general question relating to subaltern women’s desire to speak. Rather, if we really inquire into the issue of the violated female body as muted, voiceless or *subaltern*, we must challenge the particular issues involving the act of reading and the ways in which that particular act makes possible the muting, silencing, and categorization of female form as *subaltern*.

Accordingly, questions concerning the representation of the female violated body are

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<sup>10</sup> For one example among the reading materials see Gayatri Chakravorty Spivak’s (1988) *Can Subaltern Speak?: Speculations on Widow Sacrifice*. Whenever I refer to the term *subaltern* in this thesis, I follow Spivak’s use of the term to refer to those who have a limited or no access to cultural imperialism, and thus, those who cannot speak for themselves.

necessarily weaved into another set of relevant questions:

- 1) What does our act of reading the violated female body entail?
- 2) Does our act of reading the violated female body require prior intimate knowledge of the reader's gendered body as a space of violation or potential violation?
- 3) How does our act of reading of the violated female body affect particular modes of reading text?

How do broader questions such as these allow us to see how our acts of reading about the violated female body become acts of reading as our body and bodily hurt experience, and ultimately, as our own selves and our own suffering?

## **1.2 My encountering with the novel *S*.**

In the class "Women's Rights, Human Rights," I encountered the novel of wartime rape in Bosnia entitled *S.: A Story of the Balkan*. As a work written by a Croatian feminist novelist about Bosnian Muslim women's experiences of rape, this novel offers much in terms of the motives and means of its own production. Even more crucial to my investigation is the fact that this novel was assigned for me to read. What interests me is the signification of this subject position *I* that encountered the text and read the story of wartime rape in Bosnia. My encounter with the text is not merely the result of my coincidental presence in this class as a student of Gender and Women's Studies, but takes part in shaping my act of reading.

Reading the novel at different points in time has helped to construct and construe my relationship with the text. My first reading of *S*. provoked little more than an interest—to the point that I did not find myself in the text. It was not until I was finishing my graduate

coursework and contemplating the topic for writing this thesis that I reread the text. This time, two and a half years later, I was able to read the internal reality of an individual raped woman as part of my experience. That is to say, I took my own particular position in the text, existed in the text as in my own reality, and tried to comprehend the situation of my own being in the world, both textual and material. As its reader, I grew to emphasize with this being as I read, felt, and thought about here and there.

The closer my relationship to the text becomes, I find myself wanting to read the story of wartime rape in Bosnia even more closely and carefully. What is at stake here is my attitudinal change in the form of desire and its effect on my act of reading. The question, then, is not whether my close reading of the novel *S.* has had either a positive or a negative impact on my act of reading. Rather, the question is how has my amnesiac way of reading become varied and what is the process by which I have incorporated the textual world I read into my own emotions, my own lives, and my own worlds?<sup>11</sup> What is the nature of my relationship to the novel of wartime rape in Bosnia *S.*?

### **1.2.1 Acting and performing to read *S.***

From the time when the novel *S.* was assigned for me to read in a class taught by Professor Martina Rieker and Professor Barbara Harlow, to the time when the text was purchased at a university bookstore; from the time when the text was read to the time the text was reread, I have been engaged in several kinds of acts: acts of reading, acts of identifying myself-as-reader, acts of becoming sensible and, and acts of transforming the self-as-reader into a rhetorical witness. I will give a brief indication of how these acts will

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<sup>11</sup> By *amnesiac*, I mean to describe how my first reading of the novel *S.* was rough. Further, it overlooked and ignored many details written in the text. How my ways of reading was amnesiac will be described in chapter three.

become constitutive elements in my discursive practices, and how these acts are, in turn, mediated by performatives. Let me begin with an inquiry of my acts of reading.

My acts of reading the novel *S.* are marked by performance. My acts of reading became performative in that trying to imagine why a Croatian feminist novelist tells a particular story about rape in a particular genre or participate in (re)creating accounts of wartime rape in Bosnia and vivid rape scenes. What Butler (1993) calls the *performative* has the power to make and re-make both identity, and subjectivity. However, this creative power is neither fully singular nor singularly produced and producible. As Butler (1993) suggests:

As a discursive practice (performative “acts” must be repeated to become efficacious), performatives constitute a locus of discursive production. No “act” apart from a regularized and sanctioned practice can wield the power to produce that which it declares. Indeed, a performative act apart from a reiterated and, hence, sanctioned set of conventions can appear only as a vain effort to produce effects that it cannot possibly produce (Butler, 1993, p.107).

Butler argues that a discursive practice requires repetition or repetitive acts. When performative acts are reiterated, identity and agency become possible.

My rereading of the novel *S.* has further shaped my performative acts. I learn about the story behind the story in which *S.* is written and I inspect into the author and her motives in writing about it that, in turn, helps to constitute an identity—an identity of myself-as-reader. Claiming the identity of myself-as-reader is an essential element of my performative acts. Before explaining the reason, let us read the following passages. In

*Gender Trouble: Feminism and the Subversion of Identity*, Butler (1999) states:

...acts, gestures, and desire produce the effect of an internal core or substance, but produce this *on the surface* of the body, through the play of signifying absences that suggest, but never reveal, the organizing principle of identity as a cause. Such acts, gestures, enactments, generally constructed, are *performative* in the sense that the

essence or identity that they otherwise purport to express are *fabrications* manufactured and sustained through corporeal signs and other discursive means (Butler, 1999, p.173).

Butler opens up conversations about the performative with the perspective of identity. Her perspective on identity is determined by the problem of claiming an identity as such, and performatives of the identity through the play of signifying absence. What does this mean? Where in this lies the essential problem? Once again, performatives mean the reiterative act, and my acts of reading *S.* are thus performatives. While Butler is strictly concerned about performatives in terms of gender identity, I am concerned about performatives in terms of the identity of myself-as-reader. My attempt is not, then, the consideration of whether and how my acts of reading *S.* pertain to the performative of being-true to my gender identity as reader. Rather, my attempt is to interrogate how my acts of reading the novel *S.* pertain to what Butler refers to *performative*, and then, I engage with the mode of self-identification to explore how my acts of reading, which I claim to be performatives, will construct the identity of myself-as-reader. Let us go back to Butler's passage above.

Butler's assertions are of significance in several respects. Butler problematizes acts, gestures, and desire as performatives because they only appear on the surface of the body, carrying with it the possibility of having no effect on its internal core or substance. These are what Butler calls *fabrications*. Accordingly, Butler assumes that claiming an identity carries with it the problem of making false representations. Butler's claim appears irrefutable. In fact, it can be refuted neither at a linguistic level, nor by appealing to what is directly expressed in the term *identity*. The notion of fabrications brings to light two

possible elements of claiming an identity: presence and absence. Claiming an identity involves the presence and absence of its essence of identity. What is genuinely problematic in claiming an identity ends up being a problem of claiming an identity in its void, and further, performing the void as if it were one's *real* identity.

To be noted is that claiming an identity basically means: claiming an identity to someone as well as to oneself. It is evident that claiming an identity inevitably involves an element of communication to others as well as to the Other of oneself, and thus a connection between the one who claims and the one who receives the claim. Butler's claim on the fabrications of identity becomes challenging and even problematic when we consider what the problem of fabrications has to do with the reader and the process of self-identifying herself as reader. If we follow Butler, the process of self-identification might be constituted through the performative acts of reading and possibly, the fabrications of the acts of reading themselves. The claim of the self-as-reader could be fabrications so long as it cannot reveal that the identity of self-as-reader has an effect on the internal core of the subject's body.

It is precisely Butler who grasps the disparity between what it takes place inside the body and what appears on the surface of the body as an effect of claiming an identity. That which allows something to follow on is for Butler a *cause*. A cause that produces and reproduces acts, gestures, and desires is what Butler calls "the organizing principle of identity." The cause cannot be revealed upon the surface of the body, but can only be suggested. The question of identity for Butler centers upon this notion of the cause, which produces, sustains, and suggests the organizing principle of identity through discursive

means such as corporeal signs.<sup>12</sup>

If, as Butler maintains, an identity that is kept inside the body may differ from the identity that is manifested on the surface of the body (i.e., through acting, gesturing, and desiring it), then the identity harbors within itself the problem of playing with other signifying elements that lie somewhere else, either inside or outside the body. The problem of this play of signifying absence, in particular, draws me back to the discussion of my own performative acts of reading in parallel to my act of claiming the identity of self-as-reader.

It has to be noted that my practice of rereading the novel *S.* does not simply provoke in me the identity of myself-as-reader. Before identifying myself-as-reader, I had upon rereading the text. My acts of rereading the violated female body in the text have thus become the grounds for exploring the *passion*. The challenge here is deciding upon a method for exposing the passion—and here I borrow the phraseology from Butler—as “the effect of an internal core or substance” instead of as a fabrication. In other words, how can I fairly situate my passion, an intangible substance at the core of my bodily experience of reading in a Butlerian framework, or cannot I?

### **1.3 My passion, my testimony**

Another important factor in reconfiguring my discursive practice occurs in the telling

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<sup>12</sup> What corporeal signs mean cannot be investigated within the scope of this thesis. One of the ways in which we can consider the contemporaneous issues surrounding corporeal signs is on *homosexuality*. In a 1993 work *Bodies That Matter*, Butler suggests, “Homosexuality is not fully repudiated, because it is entertained, but it will always remain ‘entertainment,’ cast as the figure of the symbolic’s failure to constitute its sexed subjects fully or finally, but also and always a subordinate rebellion with no power to rearticulate the terms of the governing law” (Butler, 1993, p.111). Butler’s critique of the uses of corporeal signs against the category of homosexuality necessitates the understanding of *heteronomativity*. The critic Michael Warner’s (1991) “Introduction: Fear of a Queer Planet” is crucial to the study of heteronomativity.

of the emotion I felt when I reread the novel *S*. The term *passion* refers to my feeling about rereading the text and not at all about passion for the story of raped women itself. My claim about the passion, nonetheless, remains an arbitrary assertion which can in no way be shown or re-presented in a substantive performative manner. The identity of myself-as-reader still serves as evidence for this, and thus cannot be easily ignored. Because I inquire upon the root of this passion, I must approach it from the stand-point of myself-as-reader.

The further I inquire into what my acts of reading are with respect to the novel *S*. and how the identity of myself-as-reader is being constructed, the more abstract my assertion becomes. The claim such as this: *I felt passionate about rereading the novel S.* implies that the passion was experienced in a sensitive manner, yet its precise meaning is still vague in the sense that my performative acts of reading can be distinguished from those of another reader and her or his mode and mood of reading. To inquire into my acts of reading with the term *passion*, or to claim it as an authentic sensitivity, with the further authentication of the identity of myself-as-reader, is to differentiate my act of reading from that performed by others. How can such authentication and/or differentiation have the character of a challenge? An attempt to explaining the passion is certainly the challenge.

When I claim that I became passionate about rereading the novel *S*., this linguistic expression *passion* is understood in a particular way. Why? It is the passion just as I said so and as it reveals itself to us in the writing of ‘p-a-s-s-i-o-n.’ If in reading this thesis you silently think to yourselves that what I am saying is ambiguous or incorrect or incomprehensible or not thoroughly manifested in my own descriptive writing as passion,

we still understand that my act of rereading the novel *S.* resulted in my feeling of passion. How? It is not first by talking more about the passion in detail, by explicitly saying that that we operate in an understanding of the passion, but we already do this without noticing or becoming conscious about it. Our understanding of the passion, in fact, comes precisely from knowing what the term *passion* means.

In *The Instant of My Death*, Jacques Derrida (2000) notes, “When he testifies the martyr does not tell a story, he offers himself. He testifies to his faith by offering himself or offering his life or his body, and this act of testimony is not only an engagement, but his passion does not refer to anything other than its present moment” (Derrida, 2000, p.38). Derrida’s statement casts light on the notion of *testimony* as a mode of bodily engagement in a present form. To come to the point, how might I testify the fact that I felt passionate about rereading the novel *S.*? How do you, my reader, bear witness to my passion? This question must be brought into genuine questioning. Derrida explains:

I can only testify, in the strict sense of the word, from the instant when no one can, in my place, testify to what I do. What I testify to is, at that very instant, my secret; it remains reserved for me. I must be able to keep secret precisely what I testify to; it is the condition of the testimony in a strict sense, and this is why one will never be able to demonstrate, in a sense of theoretical proof or a determinate judgment, that a perjury or lie has in fact taken place (Derrida, 2000, p.30).

A certain kind of challenge is involved in Derrida’s statement. One might think that the challenging character consists in the fact that a testimony can never be framed as a theoretical proof or a determinate judgment.<sup>13</sup> But the issue here is something else, namely, the challenging character of Derrida’s statement is precisely the fact that a

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<sup>13</sup> Agreeing with Derrida’s statement “a testimony can never be framed as a theoretical proof or a determinate judgment,” I will try to show why and how such claim can be validated in chapter two.

testimony is one's own property and, therefore, must be borne witness by each one's Self *alone*.

The martyr sacrifices her or his body as a means of embodying a particular martyrdom. The act of performing the martyr reveals what a martyr is, and that the being-a-martyr signals a testimony in itself. The question of the martyr revolves around her or his embodiment of the martyr as being-the-Self (i.e., performing the commonsense understanding of what a martyr does) and may look like an ideal form of testimony to the extent that she or he is true to her or his own ideal(s) regarding *life* as an embodied experience. Yet the difficulty is precisely the idea of a testimony with a *natural* bodily experience.<sup>14</sup> From this consideration, we conclude that, because a martyr detaches her or his body from the self and remains removed from the world, the form of her or his self-as-testimony can be delivered in full only in the form of death or a corpse. In brief, what pertains to the issue of testimony does not pertain to reflection on the form of death by a martyr.

To raise my feeling of passion to the level of bodily engagement may not be a challenge in itself. But if we maintain the challenging character of the testimony—that the testimony belongs to one's self alone and can only be born witness to and by each one's Self—then the claim can no more be verified from Derrida's statement than from its further elaboration. If I proceed to consider the issue of testimony, then with the question

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<sup>14</sup> Although I made this comment to emphasize that my concern is the very issue of *speech* and *survival* as opposed to *silence* and *death*, I am not trying to undermine efforts of forensic anthropologists (e.g., Eric Stover and Rachel Shigekane) in restoring the testimony of the bodily remains. For example, Sonali Thakkar (2006), in her MA Essay entitled *Impossible Voices: Human Rights, Bodily Remains, and the Injunction to Testify*, precisely highlights the importance of inquiring into the testimony of the *bodily remains*. See <http://www.columbia.edu/university-archive.org/cu/english/Thakkar.pdf>.

of concerning the way in which I can bear witness to my acts of feeling passionate about rereading the novel *S*, I am no longer inquiring into a recipient of my testimony. Whether a particular individual is qualifying to the recipient of my testimony—my passion is not my primary concern. Instead, the question remains as to demonstrate how the testimony belongs to me alone and the way in which I can bear it witness upon myself to my Self. Likewise, the concept of *witness* must be interpreted, for otherwise we could not fully demonstrate our agency, and we do demonstrate our agency when we claim to *bearing witness*.

#### **1.4 *Witness* as a legal concept**

The notion of *witness* operates within law. It is a legal concept and used in the context and text of law.<sup>15</sup> The notion of witness as a legal concept is a commonplace understanding within the discourses of gender, human rights, justice, and cultural memory (Thakkar, 2006; 2008). When a literary critic enters into the legal context and text, and begins to critically challenge the legal notions of witness, the fact that *witness* is a legal notion needs to be treated with a special caution. To begin with, it is not impossible to ignore the fact that witness is a legal concept.

In his work *Force of Law*, Derrida (1990) states, one has “the right to contest established law in its strongest authority” (Derrida, 1990, p.95). This contestation opens up “a possibility of general strike, a right to general strike in any interpretative reading” (Derrida, p.995). We can only recall how people take part in a strike. People have a *freedom* to and not to participate in strikes such as a labor strike, a hunger strike, a pre-

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<sup>15</sup> By the text of law, I mean to include all sorts of legal documents, ranging from judges’ writings to review articles on law.

election strike, and so on.<sup>16</sup> In much the same way, as Derrida delineates it, people have a *freedom* to or not to get involved in the strike of the established legal authority. Let us consider, for example, those who might claim the impossibility of deciphering the meaning of *bearing witness*. Those people may not even consider what the notion of *bearing witness* means. It is to be noted that Derrida does not prompt people to get away from such interpretative reading. Rather, he calls into question the appropriateness of both departing from the established legal authority and abandoning the interpretative reading.

Rejecting the strike of an interpretive reading requires getting away from the notion that law is inherently positive or negative. At the same time, it is not without value. This situation is best described by Derrida when he asserts that “the essence of law is not prohibitive but affirmative” (Derrida, p.929). What does Derrida mean? Prohibitive means to thrust oneself forward to the legal authority or to claim the impossibility of interpretative reading by giving up the trial of understanding. Affirmative means to take part in what Derrida calls a *deconstructive interrogation*, namely, a problematization of law and justice.

Now, as the object of our deconstructive interrogation is set forth, we are ready to *deconstruct* the notion of witness as a legal category.<sup>17</sup> If we consider that a value of law

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<sup>16</sup> The use of the term *freedom* is fraught. It is even more problematic to use the term *right* regarding the participation in general strikes when I read a 2002 article entitled “The International Human Rights Movement: Part of the Problem” authored by David Kennedy. Kennedy is not only critical about the use to the term *right*, but also the existence of rights itself. As Kennedy suggests, “I would advocate our doing all we can to keep the existence of rights a secret” (Kennedy, 2002, p.106). So, the term *freedom* is my working definition.

<sup>17</sup> In “Letter to a Japanese Friend,” Derrida (1985) notes, deconstruction “is not an analysis in particular because the dismantling of a structure is not a regression toward a simple element, toward an indissoluble origin” (Derrida, 1985, p.284). Taking cues from

and justice lies in the very element of construction, out of which the possibility of deconstruction arises, we can consider that the value of law and justice is shaped by its social construction—how the legal authority creates it and how people use it, interpret it, and reconfigure it. In that case, it is not an outcome of law and justice alone or its potential that determines the value of law and justice. Rather, the value of law and justice is contextualized within social mechanism wherein any interpretative reading takes place. Central to my deconstructive interrogation on the notion of witness as a legal category is now framed by the notion of social mechanism and the practice of interpretative readings that occur within.

As Derrida further explains, the deconstructive interrogation involves the profound understanding of a juridico-symbolic violence or a performative violence (Derrida, p.995). What does Derrida mean by a juridico-symbolic violence or a performative violence? How does a juridico-symbolic violence accrue? Let us, once again, recall the claim I have made earlier about my acts of reading the novel *S.* as *performative*. Does that sense of *performative* might have something to do with a performative violence Derrida claims? Is there any correlation between these two sets of performative? If any, how might our understanding of performative acts of reading shift from simply postulating the notion of *reiteration*, given Butler's insight into identity and its performativity? And finally, where does our deconstructive interrogation of law and justice take us, if we wish to avoid a passive acceptance of the notion of *witness* as a legal concept? The questioning such as these sets us for our deconstructive interrogation. The rest of the thesis expounds on my

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Derrida, I use the word *deconstruct* to examine witness as a legal concept and examine the effects it has on creating the essential subjectivity, fluidity, and uncertainty of the legal category *witness*.

deconstructive interrogation in an effort to unfold these complex questions.

### **1.5 The birth of a rhetorical witness**

Let us go back to the issue of testimony that I mentioned earlier. The understanding of testimony is already made implicit when I argued that I am no longer inquiring into a recipient of my testimony—my passion. From this consideration, I delineated the conclusion that the testimony is not to be found somewhere or someone else's, but within our Selves. Subsequently, an act of bearing witness is awakened as an activity of ourselves towards our individual Selves, arising out of our individual bodily engagement. This awakening of the self-understanding of testimony as our bodily act aligns with the self-recognition of our Selves as witness. This signals the emergence of a rhetorical witness. To make the notion of rhetorical witness applicable to analyzing the ways in which the testimony can be demonstrated as one's own bodily act and therefore, as one's property, it is crucial to make a reference to the existing literature on the notion of *rhetorical witness*. The existing literature has aided me to formulate the notion of rhetorical witness as reader.

The professor of Rhetoric Wendy S. Hesford (2004) introduces a person who is labeled a *rhetorical witness*. *The rhetorical witness* is a person who mobilizes her or his self-reflexivity and critical engagements in the form of dispositions to read, think, and identify with others (Hesford, 2004, p.129). In her insightful "Documenting Violations: Rhetorical Witnessing and the Spectacle of Distant Suffering as Pedagogy," Hesford explores the relationship between human rights and humanitarian practices and the changes in the landscape of cross-cultural and transnational reading practices. Hesford

lays out three steps to challenging traditional notions of *identification* in rhetorical theory:

- 1) to articulate the idea of *witnessing* as a rhetorical category;
- 2) to re-define the notion of *self-reflexivity* and *critical engagement*;
- 3) to develop productive and critical pedagogy that takes into account cultural difference and ethical responsibility.

The pedagogy of human rights and humanitarian practices can, according to Hesford, be used for intellectuals to mobilize the self-reflexivity and incorporate the critical engagement into integral parts of the pedagogy of rhetorical theory and its practice. From this consideration, the rhetorical pedagogical interests suggested by Hesford resemble the pedagogical interests of *righting wrongs* suggested by Gayatri Spivak (2004) to the extent that they both emphasize on the importance of ethical responsibility through discursive practices of reading.

In her article “Righting Wrong,” Spivak (2004) addresses the ways in which the practice of literary reading and its complex relation to the ethical ways of seeking justice and justice rendering inform the command of reading. Spivak’s efforts to translate the insights of the act of reading into an idiom of *righting wrongs* reflect Spivak’s three main points as follows:

- 1) to resist narrow functionalist notions of reading;
- 2) to consider seriously our personal relation to reading materials;
- 3) to implement the practice of literary reading into the endeavors of fighting against various social injustices.

The notions of a rhetorical witness and righting wrongs—a practice of critical literary reading and its complex relation to ethical pursuit of seeking justice and justice

rendering—are instrumental for me to make sense of the relationship between my performative acts of reading and the processes of transforming the identity of myself-as-reader into a rhetorical witness.

When we begin to consider the ways in which we can right wrongs, the immediate question would be the question of how we read. How does a rhetorical witness navigate herself or himself within the text she or he reads? This question is crucial in my approach towards other two texts, namely, the world map and the legal document of *Kunarac*, as well as the novel *S*. In as much as each text varies in its themes and narrative or storytelling patterns, my act of reading varies from one text to another and one time to the next.

