Localizing Justice: Beyond the Chambers of the ICTY to the People of Sanski Most

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Localizing Justice:
Beyond the Chambers of the ICTY to the People of Sanski Most

Kathleen Sprague

Submitted in Partial Fulfillment of the Prerequisite for Honors in Anthropology

April, 2013

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Acknowledgements

First and foremost I would like to thank my wonderful adviser Anastasia Karakasidou and the entire Wellesley College Anthropology Department for their insights and guidance throughout this whole process. They not only sparked my passion for anthropology, but continue to nurture my intellectual curiosity and independent research.

I further wish to thank all of my family and friends, especially my mother, for their unwavering support and encouragement throughout this entire process. Their loving presence, especially in the final stages of this project, will always remain close to my heart. A special thanks to Luke for sharing his amazing mapmaking skills and Shannon for her thoughtful feedback on drafts.

I also very much appreciate the input I received from Lamia, my project adviser in Sarajevo, and the staff at SIT, as well as the patience and logistical assistance provided by my translator Dino. I am forever grateful to all the staff and volunteers at CIM for their kindness, direction, and inspiration. Your incredible work is a constant reminder of the love and resilience we all have within us and our power to create meaningful change.

Finally, I am of course indebted to everyone throughout the former Yugoslavia who shared their thoughts, experiences, and stories. What I love most about anthropology is that we do not study people, we learn from them.
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List of Acronyms

ARBiH - Armija Republike Bosne i Hercegovine or the Army of the Republic of Bosnia and Herzegovina

BiH - Bosnia and Herzegovina

CIM - Bosnian Centar za Izgradnju Mira or the Center for Peacebuilding

EC - European Community

HDZ - Hrvatska demokratska zajednica or the Croatian Democratic Union

HVO - Hrvatsko vijeće obrane or the Croatian Defense Council

IC – The International Community

ICC - The International Criminal Court

ICTR - International Criminal Tribunal for Rwanda

ICTY - International Criminal Tribunal for the former Yugoslavia, also referred to by many in the Balkans as “The Hague”

IFOR - The Implementation Force (Nato-led)

IMTs - International Military Tribunals

JNA - Jugoslovenska Narodna Armija or Yugoslav People's Army

NATO - North Atlantic Treaty Organization

NDH - Nezavisna Država Hrvatska or Independent State of Croatia

NGO - Non-governmental organizations

RS - Republika Srpska

SFRY - Socialist Federal Republic of Yugoslavia

TRCs - Truth and Reconciliation Commissions

UN - the United Nations

VRS - Vojska Republike Srpske or the Army of Republika Srpska
Introduction: Imposing Outside Categories onto Local Experiences of Injustice

Looking Beyond the War

As I moved to turn off my tape recorder at the end of an interview, I casually asked Amar, a psychologist from Prijedor, if he had anything else to add. Looking up to meet my gaze, as our eyes locked he slowly replied, “Bosnian people are not the war.” Shaking his head he continued, “We have culture and literature; we can speak about thousands and thousands of themes, but everyone who comes here just wants to talk about war.” Completely caught off guard, I wondered if this critique was directed towards me? We had just finished what I perceived to be a deep and engaging discussion about his experiences during the war in Bosnia and opinions of recent efforts towards transitional justice. Amar seemed passionate, articulate, and happy to share his thoughts. Yet, now I wondered, had my questions frustrated or even offended him? Even more troubling, I began to worry whether my research was actually perpetuating the very reductionism I had so adamantly set out to challenge.

As I returned to the States and began analyzing my ethnographic field notes, Amar’s words continued to trouble me. I realized that when I began my research in the former Yugoslavia, I subconsciously fell into the same problematic mindset as many of my Western counterparts. I was so concentrated on the “best way” to “fix” the injustices of war that I lost sight of the people who lived with them every day. By fixating on the war, I overlooked other relevant sentiments and experiences. This not only reduced my understanding of the region as a whole, but also potential approaches to transitional justice. Thus, through my own self-critique, I came to see how such Western inclinations to surgically “solve” the crisis in the former Yugoslavia paradoxically undermine even the noblest intentions. To understand justice and
Bosnia’s hope for the future, I needed to look more closely at the gap between international initiatives and local understandings.