### **1.6 Locating the rhetorical witness in contexts**

In her article entitled “Lighting thE Flame: Schema Theory Re-applied,” Tamarah Cohen (2004) argues that “[a]ll texts are invested with political and ideological processes, emerging from individual readers’ positions in time and space: they are placed, positioned and structured” (Cohen, 2004, p.32). Taking the cues from Cohen, in approaching this critical literary project, I am consciously accounting for my own experiences in relation to what, where, and how I read. The fact that the three main texts I have chosen for my investigations are assigned for me to read shaped this project. What interests me, then, is the signification of this subject position *I* that encountered these three different texts. I attempt to frame my encountering with the texts not only as a result of my coincidental presence in certain points in times and spaces within the academe, but the constitutive parts in shaping my performative acts of reading in the texts.

In the next section, I attempt to make clear the processes in which the reader can encounter three main texts: the novel *S.*, the world map, and the legal document *Kunarac*. Here my attempt is to lay out a site for you and navigate you to my journey of encountering the three texts, and in doing so, to provide the opportunity for continuity. Creating continuity might enable a reader to move between and beyond three texts, across genres and times. The fluidity with which you can move between different texts and contexts highlights the continuity that you experience in a spatio-temporal continuum. The spatio-temporal continuum in which the rhetorical witness is situated allows the reader to move between various modes of reading to accommodate various textual tones.

### **1.6.1 The novel *S.***

Imagine you are browsing through a library or a web page or hanging out at a bookstore. You find a novel on wartime rape in Bosnia. On the back cover of the novel, a comment from the prominent U.S. weekly periodical The Nation states that the novel “will leave you with survivor guilt even while never having undergone the horrific events described”<sup>18</sup> Suppose that this remark appeals to certain sensibilities in you as the reader and urges you to share feelings of guilt and vulnerability in order to empathize with the survivors whose stories it hopes to tell. You then encounter the real figures of raped women, their pregnancy, and births of unwanted children, which are all narrated through the raw experiences of main characters mediated by the Croatian feminist novelist.

### **1.6.2 The world map**

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<sup>18</sup> See the back-cover of the novel *S.* The Nation, indeed, made this comment on the novel *S.*

When you look at a world map, you may anticipate where to travel for your next vacation with the sense of longing. You may not anticipate traveling a former war zone. Perhaps for this reason more than any other, you could have a mental traveling on the world map. The world map helps situate you by indicating which direction to take, where to cross the border, how to grasp the spaces and times if linguistically challenged, for example, in case of *the former Yugoslavia*. The map fulfills the function: to inform. And like most codes inundating the cultural and social environments—from daily language to all instances of the hegemonic legal culture—the world map can also misinform.

Following the visual storytelling of cartographers to capture the spatiality and temporality of *the former Yugoslavia*, one might ask: what does the language of *the former Yugoslavia* render on the world map? When used with the term *Yugoslavia*, the term *former* affirms post-Balkan social entities. This verification comes not from the visual storytelling of cartographers, but from the signifier of *the former Yugoslavia* as a legal concept. Whether or not cartographers are consciously using the language as a legal concept is not within the reach of a reader's measurement. What the reader can measure, instead, is whether there is the signification of *the former Yugoslavia* as a legal concept on the surface of the world map, and if any, the effect it might have upon the reader.

When you are challenged by the rendering of the former Yugoslavia on the surface of the world map, you might derive the following conclusions: 1) there is nothing to indicate the occurrence of wartime rape in Bosnia on the surface of the world map; 2) the reader cannot stretch the imagination about the Bosnian war simply by looking at this region represented by the world map; and lastly, 3) the world map conceals any historical accounts about the Balkan war, including wartime rape, mass murders, concentration

camps, and war refugees that are manifested in the reality of the world. You may thus claim the necessity of recovering subaltern histories on the world map by creating a cognitive map.

Such a lack of any historical descriptions on the surface of the world map, however, does not render the text obsolete or useless for discursive practices of reading. In reading the world map critically and against the backdrop of visual storytelling by cartographers, there is never any real reason to assume that a world map is a cartographer's *artifact*. However, may we consider the world map as the artifact of cartographers? If so, how does such consideration vary the relationship between the reader and the world map?

The lesson one learns from reading the world map carefully and critically is that one cannot read the text on its surface alone. One should be *reading* signs and languages deciphered from the text interpretively, acknowledging the power of visual storytelling sustained by the hegemonic legal culture. The hegemony endorses ideology, as deeply coded and influential as it is obscure. And then one should be considering which aspects of ideology are decipherable in the supposedly innocuous world map and what types of power structures are being reflected, governed and preserved in it. Only then might the reader realize that, in fact, her or his reading was absolutely right: the absence of any historical markers including the language of *the former Yugoslavia* in its region does normalize the cartographer's signifier so as to all but erase the evidence that the world map is cartographer's artifacts.

### **1.6.3 The legal document *Kunarac***

Have you ever read a legal document? What kind of impression did that document

leave on you as the reader? What kind of feeling does the text of judges' trial renderings of wartime rape in Bosnia, published on the International Criminal Tribunal for the Former Yugoslavia website, bring upon you?<sup>19</sup> It is voluminous and difficult that rests on a rough reading or skimming. Such reading—even skimming—wrestling with the enormous challenge of legal languages enables one to be an active participant in the judges' writings.

In trying to read legal documents such as *Kunarac*, the question of who speaks for whom and how is not unimportant. In acting as narrators for raped women in *Kunarac*, judges exercise a great amount of control and dominance over the narrated. Raped women's subordinate position is also revealed by the term *witness*. Despite the fact that they are legally identified as the witness—the witness of rape occurred to them as well as to other women—and in this sense, the raped women are a rhetorical witness, they are forced to become impotent. The raped women are narrated as impotent in the text not because of the physical and psychological trauma of rape they continue to suffer after the war. Rather, they are so because judges' narratives reinforce the ignorance, forgetfulness, and negative characteristics of the raped women.

Judges' legal fictions depart in many ways from juridical treatments of the crimes—wartime rape, and also of the witnesses—raped women, for the main narrative conflict is not any putative problem of creating the figure of witnesses as such. The problem is, in fact, of judges. *Kunarac* contributes to the framing of raped women's experience in terms of judges' experiences and in the concomitant neglect of raped women's experiences.

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<sup>19</sup> See the ICTY website. Retrieved from <http://www.icty.org/>

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Not a single act of reading is identical. In her preface written for Derrida's *Of Grammatology*, Gayatri Spivak (1976), acting as a translator, remarks, "the book is not repeatable in its 'identity'" (Spivak, 1976, xii). Each reading requires a new reading as a new reader. As Spivak notes, "each reading of the book produces a simulacrum of an 'original' that is itself the mark of the shifting and unstable subject that Proust describes, using and being used by a language that is also shifting and unstable" (Spivak, xii).

One of the key roles the rhetorical witness plays is to read texts critically and engage in raising the self-understanding of oneself as a reader. I engage with three different texts in order to question whether and to what extent each textual genre enables and make necessary the theoretical basis of *my self-reflections*, and in doing so, I tend toward my sensibilities toward all three texts: I felt passionate about reading the novel *S.*, I was confused by the rendering of the former Yugoslavia in the world map, and I felt alienated from the legal document *Kunarac*. Then, I will explore how my three sensibilities can be used to interrogate some outstanding themes and narratives patterns embedded in each textual genre.

## CHAPTER 2

### The Legal Alien Giorgio Agamben's Reading of Primo Levi

Primo Levi is a perfect example of the witness.  
--Giorgio Agamben, *Remnants of Auschwitz*

#### 2. The origin of the term *witness* in Latin

In his work *Remnants of Auschwitz: the Witness and the Archive*, Italian philosopher Giorgio Agamben (2000) revisits Primo Levi's raw experience of the Holocaust. In doing so, Agamben traces the origin of the term *witness*. There are two words for *witness* in Latin: *testis* and *superstes*. The word *testimony* is derived from the first word *testis*, in its role as a third person or party between two rival parties in trial or lawsuit. The word *survivor* is derived from the second word *superstes*; someone who has lived through an event, and someone who bears witness to it (Agamben, 2004, p.438). Levi is "a survivor [*superstite*] of the Jewish Holocaust. But this also means that his testimony has nothing to do with the acquisition of facts for a trial (he is not neutral enough for this, he is not a *testis*)" (Agamben, p.438).

The personal aspect of disaster was brought about by Agamben's narratives in concerning Levi, who was a survivor (*superstes*) of Auschwitz. His testimony (*testis*) was not, however, qualified to be considered as a reliable source of facts. The reason Levi's testimony was not considered as a reliable source of facts was unknown. At any rate, Levi was not *neutral* enough, was not allowed to testify in a courtroom, and was not legally identified as witness.

## 2.1 Primo Levi as a Legal Alien

Agamben illustrates the moment in which he saw Levi at meetings with the Italian publisher, Einaudi. “Levi had this uneasy about him when I saw him...” (Agamben, p.437). Agamben continues, “He could feel guilty for having survived, but not for having borne witness” (Agamben, p.437). He then asserts what Levi comments on, “I am at peace with myself because I bore witness” (Agamben, p.437). The chain of these narratives between Agamben and Levi yields some analytical questions: how did Agamben get that sense that Levi was uneasy about himself? Why did Levi feel peaceful for bearing witness? What does it mean for Agamben to say that “Primo Levi a perfect example of the witness” when Levi was, in fact, legally unidentified as witness?

In order to approach these preceding questions, I consider Levi as a legal alien, the estranged figure from the legal category of witness. Some of what follows is drawn out of a passage in Agamben’s (1998) *Homo Sacer: Sovereign Power and Bare Life*. I would like to indicate some of its salient aspects in this work. I attempt to situate and observe the problem of witness in the context of modern democracy. In *Homo Sacer*, Agamben introduces the concept of *bare life* or *sacred life*. Agamben states:

The root of modern democracy’s secret biopolitical calling lies here: he who will appear later as the bearer of rights and, according to a curious oxymoron, as the new sovereign subject (*subiectus superaneus*, in other words, what is below and, at the same time, most elevated) can only be constituted as such through the repetition of sovereign exception and the isolation of *corpous* (i.e., the new subjects of politics), bare life, in himself” (the second parenthesis mine) (Agamben, 1998, p.124).

From these characteristics, Levi’s life after surviving the Holocaust could be identified as the *sacred life*. Agamben’s thought on *sacred life* is accompanied by the

understanding of *body*. “Democracy is born precisely as the assertion and presentation of this ‘body’: *habeas corpus* and *subjiciendum*, ‘you will have to have a body to show’” (Agamben, p.124). Citing Thomas Hobbes’ *The Leviathan (The Social Contract)*, Agamben explains that to have a natural body is different from to have a political body. “Man is not only a natural body, but also a body of the city, that is, of the so-called political part” (Agamben, p.125). Because of the sheer arbitrariness of power dynamics amongst human beings, the weakest person could kill the strongest person. No one can trust her or his strength, and accordingly, her or his inherent superiority to others. As my study continues to be marked by the theme of witness, I choose to use the term *the legal alien* to describe Levi and consider how the notion of *bare life* could affect this seemingly legitimate witness.

In the twentieth century, a subtle shift occurred in terms of locating the body of human beings in the juridico-political sphere. Agamben points to this subtle shift in investiture of body politics, to the movement away from the concept of *freedom* and *liberties* toward the corpus as the figure that carries the demand for clear juridico-political significance. Since the birth of modern democracy, it is no longer a free man (*homo liber*), who was assumed to occupy the secured political space except in the realm of law wherein her or his peers interfered into the legal judgment. Rather, the corpus, and here I borrow the phraseology from Agamben—*the life that is unworthy of being lived*—has become the locus for the political history of modernity (Agamben, p.122). If one understands what this shift would indicate, one will see why I am bound to identify Levi’s life after the Holocaust as *the life that is unworthy of being lived*. Levi strongly believed in bearing witness to the Jewish Holocaust, but could not become one. Does his

life after the Holocaust signal the life that is unworthy of being live?

## 2.2 Agamben's narratives of resistance

*Primo Levi is a perfect example of the witness.* I will focus on a moment in which Agamben encountered Levi at the Italian publisher, a moment that opens up the dialogue between the philosopher and the writer, proffering a tantalizing possibility for Agamben to bear witness to Levi. When Agamben encountered Levi and pronounced that Levi is a perfect example of the witness, Agamben entered into spaces of identification that exposes him to the internal reality of Levi. Agamben seizes upon Levi with adherence to less personal concerns such as legal and ethical issues, and seems to avoid entering into the spaces of Levi's inner struggling that would somewhat undermine Agamben's appropriation.

However, Agamben's narratives still reveal the fact that he engages with non-appropriative, less cognizant acts of witnessing Levi. This is one reason I am interested in reading Agamben's accounts on Levi closely and carefully. Agamben's interlocutory roles in *witnessing* Levi ascribe to him the mediating role. I contend that this philosopher is himself a rhetorical witness who is exposed to the complexities of language, history, law, justice, and ethics in such a way as to maintain his critical stance while holding together the intimacy of non-appropriative act of bearing witness.

Tracing back to the Agamben's narratives to determine whether or not Levi is a *legitimate* witness of the Holocaust becomes less relevant. Instead, when we tend toward Levi's efforts in introspecting and self-consciously identifying himself as witness, we can consider the expressions of *resistance* against the hegemonic legal culture that excluded

him from the legal category of witness. His endeavors of resistance are sustained by Agamben's *narratives of resistance*. "Essential then to the narratives of resistance," according to critic Barbara Harlow (1987) in her seminal work *Resistance Literature*, "is the demand they make on the reader in their historical referencing and the burden of historical knowledge such refereeing enjoins" (Harlow, 1987, p.80). Harlow's notion of *narratives of resistance* suggests that understanding of history or historicity, or what is considered a proper historical knowledge have the possibility of misunderstanding, and may not always be amenable to exact reproduction of knowledge in another educational or cultural or historical setting. If we agree with Harlow and situate Agamben's *narratives of resistance* within an ongoing process of understanding the Holocaust history and its survivor Primo Levi, we come to grip the importance of "a politicized interpretation and reading." As such, instead of simply considering whether Levi should be considered a *legitimate* witness or not, we can consider how Levi was becoming one.

### **2.3 The savor of one's private being**

I attempt to adhere to this Levi's assertion "I am at peace with myself because I bore witness." Levi's assertion is marked by certain historical referencing made by Agamben. In quoting this statement, Agamben levels Levi against the seemingly innocuous tonality expressed in the term *peace*. "Some of my friends, very dear friends of mine, never speak of Auschwitz. Yet, for others, the only reason to live is to ensure that the *witness* does not perish ... I have not ceased to be an *ex-deportee*, a *witness*" (italics mine) (Agamben, p.437).

Intimately precious and ineffable, beyond the reach of the descriptive word of social

reality, Levi's sense of self as an ex-deportee or a witness becomes intelligible because Levi comes to terms with his Self. For Levi—and it is here, perhaps, that he is most centrally in the Holocaust literature—the savor of one's private being is a primary register of reality, and the self-identification as a witness is requisite for his existence in the world. The process that involves Levi's self-identification with the term *witness* includes his resistance against extinction of personal memory on the atrocities of the Holocaust he bore witness.

“I firmly decided that, despite everything that might happen to me, I would not take my own life...since I did not want to suppress the witness that I could *become*” (italics mine) (Agamben, p.441). *Levi makes judgment impossible* and regards victims as executioners and executioners as victims. This is Levi's central position, a characteristic combination of his psychic extremes—breaking up barriers between those who judge and those who are judged; those who maneuver law and those who are maneuvered by law. At the profoundest level of becoming a witness, Levi marks himself neither by the fixed, unique stamp of a survivor of the Holocaust nor by the legal category of a *witness*. If we consider that the world is a kind of social construction in which all counters of reality are merely virtual, relational, dialectically contingent, Levi's self-identification with the term *witness* is not only a decadent juridico-political affair. But it is also of literally vital importance because it means taking on one's self, proving one's self without an approval of law or judgment, defining one's sense as witness without relying on its existing signification, and thus, creating his own self-identity as witness.

For Levi, the notion of witness seems to be shapeless not only because it is a private and internal event within but because the identity of his self-as-witness is inherently

without a form, proof, and evidence that law may require from the “legitimate” witness. After all, he was not legally identified: he became a legal alien. To Levi, the attempt to grasping the sense of self as witness means a thrust of oneself onto the primal fluid level of complete formlessness, where boundaries between himself and law can be obfuscated. Levi describes this gray zone as the zone that could be not yet born or already extinguished (Agamben, p.441).

Levi’s desire to become a witness should not be confused with some kind of a utopian desire. It results from an endless cycle of negotiation in his life in the war camp and the life after surviving the Holocaust. He could have merged with others or run away from the war camp and/or thrown himself onto the fence to kill himself (Agamben, p.441). The lesson we learn from Levi’s ceaseless endeavors in becoming a witness is that one’s will to adopt a distinct form of identification is, and must be, recurrently confronted by the attempt of surviving the danger and creating a rupture between one’s self and the power of juridical affairs. These antithetical conditions are precisely what make Levi a witness.

#### **2.4 Using the test drive in the (re)trial of Adolf Eichmann**

We will now cast light on Agamben’s narratives on the trial of Adolf Eichmann. Eichmann’s defense lawyer Robert Serviatius stated: “until the end, Eichmann insisted on his guilt before God alone (who was for him only a *hoherer Sinnestrager*, a higher bearer of meaning) to defend himself from the crime of Holocaust and could not be legally prosecuted” (Agamben, p.440). Now we are invited to read this quote closely, and in doing so, we are particularly paying attention to the fact that Eichmann testified, in his plea of guilt for facilitating the Holocaust, before God. Where Eichmann claimed the

testimony of his guilt before God, the plea itself opens up the possibility of endless contestation. Agamben brings a question to Eichmann's claim of the testimony; he considers Eichmann's act of claiming the testimony questionable.<sup>20</sup> What Agamben brings to the discussion is, then, the possibility that he might have, either in terms of endorsing Eichmann's testimony or casting doubt upon it. Whether or not Eichmann's plea of guilt before God can be properly measured within the existing evidential paradigm of law and judgment is another story.

Philosopher Avital Ronell and writer and photographer Suzanne Doppelt's (2003)'s *The Test Drive*, helps to consolidate a number of points that I want to underline and pursue in terms of Eichmann's testimony. In their book, Ronell and Doppelt have explored philosopher Friedrich Nietzsche's notion of *scientific experimentation*. Nietzsche interrogated science and its reporting system and investigated the structure of a reporting method as both singular and repeatable in the domains of pharmaceuticals, medicine, reproductive technologies, and law (Ronell, 2003, p.655). The idiom *the test drive* is, as the title of this book indicates, derived from the practice of experimentation on the reporting system carried out by Nietzsche. In his work *The Gay Science*, Nietzsche (1882) reflected upon the *experimental disposition*, regarding the concentration camp as the most distinct experimental laboratory in modern history. Let us not forget that concentration camps such as the Auschwitz became the real scene of human subject research, such that human beings were targeted as the object of scientific experimentation. This may send chills down our spine. In tracing the genealogy of Nietzsche's

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<sup>20</sup> Regarding the issues of questioning one's testimony by others, we can recall my earlier discussions on the notion of *fabrications* suggested by Butler. See p.24.

experimentation, the *test drive* becomes the tool with which Ronell and Doppelt (2005) pursue “an endless erasure of what is” (Ronell & Doppelt, 2005, pp.6-7).

The hermeneutical experiments Ronell and Doppelt carry out in their work *The Test Drive* are aimed at reading more stories than [what] the experimenter at a given moment is trying to tell with it. As they delineate it, “fiction, narrative, contingency, and *difference* inform the experimental effort” (Ronell & Doppelt 2005, p.43). The experiment, carrying the demand of ethical responsiveness to the historicity of the twentieth century, is the “locus of tremendous ethical anxiety” (Ronell & Doppelt, p.157). The value of hermeneutic experiments of reading and interpreting texts lies in the power of healing ethical anxiety with their therapeutic effect.

Taking the cues from Ronell and Doppelt, I consider the tone of Agamben’s narratives regarding the criminal of the Holocaust, Adolf Eichmann. Contrary to his empathic reading for Levi who was legally-unidentified as witness, Agamben reveals frustrations and anxiety over this seemingly illegitimate witness, Eichmann. Agamben’s narratives prompt us to engage with what Ronell and Doppelt call *experimental efforts*, the endless erasure of what is.

#### **2.4.1 Test 1: Legal guilt, moral guilt**

Considering the trial of Eichmann, Agamben registers the expression *legal guilt*, which results in paying the price of ethics, by pointing to the risks of moral guilt ascribed to the trial of Eichmann. Agamben suggests:

The only possible explanation for this insistence [of Eichmann’s plea of guilt before God ] is that, whereas the assumption of moral guilt seemed ethically noble to the defendant, he was unwilling to assume any legal guilt (although,

from an ethical point of view, legal guilt should have been less serious than moral guilt) (Agamben, 2004, p.440).

What are the main characteristics that Agamben finds to distinguish legal guilt from moral guilt? Agamben is stuck at a moment when the question of *moral guilt* emerges in his reflections on Eichmann. One can surmise that the shift to the legal guilt introduces a crucial byway to decipher what Agamben had not said: Eichmann could have been willing to assume his legal guilt due to the fact that he facilitated the Holocaust. If the legal guilt signals the desire of Agamben's—the desire to turn over Eichmann's moral guilt and instead, assume Eichmann's legal guilt—then we would need to rethink everything that has been legitimated by the terms *law* or *legal*. The theoretical issue at hand entails at least one question: Can Agamben preside over Eichmann's legal guilt without taking into account his claim of moral guilt at all?

These two registers, the legal guilt and the moral guilt, can be understood to pivot around the law-ethics axis, and it is for this reason that I draw toward the Eichmann's testimony. While Agamben carries on emphatic reading on Levi's autobiographical plea for wanting to be identified as witness, he problematizes Eichmann's moral guilt, which is, without articulation, appropriated by the concept of *legal guilt*. The particulars of Agamben's appropriation of legal guilt for Eichmann bring us a further query: What are the consequences of assuming legal guilt? Agamben concludes his elaboration as follows: "To assume guilt and responsibility – which can, at times, be necessary – is to leave the territory of ethics and enter into that of law (Agamben, p.41). Ethics is the sphere that recognizes neither guilt nor responsibility; it is, as Spinoza knew, the doctrine of the happy life" (Agamben, p.41).

Heeding the assertion that the assumption of guilt and responsibility must be essentially treated by law rather than by ethics, Agamben purposely contradicts himself by tapping a paradoxical feeling of *legal guilt* for Eichmann. Eichmann's admission of his guilt, in turn, with a wishful testimonial that sought evidence from a divine figure, tells us something about contradictions regarding this witness' political position. Further, Eichmann's appealing of guilt before God demonstrates the complex social, legal, and ethical attitudes toward his position before law.

It is clear that seeking compensation for Levi in the territory of law where he was legally unidentified as witness reinforces injustice against Levi. Similarly, assuming Eichmann's legal guilt has its own limitation because his moral guilt was justified by the given testimony. Where the law intersects with ethics, the question occurs to me as to where to draw the line between legal guilt and moral guilt. More importantly, can we divide them?

Unveiling two registers, the legal guilt and the moral guilt, brings the law into an *a priori* rationale. If it disturbs Agamben, this is in order to set up something else, something very personal than what Agamben may anticipate. Yet, the direction Agamben's narrative seems to take would not simply be subject to law alone; rather, the transparency which two registers of guilt unfolds lies in the ethical thinking in law. There is a vast area of ethical thinking that appears to be absent from Agamben's reflection or that is in danger of falling into the seemingly optimistic closure of ethics by pointing at Spinoza's *the doctrine of the happy life*. With this Agamben's impenetrable utterance in reference to the term *happiness*, one cannot simply end up interpreting that ethics undermines law or vice versa. Ethical thinking in law emerges here as an important

consideration when we follow, as Derrida (2000) maintains, “one will never be able to demonstrate, in a sense of theoretical proof or a determinate judgment, that a perjury or lie has in fact taken place” (Derrida, 2000, p.30).

It is to be noted that Agamben does not necessarily constitute the understanding of guilt outside ethics but troubles its internal function by separating moral guilt from legal guilt. The demarcation reflects on the sine qua non that the law should recognize its pitfalls: the pitfall for not identifying Levi as witness and the pitfall for acknowledging Eichmann’s moral guilt as such. Agamben further prompts us to understand that despite Eichmann’s attempt to render his guilt outside of human significations, as he did in confessing before God, the testimony was ultimately considered a confessional plea rather than a legal ruling.

#### **2.4.2 Test 2: I swear by God**

Now the question arises regarding where to place two registers of guilt; surely, given the fact Eichmann testified, in his plea of guilt for facilitating the Holocaust, before God, it, too, is not a far cry from everyday common sense. An ambiguous clue, the challenge posed by the utterance *I swear by God* can be heard from anyone, anywhere and anytime. *I swear by God* is very likely to be uttered with the essence of witnessing—a shorthand blueprint intended to establish a tone of confidence, telling others the limit of challenging the Other of oneself. *I testify* but avoid the execution so long as *I* am confessing before God.

Meanwhile, there is something about our common sense that alarms us here: The two registers of guilt cannot be reduced to a history of the non-human signification, God.

Here, following Nietzsche's experimental idiom, "Let us try it" (Ronell, 2003, p.5). By the term *it*, Nietzsche intended to place this non-human signification, God, into a trial. This is because Nietzsche attempted to resist any notion that would prevent him from testing (Ronell, 2003, p.564). Everything including God, according to Nietzsche, has to be tested.

By putting God in a trial, the utterance *I swear by God* requires a type of responsiveness from the third-person guarantor other than God Himself, precisely because God cannot guarantee Himself at the trial where He is subject to the test. Where the conflicting parts of moral guilt and legal guilt refuse to stitch, one finds the need of the Other of oneself—the guarantor of the subject within.

## **2.5 Witnessing the Other of oneself**

It would be comforting, no doubt, to suppose that others see me and understand me. That is, the other person can witness me under any circumstance. I exist in relation to you because you are *out there* for me. If guarantors were that liable—if guarantors were that promising and impeachable—they would not have horrified the legal alien, Levi. After Levi left the concentration camp, he began to narrate his experience in the camp to everyone day after day (he wrote his story on a typewriter at night), as if he went mad. It can be inferred that Levi's terror could have been the very terror of losing the Other of himself who could bear witness to his tremendous anxiety within himself, and thereby he was becoming a witness. Regarding Eichmann, I will leave behind the analysis of his moral guilt to my research in future.

In this chapter, I have attempted to show that Agamben highlights the term *witness* in

the formation of meaning, which gives rise to the critique of law and its exclusion of the seemingly legitimate witness. I have attempted to explore Agamben's non-appropriative act of witnessing Levi, which complicated the demarcation of legal guilt from moral guilt when Eichmann's testimony was brought to the fore. Tracing the ways in which Agamben encountered and observed Levi and Eichmann enables us to examine that Agamben was exposed to the danger zones of historicity in such a way to become the interlocutor for Levi who was legally unidentified as witness, and subsequently for Eichmann whose confessional plea, for facilitating the Holocaust, before God was legally admitted. I argue that Agamben's narratives both on Levi and Eichmann encapsulate the non-appropriative version of acting as a rhetorical witness.

It is the spectacle of law which occupies the secure space of a polity in modern democracy and generates the discourse of rights to testify and become a legally-identified witness. Yet, the spectacle of legally-unidentified witnesses such as Primo Levi enables us to understand that these legal aliens become the guarantors of the interior space carved out in the literary, rhetorical, and ethical spaces within the hegemonic legal culture. Agamben's narratives proffer, in turn, the possibility for the rhetorical witness as reader to partake in this interior space.

## CHAPTER 3

### **Inconclusive Fate of Reading The Novel *S.* and the World Map**

#### **3. In pursuit of geography of truth**

For the last two and half years, since the novel *S.* became my possession, I have been thinking about my shifting relationship to the text and the broader meaning of my acts of reading about it. For, I am convinced that there is a profound sense in which my acts of reading the novel *S.* have become my responsibility. I have come to think that this novel was entrusted to me in a much more significant manner than I initially had thought as a student of “Women’s Rights, Human Rights.” As I recounted the ways in which the class read the text, I came to contemplate what lies beneath my sensibility *passion*. The story now after *S.* came into my possession perhaps goes some way toward explaining why and how I felt passionate about rereading the text, and what does my passion essentially mean.

In the first semester of my MA program at AUC, I took a class titled “Women’s Rights, Human Rights” which was cross-listed on the department of English and Comparative Literature and Gender and Women’s studies. Amongst many other reading materials in this class, I was assigned a novel of wartime rape in Bosnia entitled *S.: A Novel about the Balkans*. There was no instruction to buy the book, copy it or borrow it from the library. The syllabus read that the text can be either purchased at the school bookstore or loaned in the library.

The class read *S.* in the week titled *Geographies of Truth: Post-Balkan Effects* stated in the syllabus. I wrestled not only with the theme of the novel, which I understood as *wartime rape in Bosnia*, but also with the title of the class in which *S.* was read. I thought

the significance of reading about the text lies in deciphering the meaning of this title *Geographies of Truth: Post-Balkan effects*. Nonetheless, I did not grasp the meaning immediately. I thus attempt to explore its meaning in this chapter.

Before the class was over, Professor Barbara Harlow left us with some queries: “Do you know where the former Yugoslavia is? If not, just look it up on a map?” When she broached the question, I immediately guessed that the language *the former Yugoslavia* was inscribed and manifested on a map. When the class was over, I searched for a world map to look for the language, as I was asked for.

It was in this way that I approached a world map together with the novel *S*. not so much to seek out connections between the texts at the outset. Whilst extending my acquaintance with the Croatian female-authored novel of wartime rape in Bosnia, I was not at all familiarized with the world map. Inspecting the world map, I could not find the language *the former Yugoslavia* on its surface of the text. I was also troubled by the absence of any historical markers that indicate the occurrences of wartime rape in Bosnia. Further, I was oblivious to the lack of any constructing implications of *the former Yugoslavia* in the map. Subconsciously, I was constantly going back to the accounts of raped women in the novel *S*. and trying to transfer the knowledge of wartime rape in Bosnia to the rendering of the former Yugoslavia on the world map. This way of reading the two texts in parallel comes to the expression of *intersexuality*, which cannot be thought up by reading the two texts independently or against each other?

### **3.1 Guidelines for reading the world map**

If we ask what a world map is, we could say that it is an object of looking. Not many

people may have a commonsense understanding that it is an object of *reading*. Even if we are not in a position to give a concrete and correct definition of its use, we nevertheless always already seem to know how to read a world map. Not only do we seem to know what a world map is, but also, we seem to know who writes it, if the author ever matters to the reader. So the question remains as to the origin of our understanding of the world map, its use, and its authorship as well as the readership. Let us pretend that we do not know what a world map, and from this standpoint, we begin a new speculation on it. IN doing so, we will read articles published in the field of Geography, for they aid us to understand how a world map is read by the expert. We will also try to make connections between what my already internalized ideas about the world map, which I encountered almost a decade ago and those of my new insight into it today.

We know what a world map is and yet we do not know how to read it, given no useful guideline or guidance to do so. Perhaps, less often, we may consider the act of exploring the use of ideology embedded within the geographic text. But this is not the approach Jacques Derrida might take towards a text. By explaining the term *trace*, Derrida (1997) in *Of Grammatology*, speculates on a source or origin of text. The necessity of leaving the path and speculating on a source or origin lies in the fact that there is a dangerous *promiscuity* between the reflection and the reflected; those who represent and those who are represented in the text (Derrida, 1997, p.36).

History or the lack of historical accounts manifested on the surface of a world map constitutes cartographers' visual storytelling. The world map does not easily offer the reader an identity of source or an origin of the text. That is, the world map does not limit in providing the reader with a way that a source or origin of the text can be thought about

and imagined.

When I began my journey of tracing the rendering of the former Yugoslavia on a world map, it immediately and intimately tied into the female violated body and rape scenes illustrated in the novel *S*. In that moment, it seemed somehow critical to know where the former Yugoslavia is located on the map wherein events of wartime rape took place as depicted in the novel *S*. In this way, the notion of *tracing* suggested by Derrida gave me a hint in terms of reading the two texts in relation to one another. This awakening of the understanding that the world map partakes in the same intertextuality as the novel *S*. is crucial here, for it simultaneously contains the means by which to critique the agency of raped women the world map demarcates.

But perhaps someone could question, in the final analysis, about the function of a world map, by pointing out the fact that a historical marker of wartime rape in Bosnia cannot be viewed in the same way as in the novel *S*. Scholars such as Wendy Hesford (2004) would further argue that imagining the body of raped women in a text such as the world map is dangerous because such is not just ethically wrong for raped women, but further victimizing them in that process. “Although the gerund ‘imagining’ assumes an activity,” as Elaine Scarry (1987) suggests in *The Body in Pain*, “it is impossible to imagine without imagining something” (Scarry, 1987, p.162). If, as Scarry maintains, imagining requires imagining of something, we need to think, before imagining anything about the raped women, the ways in which we could imagine the use of the world map.

Alluding to the completely different genre of text such as the world map to the novel about wartime rape in Bosnia *S*., imaginations properly pertaining to my reading of the novel *S*. cannot be simply transferred to the world map. What justification is there,

however, alluding to the seemingly completely different genre of texts? Do the ways of reading the novel *S.* and the world map in relation to each other presupposes that we already know about each nature of text and its genre? Do we indeed know this? Do we know what the world is? What about the novel *S.*?

### **3.1.1 The former Yugoslavia as a legal Concept**

We are now going to closely look at the rendering of the former Yugoslavia on the world map. Just as *the former Yugoslavia* is the collective name for everything that belongs to the geography, refers to this region itself, so is the Balkans the collective name for all former Yugoslavia nations, for what falls within the regions of that which is, for what we mean by the former Yugoslavia. The fact that the former Yugoslavia is a legal concept is not mere an accident and unrelated to the discussion that the former Yugoslavia is a collective name and the name that represents the region.

When I first looked into the world map, I found that lines are drawn between Croatia to Bosnia and Herzegovina, from Serbia to Montenegro, and from Kosovo to Macedonia. Each country in the former Yugoslavian territory appears to exist independently without any indication of its temporal continuity. What confused me most in terms of the lines mentioned above was that they appear to elucidate the spatiality of the former Yugoslavia while obliterating the temporality of the former Yugoslavia, and the fact that the spatio-temporal ruptures tally up in the language of the former Yugoslavia.

A map has a specific system of naming, spacing, and timing. Such system is rooted in a judico-scientific paradigm. The rendering of the former Yugoslavia on the world map is re-presented by the scientific writing of cartographers based on the legal concept *the*

*former Yugoslavia*. What does the geographic formulation of the words *the former Yugoslavia* have to do with the law and science?

By speculating on this initial question, I borrow the phraseology from the geographer Doreen B. Massey (2005) in *For Space*. I was caught up in the problematical *geographical imagination*, which was brought by cofounding categories (Massey, 2005, p.184). The *cofounding categories* that puzzled me were exactly, as J.B. Harley (1990) calls, *the cartographer's categories*. The cartographer's categories ground the "morality of the map" because the cartographer draws boundaries, names places, and constructs the map based on her/his morality (Campbell & Shapiro, 1999, p.60). From this consideration, we could assume *the former Yugoslavia* as the cofounding categories made up by cartographers. The morality of the map characterized by jingoism and desire-driven imaginaries are manifested in the cartographer's commitment to nationhood with accompanying territorial fantasies (Campbell & Shapiro, p.60).

As Campbell and Shapiro further states, "topographical amnesia"—borrowing the cultural theorist and urbanist Paul Virilio's (1994) use of the phrase—"erases older maps in its naming and configurations" and "constitutes a non-recognition of older, often violently displaced practices of identity and space" (Campbell & Shapiro, 1999, p.60). What startles me now is not so much the content of these territorial fantasies or the incipient desire to define morality of the map in the same breath as identity and nationality. Rather, cartographers' act of drawing maps itself. Indeed, cartographers can, at times, dismiss what we consider as the reality and cover it up with historical usurpation.

### **3.1.2 The spatio-temporal ruptures**

While working on this thesis, I have also attempted to recall my life as early as an elementary school pupil and wondered how I read a world map as a girl. How did I look at a world map back then? Did I ever find the expressions of the former Yugoslavia? Memory is incomplete, but I recall looking at a world map in early 1990's that extended my world of experience until finally I was re-checking out a world map as a graduate student, without direction or goal, looking always for someone to guide me through a tremendously big world.

Re-considering the fact that I was looking for the statement of the former Yugoslavia elucidated as a graphic image on (i.e., an abstract/global/space) on the surface of the world map while my sparse geographical knowledge was fixed on what I thought I had learned in my geography class in my elementary school in Japan more than a decade ago (i.e., a concrete/local/place). The language of *the former Yugoslavia* on the world map was something I learned about in that geography class. It was something that I had not been updated since then, but something I imagined to find it again on the world map. Here Massey (2005) may suggest as follows: "The flat horizontality of the page [on the map] has reinforced the imagination of the spatial as petrification and as a safe haven from the temporal—it further makes 'self-evident' the notion of space as a surface" (Massey, 2005, p.28).

Reaching into the vocabularies of the former Yugoslavia, they none-so-euphemistically evoke the time and space that have fallen apart. Syntactically, the falling apart occurs because of the giving up of resistance, a site where a most violent post-national scene is represented. In that sense, the phrase *the former Yugoslavia* can be easily modified into the post-Balkan society, irrespective of resistance from within. Such

a trick can happen because the former Yugoslavia is a legal concept. But essentially, I ask, who gave up resistance? Who modified the former Yugoslavia into the post-Balkan society? More essentially, who has and hasn't got power over the representation of time and space on the world map?

Even though the spatiality of the former Yugoslavia can be modified into and substituted by the term *the post-Balkans*, such term holds certain connotation with an orientalist origin. It also posits the Balkan people as the embodiment of an *uncivilized* or *self-disciplined* (Campbell, 1998, p.90). In *National Deconstruction: Violence, Identity, and Justice in Bosnia*, David Campbell (1998) states:

...orientalist discourse has migrated the regions marked as other, only to be redeployed by those so marked. This can come in the form of general self-disparagement—the pathetic remarks of one who wanted to explain away Srebrenica [genocide] because ‘we are Balkan people and we are uncivilized’—or self-disciplined, where, in academic accounts as much as public discourse, those in areas of the former Yugoslavia once ruled by the Hapsburg monarchy look down upon those in former Ottoman-ruled areas.  
Campbell, 1998, p.90)

The danger implied in the understanding of representational practice of languages such as *the former Yugoslavia* or *the Balkan* reverberates in Massey's (2005) concern about the intellectual scientific engagement (Massey, 2005, p.27). Evoking the patterns and process of knowledge production at work, Massey concludes as follows:

if scientific/intellectual activity is indeed to be understood as an active and productive engagement in/of the world [,] it is none-the-less a particular kind of practice, a specific form of engagement/production in which it is hard to deny (to absolve ourselves from the responsibility for?) any element of representation...even if it is, quite certainly, productive and experimental rather than simply mimetic, and an embodied knowledge rather than a mediation (Massey, 2005, p.29).

Poised between the understanding of representational practice, the configuration of the world map in light of critical geography—the drawing of a story that is yet untold and

unrepresented on the surface—is strikingly analogous to the configuration of reading a text in literary theory and hermeneutics aided by the post-structuralist critique of “text/representation-as-stabilisation” (Massey, 2005, p.28). By advancing the description and analyses of the rendering of *the former Yugoslavia* represented on the surface of the world map, we can begin to make sense of the interconnecting and interlocking nature of the world map and the novel *S*. We will now move on and discuss on the novel *S*. in depth.

### **3.2 Existence from and through text**

Rereading the novel *S*. in an attempt to answer the epistemological question I posed upon earlier, that is, *how I read what I read*, brought me back to the matter of my bodily engagement with and my performative acts of reading about the novel *S*. As Butler (1993) questions, “If everything is a text, what about violence and bodily injury? Does anything *matter* in or for poststructuralism” (Butler, 1993, p.30)? Butler’s question also poses upon us another set of questions regarding our act of reading in relation to our existence in the world: Do we read texts in order to exist in the world? Or, do we read texts because we exist in the world, such that texts are out there within the reach of our hands?

The preceding questions have brought us back to the dilemma after encountering and in my rereading of the novel *S*. On the one hand, my treatment of the novel *S*. corresponds to the *natural* circumstance in which I was in: I was assigned to read the text, bought it at a bookstore, and pursued the *required* reading as part of my academic

integrity.<sup>21</sup> Now this naturalized view of a student's performance may be confused and erroneous, for reading an assigned text is normally understood as adaption, if not obedience, to the so-called professors' demand. Where I am trying to get at is precisely to problematize this naturalized view of reading an assigned text. Having said that, I am not to assume authorial intents of professors for their intent of assigning texts with particular expectations about the ways in which the texts are read and understood. Yet the difficulty is precisely to make sense of what Butler reckons on, "if everything is a text..." Further, its relevance to the materiality of our bodily engagement or its signification of the bodily hurt brings the important attribute to texts. If reading is a pre-requisite for human existence or a possibility that paves the path for one's existence as human beings, one cannot be simply satisfied with or troubled by the claim that "everything is a text," but have to consider one's existence *from* and *through* it.

My epistemological question *how we read what we read* has not gained any answer yet. This questioning requires our consideration of texts and textual treatments. Our intellectual engagement, indeed, demands this elementary question as to make sense of our huge consumption of literary and textual corpus in the academe. Questioning *how we read what we read* becomes even more important because it does not seem to be posed upon frequently enough in the academy. To press forward from our intellectuals' treatment of texts and textual genres we encounter in the academy urge us as well to consider the treatments of all kinds of texts that are not limited to "academic."

To attempt to think about our act of reading by way of questioning *how we read what*

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<sup>21</sup> By my use of the term *academic integrity*, I mean that I have interpreted the syllabus which has given the instruction of where the book is purchased or loaned at a library.

*we read*, to seek an understanding of what our act of reading is in general by immediately converging into the epistemological question is an overwhelmingly huge task that needs to be gradually yet thoroughly digested. These questions would be more approachable at hand: Why am I interested in, even obsessively, the novel *S*?

In the article entitled “Turning the Gaze back on Itself”, professor of Law Brenda Cossman (1997) argues that the ambivalence of knowing the Other can be equated to the ambivalence of possessing the Other. The emotional complications resulting from *desiring* may bring about misreading too personal to be controlling. Such is the case of the young woman Salome who desires the gaze of the man she loves, yet the gaze is not returned (Cossman, 1997, p.525). As Cossman suggests, “the power she apparently acquires from the gaze of Others cannot save her from her own act of transgress – she desires too much and ultimately brings about her own death (Cossman, p.535). What is the nature of such desires which may be so sharp radical that it is metamorphosed as seductive and intoxicating? There is also the unavoidable gulp in one’s knowledge of knowing the Other of oneself. This becomes especially true in the transnational flows of culture—Cossman is particularly concerned about the colonial binaries—of us/them, here/there, west/non-west, and the colonizer/colonized—the context excites one’s imagination as to the Other’s possibly shady past.

We go through in those moments of trying to understand the Other in an irreparable sense of discontinuity that precisely prevents any possibility of being voyeuristic about the Other. The shift one experiences here is the reversal of shift from gazing at the Other to gazing at the Other of oneself. The deeper our sense of discontinuity—which, however, does not easily get rid of one’s sense of *obsessions*, the more significant it becomes to

introvert the gaze at the Other of oneself. Paul de Man (1985) stated as follows: “When one imagines to have felt the exhilaration of renewal, one is certainly the last to know whether such a change actually took place or whether one is just restating in a slightly different mode, earlier and unresolved obsessions” (Mizumura, 1985, p.82). Precisely because of the underlying difficulty in understanding one’s own state of mind with a subjective process of self-inquiry, it nonetheless becomes even more important to witness the Other of oneself.

### **3.3 Reading the novel *S* in depth**

The only thing I learned in the camp was the importance of forgetting  
--Slavenka Drakulic *S.: A Story About the Balkans*

*S.: A Story About the Balkans* traces S.’ incarceration in the war camp. Drakulic portrays raped women as neither entirely misfortunate nor fortune. She is neither wholly whore or victim, but both. The Croatian feminist author Slavenka Drakulic (2001) creates a complicated character S. who continually subverts the conspicuously overdetermined readings the text seems to provide. Instead of simply considering the protagonist S. as a raped woman, I am concerned with the ways in which Drakulic imagines the particular female bodily hurt—S.—and the terms by which it frames her rape experience.

S., the elementary school teacher lives in a small village in B. Bosnia. S.’s mother is a Serb, her father is a Muslim, and S. is ethnically a Muslim according to the conventional criterion of determining one’s ethnic identity directed by paternal familial lineage. The Serbs might validate her incarceration because she is a Muslim, as S. wonders, whilst she realizes that Serbian soldiers who came to seize her and her female villagers “do not have

their names written down or called out, nor are their papers checked” (Drakulic, 2001, p.23). Later, with Serbian soldiers’ mass-murdering of male villagers (whose identifications are not explicitly provided) and in face of the cruel attack of the kind of ethnic cleansing, S., now frightened and in fear for losing her life, follows an order and get on a bus that nobody knows where the destination might be. Not a single woman tries to steal eyes from Serbian soldiers to escape.