Over the past two decades the Yugoslav wars of the 1990s have become one of the Balkans’ most definitive characteristics, absorbing much international attention and resources. However, just as one past tragedy cannot define Bosnian people since it constitutes only a piece of their lifetime and country’s historical legacy; neither can one simple prescription or definition encapsulate their dynamic understandings of justice in the postwar context. Despite the international community’s idealistic promises to, as the ICTY charter reads, “render justice to [the] thousands of victims and their families, thus contributing to a lasting peace in the former Yugoslavia,” as Amar poignantly reminds us, complex networks of historical memory, political and religious ideologies, social connections and personal values lie behind charged headlines of ethnic conflict, civil war, and genocide (ICTY 2012). The Balkans’ heterogeneous cultural context and complex personal realities shape how residents experience, understand, and negotiate postwar justice, complicating the ICTY’s mission.

According to Law Professor Edmond N. Cahn in his discussion of the philosophic foundations of human rights, “Justice is unwilling to be captured in a formula. Nevertheless, it somehow remains a word of magic evocation.” However, based on his research with witnesses testifying before the ICTY, Eric Stover (2005) recalls, “Witnesses often scorned that justice somehow possesses miracle-working powers. Instead, they speak of it as being highly intimate and idiosyncratic and, at times, ephemeral” (Stover 2005:142). As Stover explains, “Although the vast majority of witnesses told me they supported war crimes trials, they were far less certain about whether justice had been rendered by the cases in which they had testified. Tribunal justice, they said, was capricious, unpredictable, and inevitably incomplete: defendants could be
acquitted; sentences could be trifling, even laughable, given the enormity of the crimes […]” (Stover 2005:142). Instead, witnesses said justice meant “piercing the veil of denial about past war crimes that had shrouded divided communities since the war” (Stover 2005:143).

Justice may be beyond the capabilities of formal legal mechanisms. As Nikica, my Serbian language teacher explained, “Yes, pravda means justice. Ministarstvo pravde is Ministry of Justice, and the word justice is connected to the official mechanisms of justice.” Yet she further elucidated, “We connect [the] word pravda more with morality of an individual than with courts, laws and judges. So when something is for example nepravda [no justice] it is more in the area of unfairness than injustice in official way.” This implies that within the former Yugoslavia residents may conceive of justice as a less formal, more local set of personal values as opposed to a consistent and universal concept that international mechanisms can simply reproduce.

Thus, it is little surprise that as many legal and social science scholars have observed, international attempts to render justice have fallen short of expectations, particularly within Bosnia and Herzegovina (BiH) (Saxon 2005; Subotic 2009; Stover and Weistein 2004). Feelings of persistent and overwhelming dissatisfaction, particularly the sentiment that justice has yet to be served, lie at the center of intense criticism leveled against these international endeavors (Nizich 2000-2001; Jeffrey 2009; Meernik 2003; Saxon 2005). What underlies this domestic disappointment? Is it a failure of the legal mechanisms to perform as anticipated, or are the very assumptions that frame them inadequate? Is there a deficit in the way local cultural understandings have been incorporated into the structure of proceedings? Although scholars and politicians make their criticisms heard loud and clear, local community views go unheard too often.
To bring forward a sampling of these critical voices, I explore notions of justice in the Bosnian postwar context held by residents of Sanski Most, a small town in Northwest Bosnia Herzegovina deeply affected by the war. I begin to show how people’s understandings of justice impact their opinions of foreign-led transitional justice initiatives, particularly the International Criminal Tribunal for the Former Yugoslavia (ICTY). Overall, despite the tribunal’s benevolent undertaking, my research coincides with the growing body of recent scholarship which suggests that such international judicial mechanisms may not always be consistent with the needs of the local communities they aim to serve.

**Entering the Academic Conversation**

As scholars struggle to define justice and its role in reconciliation, the complexity and interconnectedness of the concepts of justice and reconciliation become apparent. Some scholars see aspects beyond punishment as essential to reconciliation and justice. John Paul Lederach (1995), a pioneer in research on conflict transformation, sees justice as an essential but not sole component of reconciliation, which must also be tempered by mercy. Thus, this model of justice is founded in the belief that societies and individuals heal through acknowledgement and forgiveness. Other scholars, notably political philosopher John Rawls in his Theory of Justice (1999), emphasize the importance of fairness in reconciliation, not as a separate component, but as a measure of justice. Likewise, psychologists such as Tom Tyler (2000) and Robert Enright (1992) have begun to chart the interweaving processes of justice, fairness, and forgiveness.