In the meantime, in Sarajevo, too, the increasing political chaos is producing social and political unrest. S., says with regard to her family: “I should have found a way to get there, to get into Sarajevo and see for myself that they [her parents and sister] were no longer there” (Drakulic, pp.28-29). S. regularly bemoans her guilt for not visiting her family. If one takes S, the character and text, at face value in these moments of guilt, this novel may be read as a powerful moral exploration of the psychological damning effects of shame and sin. S. is taken to a woman’s room and the horror that she has been done so create a more disjunctive effect than such readings allow.

S. does not know where her parents and sister are gone or taken to or whether they fled from Sarajevo or whether they are alive in somewhere. The neighbor informed S. that her parents’ apartment was empty, that a soldier moved in it. Her memoir of recounting her own family lasts until S. was raped, which could indicate the loss of her agency in terms of remembering the family tie and the larger network of her social affiliations.

### **3.3.1 S. in a Women’s Room**

A critical life event, being incarcerated in a war camp in a remote area, serves as a

catalyst for a shift in how S. thinks about her identities. S. who is ethnically and “racially” underrepresented because of her dual background—the Serb (i.e., her mother) and Muslim (i.e., her father)—ends up stuck in a position where she must cater for the “need” of Serbian soldiers that are largely alien to her own personal interests and marginalized cultural contexts. For these socio-structural reasons, warfare is historically tied to the tragically and violently oppressive foundations of our gender “equal” society. The Serb occupied army imposed the false requirement that women in the camp must quench the thirst of soldiers. S. was taken to a special place in the war camp called ‘women’s room,’ where she was repeatedly raped by a group of young Serbian soldiers. This event took place between June and July, 1992.

Before the war started, S. thought she was neither a Serb nor a Muslim. “For her,” S. reconsiders, “war began the moment others started dividing and labeling her, when nobody asked her anything any more” (Drakulic, p.28). S.’ materially dual background dilutes the complexities and relevance of her identification with a Serb, and thereby strips her political agency altogether. Neither does S. adhere to a Muslim identity nor endorse an anti-Serb stance. On the contrary, the Serbian soldiers hold the eminent distinction of being liable for raping S. While raping S., the soldiers curse her Serbian mother. Required here is not only the ever-cruel Serbian soldiers’ act of raping, but also act of cursing her. S. is then forced to make sense of the incompleteness of her body—not being Serb enough, and thereby makes the maneuver of rape *imperative* by filling up the gap of her *ethnic identity*.

The unequal ownership of body and sense of self inform the imbalanced contours of gender inequality. S. was overwhelmed by the undisciplined manner of Serbian soldiers

who raped her, and was collapsed by their nasty treatment as follows:

Open your mouth, says a man's voice. He is standing over her, his legs spread. Open your mouth! S. opens her mouth. There is a long stream of urine. Swallow, he orders. I'll teach you obedience. She tries to swallow. The urine is warm and salty and makes her want to vomit. She coughs and throws up at the same time. He slaps her continuously...until she loses consciousness (Drakulic, p.62).

The triumph of the Serbian soldiers would be found in their ability to infiltrate not only their sexual organs into the body of S., but also their urines (i.e., a dirty thing) into the completely dispossessed body of a woman. Judging by the sheer disgust of his sexual humiliation shouldered upon her experience of rape, one cannot ignore the extent to which the soldier is trying to seal her mouth, to prevent her from uttering a word, and to make her feel as if she was dead, *as if she was not there* (Drakulic p.61).

### **3.3.2 S.' privilege**

From the novel's beginning, S.' status as an elementary school teacher complicates the reader's understanding of the notion of *privilege*. S. was chosen as a special *guest* by the commander of the war camp. This happened in August 1992. The removal of voice from S. is not compensated at the expense of her dates with the Captain of the war camp. S. is seduced whilst she also becomes seductive in front of him: wearing a black dress, putting make-up on, and "manipulating her sexuality" in order to make her appearance congruent with the urban-bred Captain from Belgrade. S. becomes aware of the fact that she is "acting like a real whore" and is the only "real" prostitute among women in the 'women's room' (Drakulic, p.106). Like the Captain, this urban bred, well-educated teacher is yet at his mercy and serves to be his *comfort*. S. plays the roles of comforting him as the Captain expects from the female inmate.

The Captain invites S. to his home—the administration building of the war camp. He treats her with decent food and alcohol. They watch TV together, while his hands are on her shoulder. The Captain eventually manipulates his desires in controlling, subjugating and sleeping with S. S. underscores the extent to which the Captain expects her to save him from the sexually loaded image of a-poor-soldier who is apart from his beloved son and wife. S. curls up in his warm body and sleeps in his arms. In doing so, S. acknowledges on the one hand that she lacks the rationale of seeking an emotional comfort from the Captain. On the other hand, this passage is a typical formulation of the domino effect of women's departure from the moral path. Nonetheless, such reading elides the presence of S.' undeniable fear of the Captain. She does not berate herself overmuch for sleeping with the Captain and articulating her achievement of becoming the Captain's woman to serve his sexual satisfaction. S. is portrayed not as a one-dimensional character, but as a complex one that is never fully shut down or punished by the narratives the novelist Drakulic pursues here and there.

The affair with the Captain happens because S. desperately wants to escape the camp as much as the Captain wants to, as S. thinks that that is what he has in mind. Regardless of the difference of their social status in the camp—one is an inmate and the other the commander of the camp – perhaps because of that social stratum – they continue to seek places of comfort and solace from one another. More importantly, her “dates” with the Captain perseveres because S., intimidated but uncompromising to retaliate the Captain's seduction, has overcome this conventional image of how a woman with a right mind should behave. S. accommodated the unhappy circumstances of the camp in face of the Captain's humane but humiliating treatment, solely for the purpose of her surviving.

But what is the uniqueness of S.'s experience with the Captain in comparison to and contrast with anonymous soldiers who, as mentioned earlier, raped her in 'women's room'? The way in which S. is treated by the Captain takes on a distinctly different characteristic from Serbian soldiers in the 'women's room'. During the dates in which S. spends times with the Captain, nobody know whether there is any kind of 'rape' is taking place in the Captain's home or what is going on in the Captain's mind. Drakulic's remarkable prose experiments counter this constitutional absence of "rape" by encountering and representing a male-female relationship between S. and the Captain. Be some kind of nostalgia for a "male-female relationship" as it may appear, when readers feel free to judge his treatment, the imperfections of human interaction (i.e., a male-female relationship) are put into the critical spotlight, no matter his 'gentle' treatment being portrayed. Even in an occasion in which S. tries to seduce the Captain, S. remains royal and obedient to the Captain so long as she is subject to his invisible as well as visible psychological enslavement which readers can well capture. Further, the Captain would not be a moral support for S. Rather, he expects her not to bring any issues about the camp life into their conversation, not even a single word, let alone complaints (Drakulic, p.107). Here again, her voice is sealed by his tacit masculine authority, albeit differently from Serbian soldiers who sealed her mouth with their urine.

It is hard to refer to the Captain's relationship with S. as a male-female relationship in nature, because the Captain and his heterosexual desire define an ever-lasting, all-encompassing hierarchical relationship a bit too large for me to fully tackle within the realm of this paper. Nonetheless, their relationship is converged into a once again "rape" scene in the 'women's room.' What is further problematic is the all too sexually-

assaulting roles Serbian soldiers play in relation to their commander, the Captain, two groups which derive their sexual uses and abuses from the authority of government and Serbian army. So long as Serbian soldiers rape women under the leadership of the Captain, be the Captain a perpetrator of rape or not, he is consciously and subconsciously permitting the happenings of rape in the camp.

When the ethnic, “racial” and gender boundaries inferred by Serbian soldiers’ institutional/systemic rape against Bosnian Muslim women demarcate the parameters of the Captain’s act—rather than the policing and politicizing his ethical choices—taking S. as his “comfort” indicates his act of enslaving her as it is, presumably, liberating to him. In this light, I will argue the administration building becomes a space and even center of conspicuous ‘women’s room’ over the Captain’s home. In the following section of this chapter, I will further argue that the Captain’s attitudinal/psychological chauvinism is but one more system of systematic wartime rape that is explicitly and implicitly illustrated in the novel *S*.

S. sometimes thinks to herself that being a real prostitute for the Captain would be a real privilege. S. is no longer at the disposal of the soldiers in the ‘women’s room’, and that is a privilege not only to her eyes, but to other women’s in the camp. On one hand, being portrayed as a privileged woman, she is insufficiently attuned to the volatility of the singularly complex and dangerous situation in which she is situated all alone with the Captain. As far as the S.’ genuine feeling is concerned, the fixated and excessively privileged concerns over her masks her social status as the educated woman on top of her make-ups, which she wears daily, obsessively, in the camp as she used to do so before the war started, that which identity ever was true and will be. On the other hand, however, S.

is not that privileged to an extent that she could escape the camp in which she is not immune from another occasion to be raped or sexually violated, so to speak. While the Serbian soldiers used their belt to hit her, tie her hands and legs to the desk on which they raped her, her hands are still tied to the Captain with the unspoken “agreement.” S. is forced to satiate the preferences of not just the commander of the war camp, but of the entire camp, that is, the entire system of the camp, which excludes and marginalizes women by making them sex.

The double-edged nature of the following accounts on S. exemplifies the tension which I have pointed earlier: it provides evidence of S.’ as it also validates her physical and sexual power. The passage exemplifies the ways in which S.’ importance in control of herself, her body, and her possessions is consistently bracketed with her discourses on the basic status. It is a critical commonplace that Drakulic’s narrative is replete with similar enumerations of the goods and pleasures that entice and engulf not only S., but other women in the war camp.

S.’ desires for sexual and subjective liberty to flee from the camp are presented as rational, and the novel luxuriates in the enumeration of her privileges. One day a report that a soldier brought to the Captain about a female prisoner and her attempt to escape from the camp and her subsequent murder by the aggravated Captain arose in S.’s minds not only terror but also a fear of death: to lose a chance to survive. In this contested scene, Evidence of the Captain’s increasingly criminal nature and immoral actions. The scene reads differently when looked at specifically through the lens of warfare. First,

In fact, the looming threat of such sentiments still heavily affects S’ mind. The Captain’s psychological “rape” causes her mentality of “wanting to be special” for the

Captain. S. finds the advantage of being with the Captain becoming more and more obvious to her with each passing day. Perhaps S.' experiences of the war camp in its entirety can no longer be couched in legal terms such as "rape" or "sexual abuse" or "molestation" due to the psychological affect.

### **3.3.3 When war ends, the war of S. continues**

Wartime rape is without an end, even a war ends at some point. When one attempts to understand the complexity of wartime rape, one cannot ignore the consequences that have upon the female bodily hurt. S. is released from the camp with other rape survivors. S. learns of her pregnancy in Sweden where she becomes a refugee. Her isolation comes from not only being a lone refugee in Sweden but also being pregnant as a consequence of rape. The Captain is not exempt from the occurrences of wartime rape after all because S. could be pregnant by, either due to the anonymous Serbian rapists in the 'women's room' or the unwanted intercourse with the Captain. "The woman who endures a militarized rape has more than one man to accuse" (Enloe, 2000, p.141).

Drakulic provides a new chapter in the life of S. with her new-born male baby at Karolinska Hospital, Stockholm. Although S. left Bosnia after the war, she does not feel completely at ease to be where she has migrated. While S. bears witness to her baby who was born in that afternoon, she glances at a Bosnian woman Maj and her baby Britt whose given circumstances are quite different from those of her and her baby.

In the shared room that the hospital offers, S. sees fit, not so much the role of motherhood Maj and her nurses expect from her, but the recurring impulse of turning her head away from *her* baby in the defiance of her past's heretofore unequal experience that

put her into the war camp and impregnated her. Watching the baby, S. ends up wondering, “[h]ow many such children will be born without their father ever knowing about them? If children are born they will be born to these women and they, not their unknown fathers, will decide their fate. Not one of these children will know who their real father is” (Drakulic p.198).

The understanding the psychological shift of S. is crucial in that she is in transition from the experience of rape in the war camp to a life that of a refugee in another European continent Sweden. S. is faced with the crisis of her life, which is to forge an unbreakable bond with her child. All that she can hope for now is the opportunity to repair the damage that has been wrought upon her. After all, the fact that her baby becomes the only witness besides herself who could prove the occurrence of rape to her in the war camp signifies that S. begins to come to terms with her own life, especially her unresolved feelings towards “non-existent” man, the father of her baby. S. is in the process of gradual healing and finds in her baby someone she can “show the hate from which his life emerged can be transformed into love” (Drakulic, p.198). That is why S. treats her baby as if she is still alive to the confusion of her rape experiences.

Between the moment when her “death” is confirmed by her pregnancy as a result of rape and the instant of her own affirmation in order to bear witness to the baby as not of anybody else but of *hers*, alive and unaware of wartime rape that hurt, humiliated, and made her sex, Drakulic elucidates an ontological ground upon which much of the psychological discourse is constructed, and herein lies a reason that this novel partakes in a war-history of Bosnia which enables the reader to come to terms, with some sense of identification, with Bosnian Muslim women’s experience of impregnation and subsequent

child birth. Just what is it that makes the child so wanting and wanted by S., and what are some potential social and ontological necessities of making her child “her own”?

In consciously and subconsciously dictating the “acceptable” and “ideal” attitudes of a mother as characterized by Maj in contrast to S. who materially gave birth to a child as a result of rape whilst epistemologically surpassing the overwhelming notion of having a Serbian-Bosnian baby from motherly “responsibility,” S. can be characterized not necessarily by a utilitarian survival instinct (based on the preservation and reproduction of the baby or the most “precious” recourses of memory of wartime rape) as a result of her womanhood, but rather a seemingly arbitrary aesthetic force takes priority in these interactions whereby S. seeks to “come to terms with” her sad past.

While highlighting the negotiating and negotiable notion of S.’ baby as hers or someone else’s S. is simultaneously coming to terms with her new ‘self.’ Those sexually subjugated women who fight for cultural/social recognition, legal compensation and redistribution, are, often situated in an intellectual discourse such as feminism in the context of West, averse to the decontextualization of “cultured” behaviors; for fear that removal of the original subject/identity from the production of cultural capital alienates the cultural capital from its rightful owner.

In the context of ethnic conflict as it is captured in its entirety of Drakulic’s novel, the simplest parallel to the post-colonial sense, as remarked by Edward Said, is the “coming-to-terms” process. The message hidden in this novel turns out to be ideological and ideologically urbane and Drakulic’s message is clear: beyond the rhetorical search for “surviving,” ...S., as a novel, can examine her invention and demise on both thematic, stylistic levels of analysis. Particularly germane to Drakulic’s novel as an instance of

actual incorporation is the act of witnessing that takes place within the author Drakulic's herself.

### **3.4 Drakulic's self-account of writing *S*.**

"I realized...I realized for the first time," Slavenka Drakulic commented on the interview on NPR in March 19, 2000, "that the real story is not in her word, is not in what she is trying to tell me; but exactly in what she is not telling me." How then did Drakulic turn into the research, collecting the witnessing account, and writing of her 1993 book *As If I Were Not There*, published in the United States in 2000 with the new title *S: A Novel about the Balkans*? Drakulic goes on to claim that "the way witnesses themselves told us the story was very basic: you couldn't really get the picture and you could see that they were hesitating, and they had a big problem in verbalizing their experience" (Drakulic, 2000). The most significant part of the Drakulic's account in this radio interview involves her methodological insight and literary perspective which are critical about her professional background in journalism previous. "I adore journalism, but journalism is not good enough to describe the depth of the pain that these [raped] women went through" (Drakulic, 2000).

Drakulic has "chosen fiction over non-fiction is [that] this is the way the silence becomes screaming and it's no silence any more because what bothered me was actually the silence" (Drakulic, 2000). Drakulic sought to break the silence of Bosnian Muslim women who were raped during the Bosnian war and who could not speak to others about their own experience of rape in the post-war period. The radio interview concludes with her opportunistic account not only for the main protagonist S. who has chosen the morality of exercising her freedom—perhaps including her sexuality—rather than

reiterating victimhood and bodily and psychically damaged images, but also for the different possibilities of narratives in the post-war Bosnia, and for the story of Drakulic's own morality in producing those alternative voices. "I believe as Primo Levi does," as Drakulic remarks at the end of the radio interview, "that there is always the possibility of a moral choice. Nonetheless, you can pay for such a choice with your life, but it must be because I think the possibility of a moral choice is what is making us human" (Drakulic, 2000).

*S.: A Novel about the Balkans* is a story that proposes a study of literary and textual genre in the post-Balkan society, with special reference to Croatia, and provides a chapter in the life of a female writer Slavenka Drakulic and her own contribution to what critic Barbara Harlow (1987) calls "Women's writing" or more largely, "Resistance Literature."

### **3.4.1 Raping Croatia**

Slavenka Drakulic is a Croatian journalist and novelist, but her work *S.: A Novel about the Balkans* was published in the United States in 2000. Although as the novel it derives from European fiction genre and tradition, it nonetheless challenges us to explore the literary critical methodologies adopted by a Croatian novelist. "Given, furthermore, the current intensity of the debate and the rapid developments in contemporary literary critical theory in the West (e.g., structuralism, deconstruction, psychoanalysis, Marxism, etc)," Barbara Harlow remarks, "it is important to examine the applicability of these theoretical structures and modalities outside the cultural tradition which produced them" (Harlow, 1987, xvi). That being said, I believe it is important that we shed light on literary approach and critical perspectives surrounding the Croatian feminist novelist

Drakulic not only in the context of Croatia but also in a transnational context.

Perhaps the very idea of literary criticism is still uniquely rooted in the Western academe. No matter the geographical origins the notion and practice, however, I follow a set of literary critical methodology circumscribed by Western intellectuals, particularly, of post-colonial scholars that are relevant to my reading of *S*. I stand by Western literary critical methodology as a departure point from which to generate my self-reflections. Heeding the assertion that “[t]he critic is always implicated in the historical process, as implication revealed by the dynamics of the works themselves” (Harlow, 1987, p.78), I believe that the role of a rhetorical witness as reader is foundational to my literary reading of *S*. and my subsequent self-reflections surrounding the novel and its novelist.

My way of reading as a rhetorical witness serves a purpose in the exploration of literary social reality Drakulic formulates in the novel *S*. In fact, my methodological formulation of witnessing is introduced as a way of exchanging information—it is a form of communication among reader, writer, and critic. As such, I content that witnessing is the performance of an identity of myself-as-reader contrary to that which is perceived as authentic, and the identity is necessarily the performance of gender and gendered-self, precisely because the reading material at hand is mediated by gender.

In the performance of reading the novel on gender violence, the wartime rape in Bosnia, is the equivalent of witnessing and exposing one self to literary social reality. From the point of view of literary/cultural critics who keep on maintaining the impossibility of “coming to terms” with this mode of reading may be an undesirable one, but rather, it is disguised as inauthentic reading. Coming to terms is viewed so ambivalently because it has also provided that escape from the cause altogether. The

performance of coming to terms necessarily entails the requirement that one's coming to terms with one's self be kept open or publicized.

The following is a critique of the discussion of "ethnic conflict" wrought by Eva Hoffman. In coming to term with Harlow's literary critical viewpoint, as mentioned earlier, and that the critic is always implicated in the historical process, as the implication revealed by the dynamics of the works themselves, I echo the words of Eva Hoffman by stating that, "[i]n recounting one woman's journey through the dark stations of ethnic conflict, Slavenka Drakulic makes us see what we have perhaps preferred not to confront: the awful damage of war in the deep regions of body and psyche" (Drakulic, 2001). From a Hoffman's viewpoint, which is posited in the second page of the novel *S.* as an epigraph, it is argued that the present manifestation of occurrence of wartime rape illustrated in *S.* is both a symptom of ethnic conflict and the culmination of its awful depredations.

To the extent that Eva Hoffman describes a woman's journey in the war camp in term of "ethnic conflict": she is presumably talking about mass rape, mutilations of human bodies, and mass murdering in a war camp. Hoffman's use of the language "ethnic conflict" is in fact a theoretical statement, that which calls attention not only to the debate of applicability of the language "ethnic conflict" to a different political situation such as wartime rape in Bosnia; but it also presents the contour for an examination of political situations whereby Drakulic is situated vis-à-vis her own ideological and ethical disposition with regard to the re-presentation of raped women in *S.*

The daughter of the survivor of the Holocaust, Hoffman is applying the tone of a language to a specific historical context, a context in which wartime rape took place, and in which her use of language actively engages in the historical process of defining certain

historical moment from her own reading of *S. Hoffman* may as well reiterate the contention of feminist legal critics of a theoretical debate of wartime rape as “ethnic cleansing” or “genocide.” For example, as we will see in Chapter Four, Catherine MacKinnon (1994) buys into a linear thinking, supporting a thoroughly destructive rhetorical and legal system of considering wartime rape in Bosnia as “ethnic cleaning.” The wartime rape, the physical, psychological and epistemological rape, are lacking an account of the violating and dividing attributes of language itself. Uncertain designations and slipper definitions that surround the definitions such as “ethnic conflict” or “ethnic cleansing” involve figures whose temporary orderings inevitably trope into paradox, creating at best awkward misrecognitions and at worst mental and psychic chaos.

Underlying the legal conception of ethnic conflict, ethnic cleansing, and genocide are several hypocritical, inconsistent, and unsubstantial ideologies. These are racial, geographical, and economic in nature, and added value as pivotal axes upon which these debates are founded. It is these very issues that currently bear the brunt of deconstructive scholarship in the humanities and social sciences, and once effectively reconstituted, will come to define the changing global institutional landscape in the future.

While the deconstruction of such languages has become common, I will focus specifically on the literary components that illustrate the occurrences of wartime rape in the novel *S. Drakulic's* attempt to illustrate wartime rape is made up from two primary literary components. First, ‘women’s room’ can create different kinds of subjectivity, either *individuated subjectivity* that feels itself to be independent of social/military/masculine forces or a *communal intersubjectivity* that feels itself to be a product of various aforementioned forces. The fact that Drakulic’s protagonists undergo

recurrent experience of suggests structural violence, chosen rather than choosing as a “partner” of male-female relationship imposed upon by the Captain’s sexual desire. Therefore, the second component is the relationship between S. and the Captain. The accounts of rape in *S.* is but one example of this literary challenge. The same novel in its entirety tells the narrative of the main protagonist S. from herself as well as Drakulic’s perspectives. “Narrative, unlike poetry perhaps, provides a more developed historical analysis of the circumstances of economic, political, and cultural domination and repressions” (Harlow, p.78).

The central concerns of Western feminist scholarship on wartime rape up to now – “the victim,” “the survivor,” “rapists” – have overlooked, much in the manner of Hoffman’s expression of “ethnic conflict,” the oppressive social rhetorics/institutions that have produced the need to “come to terms” with raped women’s voice. I believe that the an individual raped woman’s voice is the major agency of the post-war Bosnia, and that the purpose of Drakulic’s writing, as we have come to read it over the past ten years or so, must be invoked, not by what she wrote, but rather toward her efforts of ‘voicing/narrating/telling’ what raped women could not tell her. The compliance of raped women, as described in *S.*, may be all too familiar or absurd to be ignored in favor of their resilience or resistance, but damages that raped women undergo overwhelm even those who try to approach, listen to, and attempt to heal them.

Despite the difficulty, and its individual basis, coming to terms with raped victims, like voicing for them, can be characterized as a necessary self-identification (i.e., intersubjectivity) for the achievement of social and ontological privileges and benefits. So, although “coming to terms” with victims of rape does not necessarily entail “voicing” as

it does pose at least some challenge to literary criticism such as Drakulic's *S*. I believe acknowledging the usefulness of certain forms of self-identification (intersubjectivity) is an important first step toward speaking or voicing for raped women in expanding the parameters of witnessing Others. What is then the status of the Croatian feminist literary work of rape in a large field of historicization of wartime rape in Bosnia? How do literary texts in the Croatian traditions relate to or contrast with literary texts of the Western traditions? As if these questions were not problematic enough, how are we to read a Croatian feminist's text such as Drakulic's *S*? Can the methods of explication of wartime rape such as "ethnic conflict" or "ethnic cleansing" or "genocide" developed by Western feminist criticism be 'translated' into the Croatian feminist idiom?

Such theoretical questions underlie the basic project of my study in this chapter which proposes to investigate a particular reading material that emerged not as a part of the organized Croatian national struggles and feminist movement in the former Yugoslavia, as is criticized, but as an independent status and existence as literary production by a Croatian woman for "women's writing"?

### **3.4.2 Finding out what raped women could not say**

Two facts stand out as one looks at the publication history of *S*. On the one hand, it reveals its independent status and existence as literary production in Croatia. On the other hand, it presents a serious challenge to the codes and canon of both the theory and the practice of novel and its criticism as these have been developed in the West.

The first edition of *S.: A Novel about the Balkans* was written in Serbo-Croatian language and with the title *Kao Da Me Nema*, translated into German and with the title

*Als gäbe es mich nicht*, and published in 1993 by the publisher Aufbau Verlag GmbH in Berlin, Germany. In 1999, the first English edition appeared in the United Kingdom under the Abacus publisher and with the title *As If I Am Not There: A Novel about the Balkans*, which seems to be the key word in both Germany and the United Kingdom, identifying an enduring concern of the Bosnian Muslim women who were raped during the Balkan war, but who have been left ignored or unspoken of ever since. The second English edition of *S.: A Novel about the Balkans* was translated by Marko Ivic and published in the United States in 2000 by the Viking Penguin Books.

The same year when the German edition of *S.* was published, Slavenka Drakulic wrote the work *How We Survived Communism and Even Laughed*, which was appeared in the United States under a Harper Perennial imprint in 1993, in which she reveals the fact that the outbreak of war in Croatia on 27 June, 1991 had wrested her from the country, but in continuing to write—even in London—she has continued to revisit and reflect upon her native Croatia in particular and the former Yugoslavia in general, and back and forth across another European continent. But what is the history that such publications details endorse?

One critical dimension in narrating the raped women exemplifies much risk of being precipitately condemned. As a Croatian who was accused as one of the five “feminist witches” in the article entitled “The Witches of Rio: Croatian Feminists Rape Croatia” published on 10 December, 1992 by Zagreb’s popular weekly Globus<sup>22</sup>.

*S.* is arguably facing the challenges of a new phenomenon for Bosnian Muslim

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<sup>22</sup> In *Gender Politics in the Western Balkans: Women and Society in Yugoslavia and...*, Sabrina P. Ramet (1999) names other four “witches” such as Jelena Lovric, Rada Ivekovic, Vesna Kesic and Dubravka Ugresic (p.136).

women to wrestle with biased and prejudicial treatment, the methods employed by individuals to watch over themselves while navigating these harsh environmental forces require specific identification and articulation. In order for Bosnian Muslim women to withstand the unjust response sets from the dominant culture as well as the explicit and implicit messages of the Balkan society, strict attention ought to focus on the individual at the epicenter of the dilemma whereby, Drakulic attempts to serve...

The removal of the discussion of rape from the realm of Croatia's history to the realm of public coincides with the lack of literary production on wartime rape that is especially critical about the government/Serb armies/forces with the tone of antinationalism. What, then, might turn out to be the connection between the literary historical background in Croatia that Drakulic attempts to explore and the personal histories that Drakulic strives to construct on wartime rape in Bosnia?

Drakulic has yet chosen to write her way out of the denigration of experience by questioning Croatia's nationalism. Further, the history professor Ivo Banac of Yale University has condemned as follows, "[t]he interest in Drakulic is the interest in East European ingénues—in the sort of deprived provincial girls who do laundry without household appliances and delight in soft, pink rolls of toilet paper as badges of civilized living" (Witalec, 2006).

The imbalanced perspective of Drakulician critics is arguably the most visible manifestation of gender inequality in the contemporary world. As far as the powers of contemporary male critics can tell us, Drakulic's literary production seems to have stemmed from either western feminist or primitive East European "girl". Still to this day the hyper-visibility of the female mainstream artists/writers is controlled by

masculine/corporate attitudes of cultural production, which has been always the case traditionally, be in the West or the East, the North or the South.

Let us pay attention to this criticism against Drakulic. One astute reader of the novel *S.* Rand Richards Cooper (2000) contributes an article to The New York Times, commenting on the fictional element of Drakulic's writing. In the article entitled "the Prisoner," Cooper suggests that Drakulic intended initially "to publish a straightforward account of her findings. Eventually, however, she decided to put aside the documentary technique and tell the women's truth through fiction." The contradictions between the utopian aims and goals earlier expressed by Drakulic, in an effort to find what a woman could not say, are recounted as such. Cooper reinforces the absence of a straightforward account of survivors of wartime rape from Drakulic's *fictional* accounts as follows: "[t]he steadfast banality of Drakulic's prose, her preference for summary and indirect narrative rather than *live scenes*, the decision to render character's names as letters, the paucity of *personal history*: it all keeps us at a distance and prevents her characters— even her protagonist—from developing much particularity"<sup>23</sup> (italics mine).

Cooper proposes a differentiation between literature which has been written as "live scenes" and "summary and indirect narrative (without personal history)." Such a distinction is problematic because it presupposes a "narratability" which is truly grounded on the idea of "truth" of apprehending a given population that an author tries to capture and has in addition significantly intervened in the literary and cultural development of the people. Moreover, Cooper's division of Drakulic's writing into two kinds, that of

documentary technique and that of telling the women's truth through fiction, contests the ascendancy of sets of analytic categories and formal conventions, whether generic, such as novel, fictional novel, etc. Why is he so obsessed with "live scenes" and narrating personal history? That is, how and by whom is "authentic" scenes and narratives constructed? To whom do the social and ontological benefits of narrating history like oneself accrue? Counter to what Cooper would expect "live scenes" is an illusory concept, more often constructed by society at large than by novelists themselves. In some sense, "truth" is but a euphemism for the avoidance of Otherness. Authenticity, as much as Cooper and some of us, indeed, may value it, is one of many mechanisms by which a social act can become restricted to a given set of historicity or historical "fact." When the historical boundaries inferred by performing authenticity demarcate the parameter of narratability.

In writing *S.*, the Croatian writer and freelance journalist Slavenka Drakulic conducted extensive interviews with wartime rape victims in Bosnia, collected documentaries and personal memoirs in Bosnia, and wrote *S.* It can be inferred that the novel *S.* is framed by the writer's own story of interviewing with the Bosnian Muslim raped women, that she reconstructs the struggle of the past of Bosnian Muslim raped women such a way that it comes again to play a role in the construction of a new woman's figure. No more than the writer can be separated from the subject she deals with, that is, Bosnian Muslim women that are raped can literary genres cannot be isolated from their political and ideological context and consequences.

The very fact that she is an investigative (freelance) journalist perhaps influences her late consciousness as to the desire of re-creating "voice" that would perhaps interacts

journalism and novel upon which *S.* is reflected. The authorial distance Drakulic and her female character *S.*, a distance by means of which the writer is able to interpret the woman's psychological and physical ..as politically significant, is recast...merges the requirements of fiction and narrative form... The satisfaction of societal, rather than individual demand was the goal of...the very notion of an insular

### **3.5 Speaking for others as well as the Other of oneself**

As has shown earlier in the NPR interview, though Drakulic expresses the notion of “moral choice” when she attempts to demonstrate the agency of raped women in the war camp, these are akin to...in the path way of the circuit of, something driven at but never achieved. In this sense, the project of finding out what she could not tell me is self-accomplishing, not self-expression but self-expression, towards something like an ideal self. For Drakulic, then, her interests is in a dynamic, transforming collection of discrete individuals united in their disposition (moral) towards a universal desire expressed in their particular processes of self-expression?

But what is the story that such an act of “speaking for” underwrite? In invoking herself as the mediator, the critical engagement of finding out what she could not say, for Drakulic, was no idle matter. Drakulic recognized the extent to which her efforts in “finding out what she could not say” lay not only in her engagement in specific political and social activities but also in a profound definition and reflection of the critical self: in a performance of self-reflection, the novelist asserts the integrity of the self through the device of dislodgment: through the very forces of dislodgement, the self is both distance and affirmed. For Drakulic, this act of finding out what she could not say assumes the

form of searching critical engagement with the complexities of Bosnian Muslim women and their rape experiences signified most pertinently in the synecdoche of ‘women’s room.’

*S.* proposes a study of speaking for those who couldn’t speak for themselves. I contend that Drakulic’s novel illustrates how the so-called rape camps or a women’s room, as characterized in *S.*, employs rhetorical strategies that facilitate wartime rape. Rhetorical descriptions of wartime rape in the manner of “ethnic conflict” and “ethnic cleansing,” particularly when relied upon to underline a shaky social ideology or representation of the Holocaust, prove ineffective, contradicting themselves even as they attempt to state truth. The mutuality of ethnic conflict and ethnic cleansing causes an unexpected result, that is, a raped woman, on the perpetrators’ screen of social

The novel *S.* disrupts linguistic and social certainty. Drakulic’s depiction of *women’s room*, for instance, challenges us to uncover a history of usurpation during which soldiers raped, mutilated, and in some cases, killed Bosnian Muslim women in a pursuit of fulfilling *their* sexual desire. But the challenge, initiated by the difficulty of deciphering meaning of the facts of the past in the first instance, requires more than the merely linguistic and social certainty of women’s truth that it usually receives.

Given her own account in NPR as shown earlier, Drakulic does not explore an account of survivors of wartime rape, as Cooper might lead us to expect. Neither does she intend to *tell the women’s truth* nor mediate or meditate on the modernist literary tradition of pinning down what “the women’s truth” could be; instead Drakulic tries to transform *unheard* voices of raped women that are seemingly unutterable, unspoken into spoken ones.

Instead, Drakulic tried to convey for the first time story was precisely in what she could not say. The quandary for the writer was to find *what she could not say*. What is it then that raped women could not say? To whom and to what extent she could not say, and why? In such considerations we come to grips with the concept of unspeakable embedded in the novel *S.*, and the basis for finding out who, then, alternatively could speak for the raped woman. in her faith in the necessity of voicing for the other (where does this come from)—both spoken and written.

Speaking for raped women is an attempt to understand the cultural work of Drakulic's activities. Speaking for, not speaking through raped women, defines Drakulic's writing. The challenges of Drakulic's prose result from her wish to utter the psychically and psychologically ineffable, because bodily experiences of wartime rape restrict their freedom of speech. But what is the significance that her attempt of speaking for the other underwrite? Yet can a writer – a novelist and journalist – speak for raped women? The difficulty of Drakulic's writing for Cooper signals the challenge of reading: will a reader be able to hear a voice of raped women? At the same time, attention should be directed towards a comparative history of the voice of the oppressed. This is the question I am primarily exploring in this chapter.

A crucial issue emerges at this point. Is Drakulic's worldview in any of her manifestations capable of sustaining the voice of raped women or will it be sustained/voiced at another level that grow out of a more difficult voicing—a voice that is an attempt to communicate the physical and psychological elements of ones' rape experience to another? To put it bluntly, how long will Drakulic be able to maintain in her attempt of voicing, or if she is able to do so, will she prevent raped women from

speaking? The novel I treat here does not self-consciously analyze the linguistic supports of a decadent social/legal system; rather, it indirectly criticizes those buried rhetorical ploys underlying the *natural* occurrences of rape, to which discussion I will return later.

Drakulic necessarily validates the facts of the past about wartime rape. Moreover, such facts of the past is not just on “rational” among many in a marketplace of ideas, but a dominant narrative produced by a community of speakers – a fictional recovery of wartime rape that never were, memorized and transmitted under threat of physical pain, justifying a system that itself requires the threat of violence. Such a narrative, like the primary account of choosing certain marks of difference, refers back for its legitimacy to a notion of “nature” and “the natural” occurrences of wartime rape.

My own work at this point has been at the level of what I call “deciphering meaning of the facts of the past, (to borrow the expression from Molly Andrews). I have been concerned to pay close attention to the concrete expression from this level to conceptualization in either the literary or philosophical mode. I have developed the way in which deciphering meaning of the pasts of the fact, a meaning that emerges from concreteness but not yet a concept. The method allows for raped women’s experience to other experiences of human existence in a preconceptual form raising the wider issues of reality, world, violence, etc. ....The co-director of the Center for Narrative Research at University of East London, Molly Andrews’ work “Grand National Narratives and the Project of Truth Commissions: a Comparative Analysis,” deciphering meaning of the facts of the past: discern its meaning of the facts of the past from Drakulic’s worldview, from her *Weltanschauung*, one that attempts to pronounce upon those who were raped and traumatized? The demand then is not only for “finding what a raped woman could

not say,” but for the very “performance” to speak for, as Molly Andrew formulated the question in her work of a series of German/national/on the Eastern German question. The speaking for, as exhibited in Drakulic’s novel, is one which requires both historical referencing and a politicized interpretation and reading. It further expands the formal criteria of “fiction” which characterize the ideology of traditional plots and subjects the images and symbols of literary tradition to analytical inquiry.

As Karen Engle (2005) mentions, “[o]ne particularly strong and largely unchallenged belief [in the context of wartime rape in Bosnia] seems to be that, if a Muslim egg were inseminated with a Serbian sperm, a Serbian child would ensue. Every rape carried the mark of such potential insemination and destruction” (Engle, 2005, p.788). The opening page of *S.* exactly captures the dilemma *S.* faces. Imagine next to her, a new baby lies down. The baby is *S.*’s. Yet she has no feeling for him. He was born of rape.

## CHAPTER 4

### **The Attempt of a Self-Conscious Foreigner: Reading out of the Alienation of Alienation**

#### **4. Reading from the alienation of alienation**

By definition, we cannot -- no self can -- reach the quite-other. Thus the ethical situation can only be figured in the ethical experience of the impossible. And literature, as a play of *figures*, can give us imaginative access to the experience.

--Gayatri Spivak, *Without Guarantees*

But the death thus announced as other, as the alienation of my existence, is it still my death? If it opens a way out of solitude, does it not simply come to crush this solitude, to crush subjectivity itself? In death there is indeed an abyss between the event and the subject to whom it will happen? How can the event that cannot be grasped still happen to me? What can the other's relationship with a being, an existent, be? How can the existent exist as mortal and none the less persevere in its 'personality', preserve its conquest over the anonymous 'there is', its subject's master, the conquest of its subjectivity? How can a being enter into relation with the other without allowing its very self to be crushed by the other?

--Emmanuel Levinas & Sean Hand, *The Levinas Reader*

No self can quite reach the other. This is the ethical experience of the impossible, according to Spivak's notion of post-colonial literary-critical tradition. How might the Self, identified as the non-legal expert, read legal documents such as *Kunarac* and relevant feminist legal scholarship despite feelings of alienation from the legal language of the document, from the document itself, and from some feminist legal scholarship relevant to *Kunarac*, and eventually overcome these alienations by reading in a way that nurtures the Self as a non legal expert? How, then, might the non-legal expert reader, while positioning the Self-as-rhetorical witness in judges' narratives of the "event in Bosnia," pursue the "impossible" in an attempt to reach onto the raped women who are described as the witnesses? Finally, how might the Self as the non-legal expert reader challenge the impossible in this sense, and enter into solidarity with the witnesses to an

extent that it enables herself to position in the “event of Bosnia” narrated in the legal fictions? I begin framing the overall trajectory of such an inquiry with my self-reflections on my acts of reading about *Kunarac*.

What I have set out to do in this study is to offer my self-reflections on my acts of reading *Kunarac* and narrate some of my expectations for feminist legal scholars and their writings on *Kunarac*. My self-reflections on *Kunarac* are largely different from feminist legal scholars’ responses to the text. I position the Self as a non-legal expert, and use this agency to read judges’ narratives in *Kunarac*. Due to my lack of legal knowledge, I find myself alienated from the legal document, and the alienation turns me to feminist legal scholarship and demand clarifications from feminist legal scholars for the ways in which 1) the wartime rape in Bosnia is defined as a crime against humanity and 2) the raped women are identified as witnesses.

Despite and due to my lack of legal knowledge, the Self-as-non-legal expert pursues the act of reading. She then finds herself alienated from the legal document, and tries to seek help from some feminist legal scholars I have ended up suffering from the alienation of alienation by inquiring into the feminist legal scholars. The double alienation involved here explains the fact that I had high expectations on feminist legal scholarship on *Kunarac*. In fact, I wanted them to offer the reader the representation of raped women and speak for them whose voices are completely silenced in the legal document.

#### **4.1 My Encounter with *Kunarac***

During the course of our conversation about wartime rape in Bosnia, my thesis advisor and the professor of Law, Alejandro Lorite, introduced me to an essential text in

the legal jurisprudence with respect to wartime rape in Bosnia. This case is entitled *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (hereafter, *Kunarac*).

When Professor Lorite suggested me to explore *Kunarac*, he mentioned that the text is voluminous. Prior to my encounter with *Kunarac*, I had been exposed to other legal documents such as the Convention on the Rights of the Child (CRC), the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), and the Statute of the International Criminal Court (ICC). Upon reading *Kunarac*, I became inundated with a feeling of alienation from the text itself, which I had similarly experienced while reading those other legal documents. The feeling of alienation urged me to examine these works more carefully in relation to one another and analyze what they have in common are to instill a sense of alienation in this reader.

I contend that these texts share three important characteristics.

- 1) I consider each of the legal texts to be beyond immediate comprehension, despite being authored in English, an Indo-European language which, in the words of Barbara Harlow (1987), constitutes the language of one colonial power. Moreover, the type of English is troublesome not only due to the fact that I am a non-native English speaker, but due to its very technical, unemotional and clinical tone.
- 2) Second, each of these texts is extremely long and detailed, which results in a work that is not simply too taxing to read wholly in a short period of time, but more importantly, is also impossible to read and understand closely and critically due to the clinical language of the text itself.
- 3) Third and finally, each of these legal documents is difficult for the non-legal

expert reader due to the fact that the reader's lack of experience with and understanding of legal concepts which underscore the flow of the texts, even despite the aid of dictionary or an encyclopedia.

Due to these characteristics, despite the fact that these legal texts were assigned for me to read in some of the Gender Studies classes at AUC, I could not commit myself to engage with the texts in a way I wanted. My struggles over reading were not limited to these legal texts. Rather, they were extended to some of the prominent feminist legal scholars' study on the relevant legal documents. The difficulty of engaging in the latter was due the fact that they do not offer methods for the reader to deconstruct judges' legal documents in such a way that the reader who is not familiar with judges' narratives could get a better understanding of what is written in *Kunarac*. In fact, I had high expectations for feminist legal scholars. I even assumed at that time that they should write their literature for the non-legal expert.

As I began what my advisor referred to as the exploration of new text, I visited the ICTY website, downloaded *Kunarac*, and only to begin the three-hundred and twenty page read much later. My assumption was that the members of the ICTY are composed by some white European gentlemen who put a discursive logic of promulgating legal documents on the website likewise: "all documents provided herein are for *information* only and are not to be considered as *official records* of the Tribunal<sup>24</sup>" (italics mine). The evidence is not clearer and wanting, if not wanted. But such claim, which if they acknowledge it to be problematic, is vital for revision. It could be inferred from this claim that anyone is given the right to read, but the document is not considered to be part of the

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<sup>24</sup> ICTY case section

ICTY's official records. That contestation of any of the information over the legal texts, when in some case challenged by some jurisdictions or some critical readers, would result in spoliation.

We are given no more information to consider why the ICTY has published legal documents such as *Kunarac*. At any rate, the legal documents are promulgated for someone's information, for encouragement of reading differed in no sense from the fiction S. which is 'out there' in the market for the masses and for the general readership. If the ICTY has not claimed that the legal documents are for the use of information only, if the ICTY has claimed that the legal documents are considered their official documents; those who would read to exploit and contest the hegemony of the ICTY would be at risk. Yet, since the Tribunal validated the use of legal documents as a source of information *only*, I would attempt to read the "unauthorized" documents without further inquiring into judges' authorship. Indeed, it is my understanding that nothing makes those legal documents vulnerable than a close and careful reading, of asserting criticism to the texts to which they do not claim the "authorization."

After all, the request of the ICTY—demanding the reader not to consider their legal documents as the 'official documents' of the Tribunal—signals to me the Tribunal's usurpations of the power of language. I contend that the claims of the ICTY concerning the legal documents are laid out in deterrence of any contestation for which no other claims can be set up by the reader. After all, when the ICTY promulgated the legal case "out there," the judgment is made; the trial is over.

While surveying the trial proceedings on and around *Kunarac*, I gradually came to obstruct both my ability and desire to connect with the legal text for two reasons:

- 1) It is the ambiguous definition of wartime rape as a crime against humanity on the one hand.
- 2) The description of anonymous raped woman referred to in the text as “witness” on the other.

The phraseology “crime against humanity” and the terminology “witness” become stumbling blocks for me. While in some fundamental sense, I read *Kunarac* with the aim of understanding it both as a technical instrument of the international judicial framework and as an historical documentation of the “events in Bosnia,” my technical and institutional understanding of the text’s content and contextual importance are rudely undermined by my inability to grasp many of the legal phraseologies, terminologies and references conveyed through the narratives of judges.

#### **4.2 *Kunarac* as a legal fiction**

It might be believed by some gentlemen at the ICTY that “edifying” to promulgate *Kunarac* on its website, whether or not it finds readers. It is very rarely that a non-legal scholar is disposed of reading three-hundred twenty folios. It is not necessary, however, to say anything on this matter. For it is proved by unanswerable affirmation that we are neither buying into nor incorporated into the institutional mechanism of the ICTY. Rather, we are withholding them the “studying mode” for which they are pining; we are inquiring into them the mock-learning which they seem to be indulged in.