Whether a criminal justice approach is more effective than a reconciliatory model is also currently a hotly debated issue. The former is better at holding individuals accountable, but can
handle only a few cases; whereas the latter, may be better at healing social conflicts, but fails to punish perpetrators (Merry 2006b:110). While improvements have been made to procedural mechanisms, providing victims a greater role in the prosecution of serious violations of international laws, the focus of international courts continues to be the prosecution and punishment of perpetrators (Henry 2011:26).

Another difficult issue facing transitional justice is whether it should be managed by an international body or by the leaders of the nation experiencing ethnic conflict or state repression. If the same leaders are in power, a nationally-based tribunal can be problematic (Merry 2006b:110). Conflict also often arises as to whether the goal of transitional justice is to hold individuals responsible or to produce a national narrative of the conflict (Merry 2006b:110).

In addition, increasingly, scholars contend that Western Enlightenment’s notion of one universal concept of justice is inappropriate and inadequate to many cultures and conflicts. Indian philosopher, economist, and Nobel Laureate Amartya Sen (2009) advocates for a comparative perspective of justice. Sen’s respect for reasoned differences in understandings of a “just society” is an emerging trend in many discussions of justice. This trend is particularly relevant with the current pace of the transnational spread in what Kamari Clarke (2009) terms the “rule of law” movement. Sally Engle Merry (1992; 2006a) argues that transnational processes are becoming increasingly important in theorizing about the nature of local legal phenomena, describing how transnational processes shape local legal situations in a variety of ways, particularly in the wake of colonialism. Overall, she surveys local legal processes within a national and a transnational context, examining the possibilities of a revived theory of legal pluralism closely linked to questions of culture and power.
Scholars of numerous disciplines argue that international and local understandings of the restoration of security and peaceful relations are not necessarily identical, and that both perspectives must be considered for successful international intervention initiatives (Jansen 2006; Wilson 2003; Eastmond 2010:5). Hartwell (1999) strongly confirms that perceptions of justice emerge from a culturally specific context, suggesting that justice is a socially constructed concept existing only within the minds of members of a society with no physical reality. Therefore, norms of justice, human rights, and peace are not objective or universal. Likewise, anthropologist Johanna Selimovic (2010) asserts that after mass atrocities meanings of truth, justice, and reconciliation differ. As growing research affirms, effective transitional justice and lasting peace require accommodating a multiplicity of understandings and definitions.

This push towards a more relativist and pluralistic conception of justice has been recently echoed by many anthropologists. Kamari Clarke’s *Mirrors of Justice* (2009) illustrates the multiplicity of justice in the twenty-first century by providing an interdisciplinary theoretical framework that reconsiders the relationships between justice, international law, culture, power, and history. Likewise, in *Fictions of Justice* (2009) Clarke emphasizes how understandings of justice are shifting and highly contextualized, producing new notions of international justice. Similarly, other works such as *Localizing Transitional Justice* (2010) trace how ordinary people respond to and even transform transitional justice mechanisms by exploring the complex and unequal encounter among international legal norms, transitional justice mechanisms, national agendas, and local priorities and practices.

Anthropologists also analyze the limits of the judicial system. For example, Sally Merry’s work notes how the justice system in its formality and rigid structures disenfranchises individuals from telling their stories (1990, 1993). In her more recent book, Merry (2006a)
highlights how human rights laws, particularly those based on gender violence such as mass rape during war, are not well understood or received in many cultures. Merry contends that human rights law must be framed in local terms to be accepted and effective in altering existing social hierarchies. This is very much reaffirmed by the recent work of legal scholar Nicola Henry (2011), who looks at the relationship between law, memory, and rape to access the significance of wartime rape, using cases coming before the ICTY as a major source of information.

Although case studies continue to emerge exploring the locality of justice and its negotiation with international law, minimal work has been done to explicitly address Balkan understandings of justice, particularly within the postwar context. BiH, serving as the main battle ground during the conflict as well as the major spotlight of Western aid and concern after the war, seems particularly relevant in light of its complex involvement in the war and relationship with foreign aid.