In *Kunarac*, judges’ proficiency is preserved without ground clarifying, major analytic categories are defined and explored, and a norm of representative characters. *Kunarac* can be then considered a field of expertise. Finding ways to grapple with the

“mode” of writing is a major challenge when faced with the non-legal expert. At the same time, such finding offers an interpretative environment for further investigations of the text.

Judges devote the sequence as if the desire of reading can only be satisfied by more plots, more actions, and more pages, flipped with any eye-skimming for the next pages in the continually forward-moving process of reading. In reflecting upon the affect *Kunarac*. Is this kind of writing wholeheartedly concerned about the immediate dilemmas of raped women? To whom is *Kunarac* dedicated?

Considering the opaque descriptions and puzzling narratives in an attempt to prove or disapprove the occurrence of wartime rape in *Kunarac*, Judges-as-writers are, at times, acting like guardians of memory. Because judges are in charge of re-constructing the event with a linear dependence on time within the course of trial, what is written in the document could be nothing but the re-creation of memories proclaimed by judges. According to these reservations, it is not too paradoxical to look for clues about fictional consideration in the legal case that is clearly not itself a fiction, one that is instead a composed series of definitions, conventions, meditations and narrativizations on wartime rape; but it is a text about the path to the fiction itself—that is the *genre* that looms behind judges’ idiosyncratic project and that must, eventually, be accounted for in its page.

It seems as though all accounts of raped women and their trauma are understood (i.e., supposedly, by the reader) to be disregarded. Given no names, identifications or identities, and chances of expressing their feelings, however, the status of raped women reveal something about our relationship to a history that replaces monumentality (what the text

should or can be dedicated to) with the relentless movement of distancing from the world in which we live. In its distancing moment, it seems less significant for judges to name a singular woman's experience of rape than conceding the collective women's experiences of rape that the judges associate with more plots, more actions, and more pages of writing. Encountering the countless plots, actions, and pages of writing, exacerbated by non-identifiable characters of victims, the reader can come to see *Kunarac* as idiosyncratic, if only in the sense that there is an outstanding exigency to be read.

The provisional logic of *Kunarac* breaks into the very core of the judges' legal case writing, exceeding the range of law's customary practice. If it were the case that judges had a responsibility of representing the voice of raped women, they would have ordained their own attribute. Instead, the judges make their own attribute explicit by focusing, as its purpose, on validating the occurrence of wartime rape: "everything that happened." In effect, this means that *Kunarac* is the re-cognizing process of judges—not necessarily recognizing the victims of rape—for determining whether there was the wartime rape or not. Now, ethical dilemmas of writing the matters of wartime rape through the medium of law and according to a question which has more to do with validity than with certainty: For whom do the judges intend to write the legal case? Who is the intended reader? Judges are able to facilitate the process of writing only because they are judges who are believed to have access to a thorough knowledge of wartime rape. Accordingly, the judges have been assigned to reevaluate the wartime rape; the intended reader finds themselves implicated in the very act of writing. The question of writing the legal case is the question of reconstituting the subject of law: the reader of the legal case.

To come nearer to the case before us, the reader who read *Kunarac* is not called upon

accidentally, by judges. Judges are just out there (hidden in the legal case) to narrate for the reader. Why, then, is it necessary for the ICTY to promulgate *Kunarac* on-line? I guess because the ICTY anticipates that legal cases are texts the information of which does not compensate for the trouble the ordinary people have in gaining it. On all such subjects the state of the reader is the decisive test

#### **4.3 Legal languages and colonial problems**

It does not seem to me that judges can be made to abide the meaning which they assign to *Kunarac*. There seems no such thing that the International humanitarian law is to be learned primarily and strictly from *Kunarac* or other legal cases has been insisted on, but rather, seems not to bear at all on the question. We are availed by the ICTY to ascertain and digest the legal document. *Kunarac* is, after all, given to us. As soon as the trial of *Kunarac* is ended, the legal case will be useless to judges, prosecutors, and as a matter of fact, witnesses (i.e., raped women). Then, How, then, stands the case? To sum up what I have said: I think it clear that we are bound by neither the ICTY nor by judges to read *Kunarac* in a particular manner.

It was difficult for me to connect with both judges' narratives and feminist legal scholars' re-presentation of these texts. I came to question whether judges write legal documents as vehicles of justice rendering. Similarly, I came to question whether feminist legal scholars write their reactions to judges' legal documents as vehicles of gender justice. If both parties claim to engage with legal documents in terms of either justice rendering or gender justice, how does the reader know whether justice has been done when legal texts are written by them? Can the legal document written by judges be

considered judges' artifacts? How can the legal documents become an important source of reading materials to learn about the story of wartime rape in Bosnia?

This chapter brings us full circle back to accounts of wartime rape in Bosnia. Rather than focusing on what novelistic accounts reveal about the constructions of raped women, as we have seen in Chapter Three, this chapter examines the legal document *Kunarac* from the perspective of judges whose narrative techniques illuminate the notion of "authoritative speech" presented by Judith Butler. In *Bodies That Matter*, Butler (1993) states, that forms of authoritative speech are found within performative acts.

Most performatives, for instance, are statements that, in the uttering, also perform a certain action and exercise a binding power. Implicated in a network of authorization and punishment, performatives tend to include legal sentences, baptisms, inaugurations, declarations of ownership, statements which not only perform an action, but confer a binding power on the action performed (Butler, 1993, 225).

If we agree with Butler, we could consider that judges perform the action of authoritative speech. It can be inferred that judges exercise a binding power by writing and producing the legal documents such as *Kunarac*. But what kind of action do judges exactly perform in writing *Kunarac*? Which kind of judges' statements give to the legal document a required power?

This study also casts light on some feminist legal scholarship relevant to the study of *Kunarac*.

The text of *Kunarac*, in projecting the alienation for the non-legal expert reader, makes clear the tensions between my self-identification as a non-legal expert reader on the one hand, and my mega-ethical self to be a part of the hegemonic legal culture reinforced by the complexity of legal language and reasoning on the other hand.

My self-as-non-legal expert makes sense of her subject position, subjectivity, in face

of that alienation.<sup>25</sup> While the lack of expertise can be by no means an excuse for not reading or giving up reading the legal document, the alienation may still be preserved to pursue my acts of reading the text and discuss my expectations towards both judges and feminist legal scholars.

Alienation in its present usage also means the alienation of alienation: a certain continuance in the nurture of those isolations as yet resilience that have helped or are helping to lend self-consciousness and awareness to the reader. The recognition of alienation must not only be significant in the awareness of the self as a non-legal expert reader; but also in the necessity for the reader to acknowledge the meta-ethical being dictated by an explicit allegiance to the self to be a part of the hegemonic legal culture: legal expertise notwithstanding, a basic self as an archaic sovereignty of the legal authority cannot be altered. The self-identification with the meta-ethical being is the demand it makes on the non-legal expert reader in her inevitable presence in the hegemonic legal culture and the burden of legal knowledge such presence requires from her. In reconciling this ethical dilemma, the question arises, how does the meta-ethical self, both as the non-legal expert reader and the sovereign of the hegemonic legal culture, engage in the act of reading *Kunarac* and overcome that alienation? In doing so, how can she achieve an affinity with raped women within judges' fictional narratives?

The critic's positioning in relation to the subject matter is important in this regard. Thus, I continue to position myself as the rhetorical witness. I call attention to the absence of narratives accounted by raped women. This, in turn, poses upon us the

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<sup>25</sup> Here a sound point of "reference" can be made by pointing out Antonio Gramsci's (1989) concepts "hegemony" and the intellectual in his *An Antonio Gramsci reader: Selected writings, 1916-1935*.

question of their narratives and testimonies as a counterweight to the judicial rendering of raw experiences. In an effort to dismantling or at least lending perspective to the chauvinist tendencies of traditional legal culture, the rhetorical witness attempts to participate in the political project of interpreting, inscribing, circumscribing, archiving, and remembering the unspoken and voiceless raped women recounted as the “event in Bosnia” by judges.<sup>26</sup> Memoirs, voices, bodies of unspoken raped women are constituted in the interplay of cultural forces constantly re-negotiating the boundaries of their engagement with one another.

This paradox evident in feminist legal scholars’ academic project to undoing gender injustice must be situated in the context of the emergence of a non-legal expert mass’s active reading of legal documents and its aesthetic and ethical effects they have on the reader. Situating the rhetorical witness who consciously self-identifies herself as the non-legal expert, situated in-between judges and feminist legal scholars’ paradox, this study offers the processes in which the literary critic positions herself intimately inside the polemic between judges’ authorial voice on the one hand, and the feminist scholarly legal critiques on the one hand. In doing so, the rhetorical witness develops an affinity for the discursive legal culture which is used by both judges and feminist legal scholars. This process of building a close relationship to the discursive legal culture is required for the

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<sup>26</sup> As for the notion that the legal system is a chauvinist one, see, for example, *Intercourse* by Andrea Dworkin (2006). As Dworkin suggests, “The regulation of men by men in sex for the sake of upholding the power of men as a class in the least recognized, least scrutinized aspect of both male dominance and law as an institution of social control. The overt uses of law to keep women sexually subservient and civilly inferior to men are more familiar. But many sexual laws that mandate a low civil status for women actually serve, first and foremost, to uphold male supremacy by keeping peace among men; creating an internal cohesion in the ruling class. Women are property; adultery, rape, and some forms of incest hurt the rightful owners of the women by damaging the value of the goods or by violating the man’s integrity through violating his legal and deeply felt personal right of private, exclusive sexual access” (Dworkin, 2006, p.203).

rhetorical witness to interrogate the source of alienation. From her own empirical reading, this study argues that the judges' (re) constructions of "witnesses," "rape," and "rape scenes" in *Kunarac* are precisely creating alienating legal spectacles, and thereby the non-legal expert are feeling alienated. The alienation of alienation, in turn, reveals a complex picture of mediating between the simultaneous contribution of feminist legal scholars to a conventionally masculine domain of legal study and personal or ideological projects of promoting gender justice, which a textual mechanism structured around the neglect of non-legal experts.

#### **4.4 My expectations for feminist legal scholarship**

*Kunarac* sets up expectations for the non-legal expert reader: that it does this, however, is itself an expectation from the legal document. This peculiarity of legal document is found in that it draws the attention of the reader to its own particular technical narratives whereas the technicality is revealed on the level of words only. This phenomenon can be similar to what Butler calls "the legal incarnation of the divine utterances" (Butler, 1993, p.107). In *Bodies That Matter*, Butler suggests as follows:

How do we, readers, enter the arena of politics, discussion, and the world that seems to be related to us, but that is yet just "out there"? Is it only me who feels left out in the world sometimes when thinking why "I" am inaccessible to a certain subject matter?

The ethical reader's and scholar's task is, in part, to assume the expectation of general readers as well as to challenge they confront in face of technical skills, even if only through the act of reading. Scholars like Stanley Fish and Wolfgang Iser, for instance, have engaged in the interactive process through which a reader perceives or receives a

text. While these scholars produce legal reviews for a reader that already knew about the context; therefore I, less aware of exactly what was happening at the time they were produced, might end up unaware of how things were really progressing. That information around *Kunarac* sometimes turned out to be more intriguing than the documents themselves.

In its length that amounts to three-hundred twenty pages, the ambiguity of one of the definitions of wartime rape ‘crimes against humanity’ and the use of the term “witness” to indicate anonymous raped women, the delay of my reading suggests not just a delay in time by trying to consider these motifs; but the delay is paralleled with my feeling – the feeling of alienation as one that, I acknowledge later, came from my strong identification of self as non-legal expert. This was all new to me then, as I had entered unknown territory, with no knowledge of what was in store for me. However, other issues soon came to my mind: the question of identity?

Likewise, the question of alienation invoked the question of the “right to read” within the larger issue of cultural participation in the hegemonic legal culture to righting wrongs. In some ways, through my reflections on alienation, I have been consciously identifying myself as the non-legal expert and attempted to overcome my anxiety about not being able to read the text smoothly and efficiently.

The word “alienation” serves here as a sensibility for capturing the range of legal languages, narratives, and judicial reasoning of “events” that constitute *Kunarac*. There are not many contemporary legal scholars who have critically taken on the standard methodology for writing the “legal text” –those scholars who have, have advocated for a discussion of *Kunarac*, which probes beyond the document’s assessment of rape as a

criminal act and its rendering of victim narratives and toward a more structural critique of the discursive influences that shape traditional notions of legal writing as a “genre,” while attempting to crack open that genre as a site for new investigation and discovery. Ultimately, I am partial to this view in that, I strive for “meta” reflection and “meta” cognition on the central thematic interests of contemporary feminist legal scholarship, including its complex relations to layered notions of gender, body, post-colonialism and imperialism.

Since the ICTY granted the judgment of *Kunarac* and promulgated the legal document in 22 February, 2001, the prominent feminist legal scholars such as Catherine MacKinnon (2006), Kristen Campbell (2003), and Katherine Franke (2005) have paid considerable attention to the definitions and conceptualizations of wartime rape. The overall trajectory of their analyses begins—and ends—with the meditation of *Kunarac* as the ground-breaking war crime case to which the definition of wartime rape—crime against humanity— was applied for the first time in the history of International Humanitarian Law. Numerous law reviews and retrospective assessments of the case carried out by legal and non-legal feminist scholars such as Karen Engle (2005), Rhonda Copelon (2000), and Cynthia Enloe (2000) have generated a schema for the analysis of systematic conditions of male soldiers’ rape against female civilians in time of war (often conflated with “peacetime”), in the face of “genocide” or its euphemism “ethnic cleansing.” However celebratory the legal case of *Kunarac* can be among these scholars, their emphasis on this particular narrative and the point of criticism are validated in the particular scholarly community. It is validated by the use of language “crimes against humanity” as the ‘normative’ sign of what is read. Indeed, (feminist legal experts’)

critical methodologies concentrates on the legal definitions of rape made me feel that they force readers to shed light on the term “crimes against humanity” exclusively. It seems that these feminist legal scholars expect the reader to understand their discursive stance without explicitly showing what it is. Although no critics make an explicit reference to a theory or principle with which these feminist legal scholars’ interventions have been made, their study seems to elucidate a set of unspoken codes that this study attempt to investigate.

By engaging in some of the feminist legal scholars’ scholarship, I came to realize that the scholars demonstrate a particular competence in reading and interpreting judges’ narratives in *Kunarac*. They can read the texts with a carefully learned understanding of the judges’ perspectives, rhythms and logics of the text. They gain a grip in the insider perspective of judges’ writing, which in turn affords them both a considerable advantage and efficaciousness in interpreting the text *for* themselves as well as the academics in relevant fields. Nonetheless, these feminist legal scholars stop somewhere between learning the judicial language and modes of judges’ reasoning without further deconstructing them away from the judicial framework of interpretation. Such tendency can be found even among some radical feminists whose discursive practices are mediated by the “consciousness-raising” practice.

Feminist legal scholars are acquainted with the voice of the judicial/legal authorship, the feminist legal scholars’ task of interpretations of legal documents focus on various polemical issues which have either positive or negative effects on the non-legal expert reader. On the one hand, the feminist legal scholar attempts to negotiate and resolve the potential cultural and interpretive threat posed by judges. Their writings may bring a

positive effect and change in judges' decision-making in future. On the other hand, feminist legal scholars such as Katherine MacKinnon whose discursive practice highlight the conscious-raising practice, end up maneuvering legal language and navigating the cultural and interpretive threat to the non-legal expert. Due to this negative effect, I came to conclude that their efforts in writing reactions to judges' legal documents are aimed at gaining readership to their own interpretative documents/

I am alarmed by the intended strategy of consciousness-raising. I also came to consider the normative evaluations of the recycling of legal languages and its reasoning in the legal documents result in advocating to the hegemonic legal culture by (re)formulating and eventually reifying them in much the same or similar ways judges seem to do. After all, I am curious to know why feminist legal scholars' interventions tend to maintain the tone of interpretations produced by judges, and why they follow judges' legal narratives and reiterate the same or similar discursive language to criticize the judges' ways of reasoning.

#### **4.5 Critical legal studies' approach**

What the feminist legal scholarship, particularly those scholars who are similarly engaged in Critical Legal Studies, has innovated for the benefit of *Kunrarac* is a set of critical literary tools and discursive practices intended to help women readers read legal text in a particular way. Patricia Williams's (1991) work *The Alchemy of Race and Rights*, for example, has helped to bring the preoccupations of traditional legal scholarship under a new light of analysis in which new questions can be asked and legal texts can be reconceptualized through different modes of reading and examination. In her work,

Williams illuminates how the notion of legal constructions helps to produce a new discourse that makes room for different trajectories by which the understanding of law could be shifted from an “objective truth to a rhetorical event, the latter of which would maximize the individual’s sense of responsibility for law and society as a whole.

The extraordinary efforts of contemporary feminist legal scholars, particularly, those who are actively engaged in Critical Legal Studies (thereafter, CLS), have provided us with the indispensable tools to engage in legal documents through the kind of literary critical practice. Amongst them, Patricia Williams (1991) has suggested that legal writings needs to be re=conceptualized, re-read, and re-examined. Williams illuminates the intersubjectivity of legal constructions resulted in the formation of a new discourse—one that contained a number of different trajectories as to how the belief of law as an “objective truth” could be reconsidered. In doing so, she urges us to consider law as a “rhetorical event.” In approaching law as the rhetorical event, we could substantively intervene and maximize our sense of legal, social, and political responsibility. Treating the law as “an inquiry into truth” no longer holds contemporary legal scholars accountable for law. So, for Williams, despite her commitment to interdisciplinary approaches to the subject matter, rhetorical commitments and practical relevance are central to what legal scholars do.

#### **4.6 Rupture between rhetors and witnesses**

Since the ICTY granted the judgment of *Kunarac* and promulgated the legal document in 22 February, 2001, some feminist legal scholars such as Catherine MacKinnon (2006), Kristen Campbell (2003), and Katherine Franke (2005) have paid

considerable attention to the definitions and conceptualizations of wartime rape. The overall trajectory of their analyses begins—and ends—with the meditation of *Kunarac* as the ground-breaking war crime case to which the definition of wartime rape—crime against humanity— was applied for the first time in the history of International Humanitarian Law. Numerous law reviews and retrospective assessments of the case carried out by legal and non-legal feminist scholars such as Karen Engle (2005), Rhonda Copelon (2000), and Cynthia Enloe (2000) have generated a schema for the analysis of systematic conditions of male soldiers’ rape against female civilians in time of war (often conflated with “peacetime”), in the face of “genocide” or its euphemism “ethnic cleansing.”

The ICTY acknowledges in the jurisprudence that wartime rapes are crimes against humanity without the clarification of what a “crime against humanity” means. How does the Tribunal, then, decisively make use of the definition? to prosecute rapists? What does the language “humanity” signify? The linguistic obscurity coincides with concomitant hegemony of obscuring the imminent danger of wartime rape —often conflated with “peacetime” —that is foreseeable in a past of warfare. Contemporary feminist scholars, both legal and non-legal, have confronted the same question of what crimes against humanity means in the context of wartime rape in Bosnia.

The sheer variety of wartime rape sites may lure us into reducing the cause of wartime rape to raw primal misogyny. And yet succumbing to this understandable analytical temptation carries with it several political risks: the risk that mere maleness will be accepted as the sufficient cause for wartime rape: the risk that feminists will decide that they can do nothing to call individual rapists and their superiors to account or even, perhaps, to prevent rape in the next war.

--Cynthia Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives*

This commentary given by Cynthia Enloe, a research professor of Women's Studies and International Development at Clark University, reveals two commonplace assumptions about wartime rape. First, it is an explicit acknowledgement of the historical legacy of war and the imperialistic world order, in which men as warriors and even *civilians* do what they want to do. Enloe's statement "maleness...as the sufficient cause" is relevant to the description of patriarchy. Similarly, Margo Okazawa-Rey (2002), examining the domination of patriarchy and militarism, mentions that "patriarchy is the dominance of men as a group over women as a group—in the family; in the local communities; and in national institutions such as government, law, medicine, and religion" (Okazawa-Rey, 2002, p. 371). As both Enloe and Okazawa suggest, patriarchal hierarchies and values are combined with and reinforced by militarization, rendering wartime rape.

Second, Enloe explains that some feminists might assume the impossibility of intervening between rapists and themselves. Additionally, Enloe urges feminists to analyze the relationship between wartime rape and its strategies. Examining wartime rape as a powerful instrument of warfare, we come to think why women's bodies become an effective tool of warriors as rapist. As an associate professor of Social Work at University of Washington, Nancy Farwell (2004) explains, "rape is both a weapon and strategy of war. As a weapon, it "attacks women's physical and emotional sense of security while simultaneously launching an assault, through women's bodies, upon the genealogy of security as constructed by the body politics" (Farwell, 2004, p. 389). As Farwell puts it, "wartime rape are used as a strategy; wartime rape are practiced as an instrument of terror,

domination, political repression, torture, intimidation, humiliation; these objectives include genocide” (Farwell, p.400).

In the last decade, beginning with mass rape of Bosnian Muslim women in Bosnian war, the discourse and practices of feminist legal scholars have increasingly brought the victims of wartime rape onto their scholarly agendas. The work of identifying wartime rape in Bosnia as systematic rape has been propelled by the persistent efforts of analyzing its causes. With such efforts for analyzing the causes, wartime rape in Bosnia are no longer considered as a “natural side effect of war,” but rather, systematic rape. Occurrences of wartime rape in Bosnia were systematic are those that have a pattern. The Serbs planned the rape as a part of warfare strategies, targeting Bosnian Muslim women. As Lynda E. Boose, a professor of English at Dartmouth College, reaffirms it, “the mass rape and forced incarceration of women in so-called rape camps had been one of the chief strategies used by Serbian forces primarily against the Muslim populations of both Bosnian and Kosovo. During the Bosnian war, it is estimated that Bosnian Serb soldiers raped 20,000 Bosnian Muslim women.

The ICTY Statute (1993) lists wartime rape as “crimes against humanity.” “The Tribunal’s decision provides an authoritative definition of the elements of the offence under international criminal law which was confirmed on appeal.” This judgment decided wartime rape as crimes against humanity in terms of two key components: first, the act of rape: and second, the committing of that act as part of an attack directed against a civilian population in the context of an armed conflict.” It is argued that the Statute plays an important role because it is for the first time throughout the juridical history that the International humanitarian law acknowledged wartime rape as a crime of war and a crime

against humanity. However, the question of what is meant by “humanity” remains obscure.

Some scholars, including feminist scholars, argue that wartime rape is genocide, suggesting that “what was happening was worse than ‘normal’ oppression and required an extraordinary response.” As I have suggested in the earlier discussion on wartime rape that are defined as “crime against humanity,” both legal terminologies – “crimes against humanity” and “genocide” put a limit on the application to such terms.

In particular, I rely upon the feminist legal scholar Catherine A. MacKinnon’s (1994) insightful “wartime rape as genocide” commentary, in thinking, even imaginably, about Bosnian women’s rape and understanding their experiences. MacKinnon depicts wartime rape as genocide as follows:

These rapes [to Bosnian Muslim women] are to everyday rape what the Holocaust was to everyday anti-Semitism: Without everyday anti-Semitism a Holocaust is impossible, but anyone who has lived through a program [of Holocaust] knows the difference. Because all men do [sex] all the time, war or no war, why do anything special about this now? This war [the Bosnian war] becomes just a form of business as usual. But genocide is not business as usual – not even for men (MacKinnon, 1994, pp.186-187).

Now we are left with two legal terms that define wartime rape as either crimes against humanity at the ICTY or genocide from the feminist legal expert’s perspective. Defining wartime rape as crimes against humanity and genocide is fundamental to and demanded by the juridical conceptions of justice, but which brings another question: How will the victims of rape prove their rape experiences outside the court, if the court, be it deliberately or not, does not find enough evidence to convict and prosecute rapists; does not offer enough facilities and opportunities to testify their experiences and truths? In her article entitled rape as a ‘crime against humanity’: trauma, law and justice in the ICTY, a lecturer in sociology at Goldsmiths College, Kristen Campbell (2003) examined the

concept “crime against humanity”: “The Tribunal defines rape as a violation of the integrity of the autonomous subject, in which that act is a trauma to the integrity of the ‘self.’” The lack of evidence or rape one has suffered, which brought before the law as trauma, subjects the plaintiff to doubt. As Campbell writes, “...rape as a crime against humanity shifts from the wrong to the human to a wrong to humanity.” More importantly, Campbell adds that rape as a crime against humanity leads to women’s physical and psychological trauma, and ultimately “a symbolic trauma to ‘humanity’” (Campbell, 2003, p.51).

To trace further the argument of defining wartime rape as genocide, it is necessary to analyze how this argument is done and by whom. In the most demonstrative sense, it derives from tracing the material conditions of rape. The essentialist’s notion of rape as [an instrument of] genocide have distinguished wartime rape from “everyday rape.” By defining wartime rape as genocide, they emphasize on genocidal effects of rape by Serbian men of Bosnian Muslim women. In fact, their underlying argument comes from the facts that the Serbs caused wartime rape as a tool for the systematic extermination of Bosnian Muslim women and their society.

Compared to essentialist’s argument of wartime rape as genocide, as I have delineated in their earlier discussion on judicial justice, pregnancy truly provides the clear sign of wartime rape. As Karen Engle reminds us, “[O]ne particularly strong and largely unchallenged belief [within wartime rape as genocide debates] seems to be that, if a Muslim egg were inseminated with a Serbian sperm, a Serbian child would ensue. Every rape carried the mark of such potential insemination and destruction. Engle adds that the use of the term “genocide” is nothing new to Bosnia or to feminist. Genocide is often

used quite popularly to refer to mass killing, regardless of whether there is an ethnic or racial motivation or aspect to it.

Based on Engle's statement about the challenging belief on wartime rape in Bosnia, it seems less significant to take a measure of feminist like MacKinnon, who have proposed compensatory strategies for combating with the ideological affairs of wartime rape as genocide according to the contemporary feminist legal scholars' cultural and political agendas. It is with this critical insight into the agendas that we are asked to consider...the affair of justice. Whose justice are the contemporary feminist legal scholars seeking for?

#### **4.7 Transitional justice mechanism and its unresolved issues**

The Gender Justice and Transitional Justice movements among contemporary feminist legal scholars give a certain high-cultural sanction to the use of "victim" subjects as raw materials for their study, and in many cases blurred distinction between documentary and fictional accounts altogether, creating both an appetite and system of distribution for justice-rendering that does not conform to the narrative principles of "legal realist" tradition.

In the article entitled "The International Criminal Tribunal for the Former Yugoslavia Comes of Age: Some Observations on Day-to-Day Dilemmas of an International Court," an American judge Patricia McGowan Wald (2001), gives us a glimpse of the interrogatory mode of questioning by a prosecution attorney and a raped woman undergoes a trial at the ICTY, of her dilemma of remembering, forgetting and being less confident about her memory of rape, in a prosecutor attorney's interrogatory questioning. Wald served as a judge at the ICTY between November 1999 and November 2001. The

article was written within and from out of the experience. Wald states, “[m]any of the witnesses (i.e., the raped women) are physically and emotionally fragile in the aftermath of their fractured lives...The accused are there in the courtroom only a few feet away” (Wald, 2001, p.109). The “communication” between the attorney and raped woman is illustrated in the *Foca* case (IT-96-23/1) at the ICTY:

Q) Did you feel like you could do anything to defend yourself?

A) It was impossible. He had a pistol. He threatened. And even had I risked my own life there, I was afraid for my family’s lives. So I did not dare do anything.

Q) When did this stop?

A) I do not know. I cannot say exactly.

Q) Did something happen?

A) I did not understand your question. Can you rephrase it?

Q) I am sorry. I meant. Did something happen to stop what he was doing to you?

A) I think so, yes. Yes, for sure something happened. But I do not know whether these two soldiers walked into the room or whether they knocked on the door before that, or whether they were clamoring in the hallway. At any rate, somebody came in and it stopped.

--Anonymous Testimony

Were it not for the “something,” what are the purposes of carrying out the ICTY trial? The arbitrary process for prosecution at the ICTY, of wartime rape in Bosnia, does not allow the raped women to express themselves freely. In the communication exchange between prosecutors and witnesses, as we have seen above, the emotional context is repressed in the testimony in accordance with legal proceedings. The proximity of defendant can silence the witness. Nevertheless, the criminal trial, unlike civil cases, requires the presence of defendant. It underscores *confrontation* among witnesses, defendant, and complainant (Leader, 2007, p.7).

In a trial, as Richard Posner (1997) states, “the plaintiff and the defendant each tell a story – actually a translation of their ‘real’ story into the narrative and rhetorical forms authorized by law – and the jury chooses the story it likes better” (Posner, 1997). In a

criminal case, since the defendant's confession is placed in evidence, there is a story within the story (Posner, 1997). The law requires the plaintiff to prove each element of his claim by a preponderance of the evidence (beyond a reasonable doubt if it is a criminal case), and likewise the defendant if he pleads any affirmative defenses. Reality, as Lyotard writes, "is always the plaintiff's responsibility" (Lyotard, 1988, p.8).

Plaintiffs are highly gendered and domesticated. [EXPLIAIN] In using the term 'a subject before the law,' Judith Butler (1999) has mentioned that women's lives are systemized through law, that law is the *process* by which the categorization of gender are created, and then neutralized by legislating this order (emphasis mine) (Butler, 1999, p.40). However, though I agree with Butler and consider that law is the *process*, I argue that it leaves unanswered the question of why and how the process of systematic gendering takes the legal form. Moreover, Butler's assertion leaves room for interrogating, in light of international criminal law, the subject that is responsible for legislating and neutralizing the categorization of gender

As has been described above, the communication between the prosecutor and the plaintiff clearly divulges the *gendered* process of the ICTY trial. As "a public event," as Graham White (2008) analyzes, "the ICTY also emphasizes the role of its present *audience* and of the *individual spectator* as components in the staging and shaping of such narratives through the performative strategies of the *courtroom participants*" (emphasis mine) (White, 2008, p.75). Given White's explanation of theatricality and performativity of the criminal trial, my concern is the very opposite of "courtroom participants." In centering my analysis on raped women at the ICTY trial, we must also contend with the question of individual and independent "spectators" who seemingly

have no voice in the courtroom, yet are increasingly important in shaping cultural politics of representation.

In the last several decades, mass rape in former Yugoslavia, has directly addressed the needs of witnesses, the status of raped women at the ICTY trial is highly fraught. The victims are weighted with expectations of proof by the prosecutor. On the one hand, the victims become the “subject” of law, which is a terrifying price to be paid because what is proved as a legitimate proof is disclosed only after, as has shown earlier, the communication between the prosecutor and the victim. The prosecutors, on the other hand, as the visible regulator of court affairs, embody or disembody the experience of raped women. Then, female subjectivity before the prosecutor comes to be an obstacle of the trial given, in particular the nature of war crime such as rape. The ICTY trial is one such example that demonstrates the subjectivity of raped women in the courtroom.

The law and judicial judgment remain the authorities to determine the criteria of witnesses. In the article entitled “Gendered Subjects of Transitional Justice,” feminist professor of law at Columbia University Katherine Franke (2005) reflects on the mechanism of transitions, legal and sensory, testimony as an alienating experience, appropriating and instrumentalizing memory. It was written in 2005, when the International Center for Transitional Justice was organizing a workshop on Gender and Transitional Justice in Bellagio, Italy, and Franke mentioned the fact that “[t]ransitional justice will always be both incomplete and messy” (Franke, 2005, p.1). Investigatory work towards transitional justice has remained highly institutionalized and primarily focused on juridical or quasi-judicial attempts to prove the nature and extent of rape as a “crime against humanity,” and to hold individuals and governments accountable.

While these two imperatives, the ICTY and the contemporary feminist legal scholars, are not mutually exclusive, an English professor Wendy Hesford (2004), has identified a growing tension that has emerged between the “rhetors” (advocates who stand in for the “other) and the “other.” The tension seems to occur based on the grounds that such identifications risk incorporation, of the “other” (i.e. spectators), who are they? within the self and evidentiary needs and limitations of ICTY in the aftermath of mass rape (Hesford, 2005, p.107). Hesford uses the term “crises of witnessing” to explicate the tension between the “rhetors” and the “other” (Hesford, p.107).

Rhetorical witnessing has thus added on a new paradigm in documentation, representation, and public awareness to the existing gender justice mechanisms. It has played a significant role in the human rights efforts. Yet the treatment of rhetorical witnessing, as I have described above, signals a powerful tension between rhetors, the feminist legal scholars who advocate themselves in its plentitude when she, in fact, is not a victim of wartime rape, and the status of human rights violations – a violated subject whose intrinsic dignity and humanity is at the core of human rights’ movements, wherein the tension provokes for the recovery of raped women and subsequently pursues the remedies of international gender justice in their name, instead of raped women themselves.

One of the questions this chapter will attempt to pose upon is, the gap between the treatments of witnesses (i.e., anonymous raped women), in the pursuance of legal remedy, as well as, the rhetorical witnesses or the advocate that animates discourse around the raped women. I ask, in part, can the contemporary feminist legal scholars possibly bear witness to the witnesses and hear the unscripted voices *Kunarac* echoes—in a way I, as

the “ordinary” reader, imagine *Kunarac* does. What does this barrier, in bridging historical continuities and discontinuities of one’s experience to the other through the medium of the Other, by way of reading the legal case, suggest to my own ability to bear witness to witnesses, the raped women and her life stories? The challenges this consideration poses, to my preliminary account, is exacerbated by the way I am reading the legal case, as the object of my study. How do I transform the legal case and alter its ability to bear witness to a particular and peculiar lived history, when by reading about it, I might further alienate her “existence” and turn her into a mere object of study? And finally, what do I, as a self-claim “witness” owe now to witnesses, and how might I legitimately speak of and for them? Most importantly, am I aware of their plight?

The utility of rhetorical witnessing of human rights prosecutions derives from what professor of German, comparative literature Ulrich Baer (2002) has termed as the ungovernable, and what Jea-Francois Lyotard (1988) has termed as the differend. According to Baer, taking the unspoken stories of Holocaust victims as his example the ungovernable: the openness of interpretation, in a text or in a photograph, is relevant to the “inability of representation to capture, as in fix or make static, the truth” (Hesford, 2003, p.107). In the similar fashion, Lyotard’s different: the impossibility of proving a crime in the language of law. The crematoria of the Nazi death camps, has given him a point of entry to examine, that when the crime is self-erasing, by killing the witness and by eradicating any evidence of bodily remains, legal prosecution can prove all the more difficult (Taylor & Lambert, 2006, p.86-7).

Given the two impossibilities, the ungovernable and the differend, as a consideration for changing evidentiary landscape of human rights work, it is important to consider a

new form of rhetorical witnessing. If a photograph of the crime in progress cannot be produced, it is harder for the raped women's voice to be heard at the ICTY trial, and then what other possibilities are out there?

#### **4.8 Ethics of reading in legal documents**

Each time a rape law is created or applied, or a rape case is tried, communities rethink what rape is. A buried contextual and experiential presumptions about the forms and prevalence of force in sexual interactions, and the pertinence and modes of expression of desire, shape determinations of law and fact and public consciousness

--Catherine MacKinnon, *Are Women Human?*

People *out there* read a rape law; they rethink what rape is. *There is* "public consciousness" about the existence and the materiality of a rape law. How, then, might the contemporary feminist legal expert go about pursuing the "consciousness" for and about reading law if she ever takes into account the fundamentally anomalous position the "ordinary" people occupy vis-à-vis the legal expert in the terrain of law?

In a book entitled *Are Women Human?*, Catherin MacKinnon (2006) problematizes the condition of women before law by questioning: "How to address so many laws *seemingly* useless by design, full of traps for the violated called 'doctrine,' entrenched before women were even allowed to vote, now enshrined as precedent" (emphasis mine) (MacKinnon, 2006, p.267)? MacKinnon's question, in fact, is a methodological question, calling one's attention not only to the material condition and existence of law, but to the legal expert's own ideological approach and historical disposition with regard to the legal case. As MacKinnon suggests,

How to make that kind of connection into the affirmative, hopefully conscious and intentional, preferably facial even conspiratorial link that the law (which women also did not write) wants to see before anything can be done (and one is also called

paranoid for claiming) (MacKinnon, p.267)?

Furthermore, MacKinnon goes on, “How to get at the endless doing of nothing that enables something—a pattern we are frequently told is inaction, not action? ... How to capture the larger reality of men getting away with violence against women and knowing they can—a force that operates between the sexes like gravity” (MacKinnon, p.268)? In an attempt to narrow the gap between “theory” and “practice”, the gap between “action” and “inaction,” and the gap between “men” and “women,” MacKinnon’s concomitant queries from its (supposed) inception of feminism do more than reveal the gap between “ideal” and “reality” straining after the kind of simple, transparent methodological queries that might speak for a larger audience in society outside the feminist academy. More importantly, they point us to the cause of alienation: an epistemological concern with “the way *we* know what *we* know,” in an attempt to seek knowledge that is “out there,” about the method and methodology of which one remains, nonetheless, uncertain—in simpler words, a concern with a *know-how*.

Nothing less than MacKinnon’s omnipresent regard for women’s collective paths, for knowing about their social conditions, with “becoming conscious about it,” gives her away. In a book entitled *Toward a Feminist Theory of the State*, MacKinnon’s states: “behind all law is someone’s story—someone whose blood, if you look closely, leaks through the lines” (MacKinnon, p.141). Taking her cue, it is possible to read MacKinnon’s statement as a central instance of paving the way for an act of reading law in terms of reading someone’s apocalyptic life story; however, as the legal expert whose narratives of professional upward mobility expresses a discrete rhetorical form of

collective consciousness-raising practice, a “becoming conscious about it” that is bound by new imperatives and new difficulties. MacKinnon has not yet offered a painstaking instrument to reading life stories hidden in the legal case wherein we, the ordinary people, can become conscious about an experience of the Other.

“Law,” MacKinnon states in her work *Are Women Human?* , “does not grow by syllogistic compulsion; it is pushed by the social logic of domination and challenge to domination, forged in the interaction of change and resistance to change. Text does not beget text; life does. The question—a question of politics and history and therefore law—is whose experience” (MacKinnon, p.141). This, as an opening statement of the chapter entitled *Crimes of War, Crimes of Peace*, mediates between a sense of self-betrayal as, in some occasions, dominating hegemony and as, in other occasions, subverting hegemony, and which, nevertheless, is confined to its own functionality, is fairly accurate. It resonates with the somewhat practical, progressive and even pro-active but nonetheless unreasonable, deteriorating and retroactive system of law.

MacKinnon’s intervention into law disrupts the relation that the judge might have an impact on the original between the texts and readers. The question of reading law is relevant to the question of legal expert and their expertise, which interferes in what can be considered to be a matter between the legal case and the legal expert, may thus be read as an alienation, through disaffecting , of that relation.

It is that a legal case stands for, that is, how non-legal expert assume and treat the *legal* text—from its shape, language, volume, and pages—by which their material condition is shaped. Before turning to the notion of “the ordinary people’, to provide a critical introduction to the matter of non-legal expert, it is important to note that I use the

grammar of “legal expert”, “non-legal expert” and “ordinary people” as if these subjects identify themselves with such identifications, but my point is to underscore that these identifications are grammatical construct or “grammatical fiction,” as I borrow the phrase from Butler (Butler, 1993, p.99). Hence, I am using these grammatical fictions to elucidate the fluidity and performativity of identities among a possible readership.

#### **4.9 Ordinary people before the law**

Borrowing Franz Kafka’s description, in “Force of Law”, Derrida (1990) illustrates the *ordinary* and *terrible* man who “cannot manage to see or above all to touch, to catch up the law: because it is transcendent in the very measure that it is he who must found it, as yet to come, in violence”<sup>27</sup> (Derrida, 1990, p.993). Kafka’s metaphoric use of this *ordinary* and *terrible* man points us to the cause of this man’s symptomatic self-betrayal—a self-betrayal with the visibility and tangibility of the law at hand, within the constraint of which he remains, nonetheless, *impotent*—in a plainer word, to do something about it: something that which, as he conceives, is beyond him and his intelligence.

Derrida quotes this Kafka’s metaphoric use is to argue that nothing less than an ordinary man’s insidious regard for the law and its various obstacles, with founding it, would save him from the misery that awaits him. The understanding of the *ordinary* man is much more complex than it may appear at glance. The ordinary man’s *choice* of silently accompanying the law—the *impotence*—without doing anything about the law

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<sup>27</sup> I should add that I have not yet read Kafka, Franz. (1999). *The Trial* (Breon Mitchell, Trans.). Schocken.

has centered on his presupposed capacity. If it is possible to do something about the law that exists in front of him, then he who does not engage in this task of doing something about that law, is to be blamed for simply being indifferent to and irresponsible for the law.

There is also an aspect of ethical dilemma, in which the ordinary people are seen as somehow responsible for, yet individually unable to do something about the law. For instance, let us think about an individual in a modern democratic society. She or he participates in the decision-making of jurisprudence and asserts her or himself as bastions of justice. The court doesn't necessarily believe that only the jurists should authorize the law. In his work *Modern Social Imaginaries*, the Canadian philosopher Charles Taylor (2004) suggests, the court endorses an ideology that "the mighty [judge and jurists] are cast down from their seat, and the humble and meek [those who are judged] are exalted" (Taylor, 2004, p.104). Such judicial ideology, a seemingly inoffensive and utilitarian directive, situates the ordinary people at the periphery of law. The ordinary people have become fodder for the legal authority precisely because of their "ordinariness"—without the competence for law, and as a result of such assumption, they are alienated from the law.

In his seminal work *A Theory of Justice*, the political theorist John Rawls (1999) argues that "the original position" functions as a citizens' "device of representation" in the process of reaching agreement on principles on the national level. As Rawls explains, the original position provides that citizens' representatives preside over principles of fairness that determine the "basic structure" of society, and that they do this with an impartiality deriving from the fact that they have no knowledge at all about their social

position. The individuals' impartiality of knowledge affects their understanding of what to do with their right. As Rawls suggests, "a conception of right is a set of principles, general in form and universal in application that is to be publicly recognized as a final court of appeal for ordering the conflicting claims of moral persons. Principles of justice are identified by their special role and the subject to which they apply" (Rawls, 1999, p.117).

By circumscribing the different conceptions of rights from one person to another by using the conception of the original position, Rawls argues that "certain claims do win over others" (Rawls, p.116). Taylor similarly considers the original position, "People act within a framework that exists prior to and independent of their actions" (Taylor, p.115). People also rely on the skills that they have learned to adjust to situations that they encounter. In this view, it is possible to argue that people make sense of the efforts and claims of the court to pertain to the respectable authority. Power, argues Taylor, "remains at the summit: it's the very opposite of the understanding defining popular sovereignty. Popular classes that function in this way have to transform their repertory of what before they can act as a sovereign people" (Taylor, p.119). Before people can act as a sovereign people, they have to create a space. For instance, a new form of civil society in which they can build repertory or a range of skills and aptitudes that might be useful in a particular field or occupation, including the field of law. Only then might people codify their system of understanding the Self and world into the courtroom and law.

Let us suppose that the ordinary people unquestionably read, understand and acknowledge the court decision as the preponderance of their authority. Such blind acceptance has the double task of highlighting the court as their "just" authority while

simultaneously distancing themselves from the law. Clearly, one can say that the problem lies with the ordinary people: They are reading the court decision superficially when, in fact, they should be reading it critically and acknowledging the power of legal language to endorse power, as deeply coded and influential as it is elusive. Furthermore, they should be considering which aspects of ideology are decipherable in the supposedly innocuous judicial decisions and what types of power dynamics are being reflected, governed and preserved. Only then might they realize that, in fact, their reading of legal case is right: the court decision, does, indeed “normalize” the signifier so as to all but alienate the ordinary people from the law.

We can stretch our understanding of the ordinary people to the understanding of human rights principles. Theoretically speaking, the human rights movement takes its existence from the fact that however differently we, the “ordinary” people, are constituted in a different discourse of society; we are constantly and inescapably constituted as the ordinary people. While the ordinary people are given an attribute of ordinariness, there is a discourse available to judges, which allows them to represent themselves as people, humanity, and the force of law. This discourse, by its very existence, excludes and marginalizes the ordinary people by making them believe that the court is the just authority. Such belief that the court is the just and only authority may not allow the ordinary people to contemplate on their aptitudes for being ordinary. The goals of human rights discourse are not only to validate the new meanings of the “ordinary” people, but also to confront the court with their judicial authority.

It is too risky to frame the ordinary people into one analytic framework for a mute, passive taking-in of legal decisions which preserve no trace of their own memory and

experience. As a result, they have a difficulty in engaging in a mode of self-reflections and generate a critical insight into and up against legal authority.

There could be a subtle relationship between what the ordinary people tend to read and their subject positions with the entitlement of “ordinariness.” For instance, the newspapers are accessible to virtually anyone. They are written more or less in a readable language. On the contrary, the legal document is a cue specific to the study of law, even if it is free and available online as has shown earlier. If ordinariness of the ordinary people would by any means influence the choice of what they read—the less transparent hierarchical interaction between texts and readership leaves us no significant contemplation. What is then more important than inquiring into what we read or what new do not read, is the manner in which texts—that are *out there* yet isolated from the ordinary people—are sought for and read.