The limited research that has been done on Balkan understandings of justice indicates that for many the ICTY is procedurally fair but ultimately ineffective. Most residents saw the ICTY trials and decisions as fair, but criticized the slow pace of the tribunal’s operations and proceedings, its lack of efficiency in making arrests, and its failure to arrest major war criminals, the so-called “big fish” (Stover 2005:3). Moreover, Ivkovic and Hagan suggest skepticism over the independence of the ICTY heavily accounts for its disapproval among local constituencies (Ivkovic and Hagan 2011:52). Other researchers have pointed to residents’ complaints that the ICTY is biased (Brio 2005:193). More troubling, survivors do not connect the type of retributive justice that ICTY delivers with reconciliation (Stover and Weinstein 2004:323).

Overall these recent investigations into the efficacy of transitional justice mechanisms, particularly war crimes trials, have exposed the gap between the promise and reality of justice
(Henry 2011:9). This confirms what John Rawls (1971) proclaimed about justice being universal, inviolable, sacrosanct and morally imperative, but also fragmentary, incomplete, elusive and deeply personal. As Senior Lecturer in Legal Studies at La Trobe University Nicola Henry contends, there is an “impossibility of full justice and vindication for gross human rights violations in the aftermath of armed conflict, as well as the heterogeneity of [...] victims within their communities and their differing conceptions of justice” (Henry 2011:9). Although Henry asserts this in the case of victims of rape specifically, I would argue this sentiment applies to all victims of the war.

A Road Map of My Thesis

Chapter 1 describes my entry into the field, introduces my fieldsite, Sanski Most, as well as my respondents, and discusses my methodology. Chapter 2 begins with a brief critique of media distortions surrounding the Yugoslav wars and reductionist explanations which deem the conflict an inevitable revival of latent “ancient ethnic hatreds.” To better understand how recent history impacts the Yugoslav crisis, I overview a chronology of the Balkans from the mid-20th century onward. I discuss the multiple alliances and divisions created during World War II, the unification under Tito, and the rising nationalism and manipulation of ethnic identity that led to the splintering of Yugoslavia. Then I discuss the outbreak of conflict in the early 1990s and implications of “ethnic cleansing,” with a focus on Bosnia’s fragmentation among its three largest ethnic groups: Bosnian Serbs, Bosnian Croats, and Bosniaks (Bosnian Muslims). Finally, I survey the aftermath of the war, concentrating on the Dayton peace accords, which ended violence but in many ways legitimized the wars’ ethnic segregation by partitioning Bosnia into two entities. I also introduce the formation of the ICTY, a mechanism of transitional justice
developed by the international community to prosecute leaders who committed the most egregious war crimes.

Chapter 3 explores the rise of “neoliberal human rights” as an offshoot of political and economic neoliberalism through the global spread of universal human rights discourse. I map this transnational flow through “the rule of law movement,” a term I borrow from Kamari Clarke to describe the implementation of contemporary human rights discourse through legal avenues. The growth of human rights has facilitated the emergence of transitional justice, leading to the establishment of formal tribunals, from the Nuremberg Tribunals of World War II, to the creation of the ICTY, and most recently, the International Criminal Court (ICC). I overview frequent concerns with the structure and purpose of such transitional justice mechanisms, including the efficacy of punitive perpetrator-driven models, complications of translating collective guilt into individual responsibility, and questions surrounding who should arbitrate this process to ensure fairness yet also create local acceptance. I then discuss anthropologists’ critiques of legal pluralism and the calls to move from justice as a universal, static and internationally imposed concept to a fluid and dynamic process translated and transformed by local actors.

Chapter 4 discusses the manifestation of the neoliberal human rights standards most pertinent to the wars in Yugoslavia, the ICTY. I begin with a brief review of the tribunal’s goals and objectives. The ICTY targets the highest level actors in hopes of individualizing guilt and avoiding collective responsibility for entire communities or ethnic groups. Through this transfer of accountability and end of impunity, the ICTY hopes to deter future crimes, provide justice for victims, and promote lasting peace in the region. However, all my respondents found the ICTY falling short of its professed mission. In addition, I review other criticisms of the ICTY,
particularly those that question it relying on local government compliance, dealing with mass atrocities as an individual crime, navigating the imposition of Western influence, and evaluating procedural fairness. I then review the limited research that has been conducted on local Bosnian perceptions of the ICTY, which suggests general dissatisfaction, concern about bias, and doubt that criminal trials can lead to social justice.

Chapter 5 argues that the Western approach to knowledge and understanding, especially the presumptions of universal truth, is detrimental to transitional justice in the former Yugoslavia. This approach neglects the ambiguities and multiplicity of local perspectives and formulations of justice, hindering acceptance of the ICTY and its efforts towards transitional justice. I start with Western perceptions of the Balkans as a space of ambiguity and incomplete transition, allotting it a perpetually stunted position in the implicit trajectory of modernity. I argue that the West’s preoccupation with triage reduces permissible notions of truth. This so-called “modern” universalist framework does not fit the Balkan particularistic society where rules develop within local contexts. Furthermore, I explore how this Western ideology can be seen as a “thought style” which remains stuck in its own rigid framework. The West’s interconnection of modernity and truth places its understanding as singular, objective, perfectly knowable, and most problematically, extractable from cultural context. I critique this detachment with an analogy to scholarship based in visual culture, arguing that people conceive justice dynamically within their cultural context. Increasingly, there is a global circulation of conceptions of justice and transfer of meaning where local residents participate in shaping the meaning of justice in BiH. However, the Western system which prioritizes rationality, efficiency, and process, ignores this global circulation and important local and personal values of justice, especially values that rest on spirituality.
Chapter 6 investigates how Western views are reflected in the ICTY, particularly the assumption that truth can be determined, that some evidence can be included and other discarded, and its dichotomous framework that leaves no room for ambiguity. I then discuss deconstructionist arguments that attempt to unmask the assumptions of these dichotomous systems that privilege Western ideas of rule of law over local conceptions of truth and justice. I then explore how the performance of power through the ICTY reinforces and privileges the narrative that it creates, drawing on the theories of Foucault and others regarding the interplay between truth and power. Such truth regimes can both reveal and conceal understandings of what constitutes justice. I continue to discuss what impact this narrow vision of truth, reinforced by the ICTY, has on retributive and restorative models of justice in the former Yugoslavia. For many local residents, truth is the most essential component of justice. However, because residents do not see the ICTY as reflecting their local experiences of past events or addressing the power and corruption in which they occurred, they do not see the ICTY promoting justice. To conclude this section, I suggest that mechanisms of transitional justice must better integrate the desires of their local constituents.

Lastly, I reiterate the need for an anthropological perspective in providing a deeper understanding of local notions of justice, particularly those that may fall outside the capabilities of a formal judicial system. The conclusion reinforces the need to bridge the international performance of justice with local experiences of injustice.
Chapter 1: Dwelling and Delving into the Past

Map 1: The Former Yugoslavia

Situating the Ethnographer in the Field

Before coming to the Balkans, nearly everything I knew about the conflicts of the early 1990s I had read in *Human Rights Quarterly* and various law review journals. Beyond the analyses of causes, statistics of atrocities, and visions of nation-building, my understanding of the human side of the war, the experiences of the actual people who lived it, was pretty much limited to Judy Collins’ “Song for Sarajevo,” recent films such as *Pretty Village, Pretty Flame*, 

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Yet as I studied in Belgrade for several months in the late winter of 2012, I began to realize that such accounts had hardly skimmed the complexities of war and the ways it was experienced and negotiated now, 20 years after the conflict. I wondered how residents continue to navigate their everyday lives in the wake of such widespread violence and destruction. Moreover, I came to the region particularly interested in transitional justice and the ICTY. I was especially curious about how young adults (those who lived through the war but were quite young when it happened) saw postwar reconciliation and healing, and what extent they saw the ICTY’s proceedings incorporating their sense of fairness.

Critics of the ICTY frequently point to its bureaucratic inefficiencies, lack of concrete evidence, difficulty locating the accused, excessive trial length, and skepticism regarding its fairness and impartiality (Nizich 2000-2001; Jeffrey 2009; Meernik 2003; Saxon 2005). However, while I knew academics had greatly debated the ICTY’s merits, the voices of the Balkan peoples, particularly the Serbs, who Euro-American popular understandings and scholarship often paint as the main aggressors, remained gapingly absent from the scholarship I encountered. To explore these questions, while I was in Belgrade I had informal conversations with Serbians ages 18 to 27 about their opinions on reconciliation after the wars of the 1990s and the ICTY. Many were students studying politics at the Belgrade Open School (BOŠ). Several were first year students at the Faculty of Economics in Belgrade. I also conducted two semi-structured interviews with a young couple Dali and Rada, the host family of a fellow American student. Rada works as a spatial planner, and her husband, Dali, is a lawyer from Belgrade who was a student leader during the October 5 student movement. My informants’ expectations of
justice after the war and their overwhelming discontent with the ICTY, which they articulated in these initial interviews, suggest that the ICTY has not fulfilled its promises in the former Yugoslavia.