#### **4.9.1 Reading legal fictions as judges’ artifacts**

The corpus of judges’ narrative is produced as a customary practice. While it may or may not be read, interpreted, and criticized by the “ordinary” people, we need to pay attention to the fact that judges’ case writing is a customary practice to the next step on the ladder. The production of legal case depends on the consumption of legal expert as well as on the judge’s pursuit of ending a trial by writing about it. And yet, how seldom this isolation of legal case from the ordinary people is challenged by the legal expert as well as by the non-legal expert, and how seldom that marginality impedes the non-legal expert with the feeling of alienation are all questions that have to be posed upon by the non-legal expert herself.

Studying my sensibility of alienation that *Kunarac* represents for me has led me into judge's narratives in the legal case. I have found that some of the raped women are identified as "witnesses." and that judges have created linear events of wartime rape as a means of leg. My inquiry has taken its momentum from the burgeoning field of feminist legal scholarship study on *Kunarac*,

By way of inquiring how one crucial and understudied category of analysis, the ordinary people, operates to read complex narratives and form self-understanding circumscribed by her alien, a non-legal position, which would expose the latent predicaments of legal fictions. My intent here is to trace the characteristics of this major figure (judge) in the process of adjudication and, more imaginably, to restore the figure (and narratives) of witnesses that is relevant to raped women). The initial step will take us to my feeling of *Kunarac* which—despite the feeling of alienation—create causes of action with its increasing urgency, as the various possibilities of "witnessing" within a non-legal trajectory are each explored. The second step, which will follow my consideration of the legal fiction, is more properly a genealogical one: to turn away from the judge's narratives where the judge is the main protagonist, and toward the imaginable settings where the emergent sense of witness received its structuring principles and, in some sense, its ethical justifications. Two postulates, then, will govern my investigation of judge's witness-plots, that the "judge" is a mediating, even domesticating figure for raped women, making of "(legal) witnesses" a path more amenable or legal rationalization .

If we treat *Kunarac* as a text on "wartime rape"—a highly academic text of analysis—or a loosely narrative practice, one given over to a set of assumptions about

ordinary people's experience and its narrative expression. If we mean the latter, we can extend our consideration of the 'legal' case as the legal fiction.

It is perhaps paradoxical to look for clues about fictional forms of writing in a work that is not clearly labeled as a fiction, one that is instead composed of a series of symbols such as legal definitions, conventions, and judges' narratives; but it is the legal case about the next step on the ladder to a fiction—that is the genre imminent in the idiosyncratic war-crime legal case and that must, in the end, be accounted for in its pages. Here my effort is not just simply substituting of one genre for another genre and altering the legal case into fiction. The task is to excavate the essence of the loosely defined text that is codified as the legal case. Conceiving *Kunarac* as a fiction is, I would suggest, tantamount to conceiving the figure of judge as a foreign purveyor who are compelled to create linear, ordered sequences of the story and shape them nothing but for the society, for the world.

The absence of descriptive affluence of raped women in *Kunarac* delineates the fact that the legal case is also a gendered space. No single raped women own their name. But rapists do. Their names are replaced by some numeric numbers and alphabets. Nowhere will you find how the raped women look like, what language they speak, whether they are accompanied by translators in the courtroom, and how they are allowed to present their narratives as well as reveal their emotions in the courtroom. Similarly, we are only allowed to imagine what kind of conversations has taken place between judges and the raped women. *Kunarac* evokes a sense of 'things' rather than the figure of women or human beings. The raped women are treated as if they were some kind of commodity; furthermore, they are oftentimes treated as the commodity of amnesia and their

forgetfulness is undermined, as you can see in the narrativization of judges.

Let us read the excerpt from *Kunarac*:

55. She stayed at Foca High School for about two weeks from 3 July 1992, and thereafter at Partizan Sports Hall until 2 August 1992. She recalled being taken to the Brena block by Dragan Zelenovi on one occasion, but that *apparently happened* while she was still at Foca High School, *not* during her time in Partizan. *More importantly, she did not remember* the accused Zoran Vokovi at all in connection with *the events* that happened during her stay at Partizan (emphasis mine).

There are a number of things we can highlight here. First of all, judges wrote, “She stayed at Foca High School...” instead of writing “She was held at Foca High School”. According to the judges’ narratives, this woman was described as if she chose to stay at the school in her will, which was not the case, considering the fact that she was captured, interned, and raped. Then, Judges noted, “that [captivity] *apparently happened* while she was still at Foca High School, *not* during her time in Partizan.” From the judges’ use of the word “apparently”, it seems that judges had certain assumption about where the captivity had taken place. But how come could judges know where exactly the captivity had taken place? Whose narratives do judges take into account? Where the narratives become infinitely more problematic is when judges venture forth to highlight the amnesia of raped women: “*More importantly, she did not remember the accused Zoran Vokovi at all in connection with the events [rape] that happened during her stay at Partizan*”. Why did not judges use the language “rape” explicitly instead of “the events” that might only evoke the sense of temporal characteristics of rape? This way of using vocabulary gives us a sense that judges validate the use of their vocabulary to discuss the occurrence of rape by showing that raped women use spatial metaphors to understand and make sense of the event.

Given the judges' attempt of demanding the narrative of 'precise' memory from raped women, it is unfair that judges do not a 'precisely' grammar. From analyzing the way in which the textual space in *Kunarac* is framed, it is fair to say that there is plenty room available for ordinary people's act of reading. Such space is necessary to disentangle readers from the temporality of the legal case altogether and recover the spatiality and materiality of texts for readers. Recollection is not just for a need of memorizing conventions and jurisprudence but for undoing the generally amnesiac [a loss of memory] quality of the bulk of recurrent debates (e.g., legal conceptualization of rape, rapists, consent, etc). Instead, readers should be allowed to inhabit in the textual space and exercise their innocent way of reading as a new insight to the fabric of legal case. Hence, it will be as important to think about how and to what end readership is intended in *Kunarac* as is it will be to think about how and to what end is not intended, further, to ask how legal cases which fail to be circulated and read widely by the public other than the scholarly circle of law provide the "ordinary" people with the necessary support for reading *Kunarac* which, in making the text intelligible, qualify specific readers only.

After some time of reading the legal case, I come to think that the *Kunarac*'s descriptive practices are encouraging a particular manner of 'reading' and deciphering meanings embedded in the textual space. The heavily mnemonic skill judges require from the raped women represented in *Kunarac* is the temporality of a dialectical process that provides a space for the required intervention of a critical reader, a rhetorical witness – a third-person guarantor –without memory of wartime rape. The intervention regards *Kunarac* as a motive or rationale for learning about the *occurrence* of wartime rape in Bosnia, for it is a war crime. Come to re-frame the treatment of legal case, I, as a self-

conscious foreigner, have read the narratives of judges, as a means of identifying, challenging, and subverting the normative use of the term *witness*.

Let us again return to the textual space of *Kunarac* where we will start digging out the contours of the important figures of “witnesses.” We will also find the latent dilemmas of judges and their self-representation as “witnesses” as the expert of wartime rape. My intent here is to dig out the contours of this important figure of “witnesses”, and more importantly, to situate the gendered conditions of their narrativization. The complex narrativization of the judges in *Kunarac* has shown how the figure of “judges” acquire the status of “guardians of memory” and managed to create and narrate linear sequences of a gendered event—wartime rape—out of the disruptive nature of remembering and narrating the story told by raped women themselves.

Ending with another legal examination of wartime rape orients *Kunarac* toward historical evidence rather than fictional form of writing the story. But then, one asks, why the legal document? Particularly when *Kunarac* seems, in judges’ presentation, so unforthcoming about their own professional contexts compared to, for instance, the novel *S.*? This is not an easy question to answer. But one is left with the question of what legal document, in its very fictional narratives, might have to offer to our approach towards wartime rape in Bosnia that a war crime fiction like *S.*’s final chapter can so astutely encapsulate the occurrence of wartime rape. And isn’t this a question to make us professionally alienating?

Although I have explored above judges’ use of in *Kunarac*, I am cautious about extending my conclusions beyond *Kunarac* to other legal documents such the case of...., because I believe the embeddeness of fictional work in textual history is specific to

author, volume, and case. And discursive theory of fiction must both develop gender as a category of analysis and develop a method of inquiry sensitive to individual prosodic interventions.

#### **4.9.2 The non-legal expert's dilemma**

A legal case writing that condenses experience of the Other, that takes a form of legal fiction, which is written from the standpoint of judges who are inhabiting an inside as a narrator who is, in reality, out of it, and this condition cannot simply be replaced, for example, by the account of the raped women but is rather to be acknowledged as a symptom pointing to the end of the knowability of the Other: that is the starting point from which I will consider the feeling of alienation. The feeling of alienation is more than what *Kunarac* should or should not give: it is what the non-legal expert must, as we have learned by reading the text, witness.

If alienation has to gain sense of its own, it can only signify the fact that the event of encountering the Other is met by the event of encountering the absence of speech of the Other. And encountering none other than judges' speech of the Other is inundated by the sense of alienation. The hiatus that hollows out is filled with the mute and anonymous narrators' narratives, as the absence filled with judges' narratives. As Emmanuel Levinas (1998) puts it, "the *there* is fills the void left by the negation of Being" (Levinas, 1998, p.4). The absence of the narratives of raped women signals the fact that they are not existent; they are dead as if they were not there.

Thinking of the disruption when it comes to publishing what judges have written. I try to make a specific set of claims about the implications of publishing *Kunarac* online.

*Kunarac* can be framed as the site of the public archive: a literary product designated with the task of reading and deciphering the meaning of the past, drawing links between past and present, and opening a path to the future. It is difficult to draw from categorical distinctions between texts that are generally accepted to be part of the public archive and texts that are considered “merely” academic textbooks. However, the collective practices of many of our traditional institutions of memory still make a categorical distinction between texts easily identified with the approval of history and texts that are treated merely as the materials of unhistorical lives.

There are gender dimensions to this question of historical objects as well. The transmission of certain kinds of private objects, which may often have little monetary value in the conventional sense, has traditionally been associated with a feminine practice. On the other hand, the transmission of property, wealth, and patrimony has historically been associated with a masculine tradition. Thus, when a legal case is written presumably by white males judges about the wartime rape in Bosnia—a gendered event—and are published online, as is the case of *Kunarac*, the legal case is marked clearly by gender. Then, what does it mean for me, as a non-legal expert who is interested in the theme of wartime rape in Bosnia, to read the legal case as a purpose of self-reflection? In so doing, what am I witnessing in the textual space of *Kunarac*?

There is more demand on thinking inside and outside issues surrounding *Kunarac*. For now, something more is at stake in finding a strategic way of reading the textual analysis of *Kunarac*. Since Derrida (1990) asserted that the first way to do justice is to hear, read, interpret and understand the origin and intent of writing (Derrida, 1990, p.951), we have been challenged to envision an ethical mode of reading. The significance of

Derrida's claim lies not so much in the foundations of ethical theory than in the reorientation of method of reading, ethical in depth. In the work entitled ...Derrida links the act of reading to the concept of justice, and arrives at the conclusion that a legal case is a locus of deconstruction (Derrida, pp.943-945). One might well ask whether Derrida does not suggest a specific strategy of deconstructive reading than the idea of doing justice in terms of reading legal cases. For Derrida, "each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely" (Derrida, p.961). Derrida does not pose upon us the question of how one legal case should be read differently from another. Rather, the question is how the existing, coded rule can be constructed and manipulated by judges. In what precisely is the existing coded rule uncovered? Derrida considers the role of judge, and he mentions that judge "doesn't take any rule for granted beyond his own interpretation, he suspends his decision, stops short before the undecidable or if he improvises and leaves aside all rules, all principles" (Derrida, p.961).

For the moment I want to suspend the question of why it seems that judges seem to be conservative and comfortable about his own interpretation of rule that they know, and why do not they challenge 'undecidable' rule and confront rules and principles that are unfamiliar to them; I will, however, return to this question once tactics of reading legal cases are established. The kind of reading Derrida endorses requires not only that the reader enters the text she or he reads, but that she or he uncovers a mold of judicial power that is foreclosed in the textual space. The fact that there is no rule for deconstructive reading would not free the discursive practice from the constraint of judicial power. Therefore, we should speculate on the mold of judicial power, and in that, I hope, we

would the hint of deconstructing legal cases.

My purpose here is to understand how what has been foreclosed in the textual space of *Kunarac* might be disrupted by oneself in order to rearticulate the textual space in which raped women come to matter at all. Here I intend to deploy the category “raped women” in the similar manner Butler (1993) does. She uses the term “women” tactically to designate that “the category of women does not become useless through deconstruction, but becomes one whose uses are no longer reified as ‘referents,’ and which stand a chance of being opened up, of coming to signify in ways that none of us can predict in advance” (Butler, 1993, p.29). In *Kunarac*, raped women are categorized within the binary as the legally-acknowledged (that is, legally made intelligible) as raped women, and raped women who are excluded and isolated from that judicial criteria of rape, that is, legally made unintelligible. And yet, such binary attempt of identifying who are and aren’t raped clearly indicates that rape is a legal matter, and therefore, it has to be treated, judged and rendered intelligible by judges within a law that claims to know what rape is.

#### **4.9.3 Conclusion**

In this chapter I have attempted to offer a new insight into *Kunarac* through my self-reflections on the legal document. In doing so, acknowledging my subject position as the non-legal expert has helped me to subvert the feeling of alienation that was constantly brought back to me as I read the text. My self-reflections on the acts of reading *Kunarac* in face of alienation would not offer a new direction for the study of *Kunarac* in strictly legal traditional legal discourses, but can be useful for the non-legal readers who find a rupture between judges’ legal writing and feminist legal scholars’ academic publications.

In this study, I have addressed various ways in which the legal languages of judges' expression and their complex relation to the ethical and political aspects of legal writing inform the importance of reading the legal document, particularly, for the non-legal expert. It is not that "if the [legal] text is intended for a professional audience it would often be inappropriate, and in some cases *impossible*, to try to word it as if a lay audience were intended" (italics mine) (Bennion, 1993, p.2). I content that while the non-legal expert reader experience may stand at the periphery of legal documents as well as at the hegemonic legal culture, her engagement with performative violence, marked by the feeling of alienation about and around legal documents, both by judges and feminist legal scholars, is critical to her acts of reading. After all, the complexity of the languages of law, customs of writing, producing, and archiving legal documents, is sustained primarily by judges and aided by feminist legal scholars. These circumstances should not prevent from the non-legal expert to further intervene into the legal documents and asserts their vital voices by engaging in the critical reading.

## The Epilogue

Am I a rhetorical witness? As soon as you finish reading this thesis, you may be asking yourselves this question, perhaps followed by another question. Am I entitled to be a rhetorical witness? Such a question, however, is not a valid one. There is no character marked by race, class, gender, age, or any other distinction which is more entitled or more in need of becoming a rhetorical witness. I must not set up a criterion to decide who are or are not to become a rhetorical witness. Such an attempt does not seem to be ethically just. If, as Derrida (2000) argues, the problem of speech act is brought into the reader's concern, and, only then, leads the debate on *rhetorical witness* into its more nuanced perspectives, which I have opened up in this thesis.

If our act of reading were to be defined differently from the very beginning, the way in which we choose our texts would also be different. Indeed, not only must we admit the possibility of various modes of reading from one text to the next, we must above all be clear about how our act of reading the same text varies from one time to another, one reading to another, and one textual space to another. If our investigation of our act of reading is to be maintained, subverted, and improved, we must make ourselves familiar with texts, textual genres, and textual spaces into which we must always be locating ourselves, with our bodily engagement, when inquiring into our act of reading, and when working toward the act of witnessing others as well as the Others of oneself.

The field of rhetorical witness seems less defined that it is depending on us who might and might not dispense with any lengthy discussion. In other words, the theme on an act of reading is an individual reader's endeavor and thus an endeavor with respect to the reader. The issue of reading is so personal and internalized that this only indicates

how massive the study of the self-as-reader can be without increasing our self-understanding. In an attempt at witnessing the violated female body and those who are not legally identified as witnesses, it is crucial that we have insight into our act of reading. Similarly important is that we have insight into our bodily engagement with the act of reading. Our act of reading involves reflections of our encountering and relationship with texts, textual genres, and textual spaces. Our act of reading the violated female body becomes our act of reading the body written within the texts as if it were our own. Our relationship with texts can be established from our bodily engagement with texts, and our bodily engagement with texts, in turn, constitutes an identity of the self-as-reader. At the very beginning, our inquiry into our act of reading can only be questioned likewise: How do we read what we read?

In taking the direction of our inquiry into *witnessing*, we must have a wider horizon in reaching onto others as well as the Other of oneself. In respect to the rhetorical witness, we have obtained something of the sort through our discussions on the notion of *witness* as a legal category. The fact that *witness* is a legal category is by no means haphazard or irrelevant in this hegemonic legal culture. With this in mind, we can establish, concerning the fundamental direction of our essential questioning that the significance and signification of a rhetorical witness come into view if we seek, contest, and subvert the legal category as the first ground of the possibility of witnessing, as something prior even to being and becoming a rhetorical witness.

An act of reading now no longer signals reading as a result of our existence in the material world. An act of reading is the act that brings a reader into texts, thus making an act of reading possible to exist in the world. If reading is the ground of the possibility of

existing in the world, the root of passion, confusion and alienation that has driven me to read the three different texts is critical to my own existence in the textual world. My sensibilities are, ultimately, grounded in the possibility that I could approach my Self and become a rhetorical witness. My sensibilities are precisely where the identity of my Self-as-reader *is*. From this consideration, we can make sense of what Martin Heidegger (1978) states in *Being and Time*, “[a]nxiousness as a state-of-mind is a way of Being-in-the-world. Starting from the anxiety I had in reading accounts about wartime rape in Bosnia as a student of Gender and Women’s Studies with a concentration on the Middle East and North Africa at AUC, feeling passionate about reading the novel *S.*, being confused by the rendering of the former Yugoslavia on the world map, and finally, feeling alienated from the legal document *Kunarac*, all of which constitute my ways of being in the world, both material and textual.

Students enter the academic setting with or without critical literary backgrounds and become quickly submerged in the academe’s particular methodology of reading. In the same breath, when students are considered *transnational readers* or *ordinary readers*, in that they enter the academe with or without the competency of critical reading skills, there is no guarantee that they will leave the academe having fully acquired the critical literary methodology. Whether university professors can provide any explanation or suggestion for an act of reading for themselves as well as for students, or actively cultivate the methodology of reading for students as well as for ordinary readers (i.e., the non-intellectual outside the academe), or for the benefit of the academe as a whole, university professors are no less influential in producing and reproducing a distinct culture of reading and consequently, a particular era of readership.

It was James A. Snead (1998) who remarked in his work *Repetition as a Figure of Black Culture* that “[c]ulture must be both immanent and historical: something *there* and something to be studied in its present form and its etiology” (Snead, 1998, p.63). A culture of reading is no exception from the larger framework of what Snead calls *culture*. This assumption enables us to consider that we intellectuals are constantly challenged to study our culture of reading in the present-day form. Our culture of reading which accrues through perpetual practices of reading inside and outside the academe, mediated by different texts, textual genres, discourses, disciplines, however inadvertently, manifest in our act of reading. Noteworthy here is that our act of reading is part and parcel of our culture of reading.

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I hope that my performative acts of reading the texts as a rhetorical witness offer some useful insights into the literature on witness; it is also informed by my self-understanding of the ways in which my acts of reading about wartime rape in Bosnia continue to assist my ability to witness the subject in lieu of the disciplinary expertise which a navigation of each text requires to some degree. Those who were or were not legally identified as witnesses in the Holocaust are obviously not the same as those who were or were not in wartime rape in Bosnia, and judges’ narratives in *Kunarac*, narratives of wartime rape in Bosnia in the novel *S.*, and visual storytelling of cartographers in a world map are fundamentally different from one another in terms of creating each form of the event in Bosnia. While legal and fictional narratives continue to imagine and represent the violated female body, the world map highlights the presence of the violated female body in its void wherein the rhetorical witness begins to imagine the accounts of

raped women.

In her “Documenting Violations: Rhetorical Witnessing and the Spectacle of Distant Suffering,” Wendy S. Hesford (2004) questions, how are the “you,” to whom the testimonies of victims of rape warfare are addressed, an integral part of the constitution and construction of “their” accounts of systematic violence and its legacies (Hesford, 2004, p.107)? Her question is a subtle and thus subtly ignored in this moment of twenty-first century, almost after two decades of the Balkan war, where newspaper headlines regularly decry the dangers of contemporary society around the world, the increase in war, rape, torture, and the loss of an innocent we never heard of. More and more, concern is directed at the violated female body, traditionally the most feared candidates for disclosure, but how do we take into account the fact that testimonies of raped women are addressed at each one of us? How about the testimonies of persons other than raped women?

Today, in the twentieth-first century, technologies are rampant. Images of the violated female body provide the plot for countless TV programs, films, fictions and nonfictions, and comic books. They all are seemingly scandalously gossiping about the victims or the perpetrators or both. Some of them do support the notion of caring about the violated female body and its traumas because they consider the effects of their traumas to be deadly for our body and body politic. The important question here is what could technologies do to us, aside from gossiping or presenting or representing the violated female body? Avital Ronell (1991) suggests, “The worst moment in the history of technology may not have an off switch, but only a modality of being on” (Ronell, 1991, p.9). What does she mean?

In *The Telephone Book*, Avital Ronell's (1989) inquires into the nature of a telephone in this technological era. By *telephone*, Ronell means a piece of technology we use in our daily life. Ronell explores the impact of the telephone call upon the receiver whose act of picking up the call has aesthetic and ethical effects upon the Other of herself or himself. For the telephone to operate as a piece of technology, for the telephone to be used as a telephone and call somebody who is separated by spaces and times, the call must be received and responded by the receiver in the spatio-temporal continuum. For the receiver to hook up with the call, the telephone always requires not only the presence of others who consciously inquire herself or himself into accepting the call, but also the presence of the Other of oneself who makes an effort in deciphering the meaning and/or the intent of the one who calls. It is through this seemingly innocuous function of the telephone that the key to understand one's relationality to the Other of oneself is hidden.

The technological, literary, ethical, philosophical, and social consequences of the international criminal atrocities such as the Holocaust and wartime rape in Bosnia were and remain real and disastrous, especially for the survivors, whether they are legally identified as witnesses or unidentified as such. I am concerned about what is currently at stake in the international society's political, legal, aesthetic and ethical demarcations of witnesses. I hope that we reflect upon our Selves as a rhetorical witness in the fullest sense without turning away from what we read whose effects I trace in this thesis.

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