All the Serbian people I spoke with felt that the ICTY had not targeted people fairly. Many felt that too much of the tribunal’s energies, and thus international blame, is disproportionately directed at one party involved in the conflict, the Serbs, even though all sides were at fault. Dali felt that the ICTY was blatantly biased, further asserting how the judges and court are politically motivated, “always saying that every Serb is guilty.” Moreover, many of the BOŠ students as well as Dali and Rada all felt to varying degrees that innocent people were swept in and forced to endure the brunt of others’ crimes.

In addition, they often pointed to the excessive trial length as a point of injustice. Dali pointed to Milošević, who died before he could even reach the end of this process of justice. Slobodan Milošević was indicted in May 1999 by the ICTY for crimes against humanity in Kosovo. Charges of violating the laws or customs of war, grave breaches of the Geneva Conventions in Croatia and Bosnia and genocide in Bosnia were added a year and a half later. The prosecution took two years to present its case, covering the wars in Croatia, Bosnia, and Kosovo. Throughout the two-year period, the trial was being closely followed by the public of the involved former Yugoslav republics as it covered various notable events from the war and included several high-profile witnesses. However, before a final judgment could be rendered, Milošević was found dead of heart attack in his cell on March 11, 2006 leaving a sense that he had escaped accountability.
Dali also criticized that the ICTY tried Milošević on the grounds of “common responsibility,” which he believed was impossible to prove. In addition, he found it unfair to hold “one leader guilty for every time a soldier committed a crime” in the former Yugoslavia since “he could not possibly have known about all the crimes taking place.” Such concerns with translating collective guilt to individual responsibility resonated with my own reservations.

Many Serbians also expressed discontent with the imposition of international authority through the ICTY. Many BOŠ students felt that because Western Powers imposed the ICTY on the Serbs, this was greatly to blame for its overall ineffectiveness. While the ICTY’s placement in “The Hague”did not arouse much concern, its lack of understanding for the Balkan context was frequently alluded to and even explicitly mentioned, usually followed with much discontent and skepticism. Many people in Serbia expressed complaints over the ICTY’s rules as arbitrary and “imposed” by outsiders who did not hold their own conduct accountable to the same standards.

There was slightly less agreement about international intervention, yet most people did not have a problem with it in principle. For example, Dail was “fine with the concept” of an international tribunal. However, he felt it was arbitrary in practice; only the “weaker countries like Serbia, Rwanda and Iraq” were prosecuted and held accountable for war crimes. However, “the big strong countries,” especially the United States, are never prosecuted. The students that I talked to from the Economic Faculty in Belgrade, particularly the student I interviewed, felt that it was not good for the international community to “interfere” in the 90s and that it “was not their job.” He thought that all efforts should come from within the country where the conflict took place. Thus, although the concept of international involvement was acceptable to some, many
Serbians were more critical of the actual process that had been employed, particularly the imposition of the ICTY.

Finally, I sensed an overall apathy and disinterest in discussing the war and transitional justice. I found this especially troubling. While most students I talked with seemed frustrated and disappointed with postwar efforts, Rada poignantly illustrated a much deeper trend of disenchantment, not only with the process of transitional justice, but also with the nation as a whole. Rada discussed her great disappointment that nothing ever really changes in Serbia. Thus, she explained, as a result of this stagnation she now tries “to accept things as they are” and “make” herself “happy within the current situation.”

Many people in Belgrade also voiced disappointment that “nothing changed” and that they cannot “see” any improvements in society, making me wonder if visible institutional change might be a critical component of “seeing” justice in the former Yugoslavia. An economics student I spoke with was quite skeptical as to whether Serbian society had healed after war. When asked why he responded, “because we’re a poor country […] that’s the truth” and “we have stupid politicians that try to steal everything.” Moreover, he did not think that “any help would work” in Serbia’s healing process. I also learned from my conversations with the students from the Faculty of Economics that they did not learn about the war in school and frankly found the topic uninteresting. An economics student explained that when he hears about war issues on television he immediately turns it off because he just “doesn’t care.” He continued, “You can’t change anything [now]” as the other students present in the conversation nodded in agreement. They all asserted it was better to “just move forward” rather than dwell in the past. This suggests that they believe it is best for society to move on with its future without remembering or writing its history. Perhaps for them, healing is forgetting.
While I was initially overwhelmed by the apathy and disenchantment I encountered in Belgrade, my conversations made me even more interested in seeking a deeper understanding of how the younger generations perceive the purpose and proceedings of the ICTY. I had heard some of what was missing, but what was needed? Were such desires even within the periphery of the ICTY? Moreover, these experiences began to illuminate a deeper question at the center of my curiosity: How do residents understand justice in the postwar context? Is this concept completely personal, or is there a general consensus? Where do residents’ notions overlap as well as diverge from Western ideas, particularly those at the core of current transitional justice initiatives in the region? The growing apathy I encountered in Belgrade made investigating these questions feel even more pertinent. Upon further reflection, I started to ponder if Bosnian residents felt this same disappointment and emptiness. Did they share any common visions on what justice should look like? Although Bosnia held a unique position in the war, since it was the main theater of conflict and suffered intense physical destruction, I wanted to explore whether similar discontents with the ICTY existed there as well.
Choosing a Location: Why Sanski Most?

Map 2: Bosnia and Herzegovina with Sanski Most Labeled (→)
With these questions in my mind, in late March I headed off to Sanski Most. Acquiring its name from the stunning river Sana that flows through it and the subsequent bridges that connect these two halves, Sanski (a form of Sana) Most (“bridge” in Bosnian/Serbian/Croatian) is a small town in the Federation of Bosnia and Herzegovina (BiH) located between Prijedor and Ključ. Ed Vulliamy, a British journalist and correspondent for the Guardian during the war, reports (1994) that residents described Sanski Most as the “city of flowers” (Vulliamy 1994:147). This seems quite probable given its fertile farmlands and long riverbanks speckled with beautiful flowers, which I enjoyed running along every day the spring I was doing research in town. While I was drawn to Sanski Most because of its unimposing beauty and “easy going” feeling, I had deeper reasons for picking the town for my fieldwork research.
Coined the “Miniature Yugoslavia,” before the war, BiH was the only republic not defined as the “national home” of one particular narod or people, but rather of three coexisting peoples, Bosniaks, Serbs and Croats (Bringa 1995:27). In many ways, Sanski Most was a microcosm of this supposed pre-war harmony. Before the war, this small town had a population of around 55,000, comprising of roughly 50% Bosniak, 40% Bosnian Serb, 5% Bosnian Croat, and 5% “Others” including those who self-identified as “Yugoslav” (Griffith 2011:21-22).

The violence that erupted in BiH in April of 1992 accompanying the breakup of Yugoslavia soon spread throughout the area. Sanski Most was first taken in 1992 by Bosnian Serb armed forces (Griffith 2011:21-22). Many of the Muslim residents were placed in camps, while the rest fled, often to Western Europe, particularly Germany, as well other parts of Eastern Europe such as Slovenia and Croatia (Asaki 2008:8). Sanski Most then became predominantly ethnically Serb, until it was retaken by the Bosniak Army in 1994 (Griffith 2011:21-22). Throughout these two cycles of what came to be known as “cleansing” countless residents fled their homes, left their lives, and lost their loved ones to internment camps and death. In the first cycle, when Sanski Most was taken over by the Republika Srpska (RS) army, many local Muslim men were sent to work camps and concentration camps. Just within the town of Sanski
Most, 2,500 men were taken to a local camp close to town, where the prison guards were often
the prisoners’ Serbian neighbors and even childhood friends (Vulliamy 1994:148). Vahid, the co-
director a local peacebuilding NGO, saw this type of cleansing as equivMarkot to genocide. He
once told me that “when 100 people were killed […] because they wanted to ethnically cleanse
that area, for me that’s genocide. If you kill one person because you want to ethnically cleanse, for
me that’s genocide, if it’s one or one thousand.” For Vahid the act of genocide transcended
sheer numbers, rather intent was its defining characteristic.

The Manjača camp, located near of Banja Luka was founded by the Yugoslav National
Army (JNA) and authorities of the Republika Srpska (RS) and was used to collect and confine
thousands of male prisoners of Croat and Bosniak nationalities (Sells 1998:16). According to
the International Committee of the Red Cross there were 3,737 prisoners held at Manjača camp
(Final report of the United Nations Commission of Experts May 27, 1994). However, the exact
number of people held at this camp is somewhat uncertain since detainees were continually
transferred between other camps including Omarska camp, Trnopolje camp and Keraterm camp
all near Prijedor in northwestern Bosnia. The camp was the site of human rights abuses, namely
the regular and systematic beatings and killings of detainees, resulting in indictments and
convictions by the ICTY United Nations tribunal for former Yugoslavia (ICTY 2012).

According to a report of the United Nations Commission on Human Rights, the administrators of
this facility who were officials of the RS army, maintained that the prisoners were “prisoners of
war.” When the camp was captured in 1995 by Bosnian authorities, some 85 corpses were found
associated with killings at the camp. Around 1,000 people from the Sanski Most area who were
deported to the Manjača camp are still missing.
As many of my respondents illustrate, residents’ conceptions of the space they inhabit has changed as a result of wartime displacement. This speaks to theories of emotion, place, and subjective experience. While Sanski Most was a huge center for many displaced Bosniaks after the war, the majority of the Serbian population that used to live in the town have yet to return (Boyd 1998:47). Hamza, a middle aged, soft spoken hotel manager and prison camp survivor with very kind eyes discussed how he felt living in Sanski Most after the war.

“It is a very specific feeling because before the war we didn’t have the feeling that someone wants to destroy our home country, but now we have this specific feeling and we really appreciate that—that we have our home country and no one wants to destroy it. The feelings have absolutely changed because we came back into a completely new country. The population of Sanski Most has changed. We aren’t working with the same people. The war resulted with the fact the population of Sanski Most has changed dramatically.”

Antonio continued to explain that before the war “Sanski Most was mixed,” but after the war, “local Serbs and Croats moved out of Sanski Most because of the war and other Muslim peoples came in, so it was a dramatic change.” He said the new population came to Sanski Most from 75 municipalities. However, just a small amount of Serbs and Croats came back after the war. Thus, as Hamza explained, today Sanski Most is a predominantly Bosniak town with population comprising of around 89.5% Bosniaks, 1.7% Bosnian Croat, and 9.5% Bosnian Serb (Griffith 2011:22). As Hamza suggests earlier in his statement, this significant change in population has also altered the way residents perceive the space.
My respondents also remarked on other postwar changes in the Sanski Most. As my translator Antonio explained, “After the war, Sanski Most was a very dynamic and lively town”. Similar to him and his family, many people came to Sanski Most from other towns after the war. However, Antonio continued that “After some years, people began to move out of Sanski Most to other towns or even to other countries. Today it’s very hard. There is a constant lack of opportunities. Young people are moving out to live in other countries. It’s very depressing and very boring.” Similarly, Ema, a cat-loving dentist with very long reddish brown hair shares very similar sentiments. She remembers that after the war, “there was some hope, talk that there would be some changes. There were lots of donations from other countries, but after a few years this stopped, and things got worse. Factories stopped after the war, and they’re still not working today.” “Now,” Ema remarked, “It’s very hopeless to live in this town. Because everything is just standing still, nothing is going forward. It’s just going to get worse I think. A lot of people are going to bigger towns and other countries.” Both Antonio and Ema describe how the space of Sanski Most after the war has a different feeling not just because of the population change but also due to the economic downturn.

Today Sanski Most continues to hold a complex position within Bosnia, geographically nearly straddling the border between the BiH Federation and the Republika Srpska (RS) (Asaki

<table>
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<th>Percentage of Total Population of Sanski Most</th>
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<th>After the War</th>
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<tr>
<td><strong>Bosniaks</strong></td>
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<td>89.5%</td>
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<tr>
<td><strong>Bosnian Serbs</strong></td>
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<td>40%</td>
<td>9.5%</td>
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<tr>
<td><strong>Bosnian Croats</strong></td>
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<td>5%</td>
<td>1.7%</td>
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2008:8). From what I observed, ethnicity is rarely (if ever) discussed in daily conversation. Although I knew that people of different ethnic backgrounds lived in town, I found it very difficult to tell which residents identified with which religion. The only visible marker of ethnic/religious identification that I was aware of were the hijabs that a few younger and middle aged women in town wore. These garments were wrapped tightly, so that no hair peeked out, making them noticeably distinct from the smaller and looser headscarves many of the older women often wore outside, particularly at the market. This suggests that some of the younger Muslim women may be more strict in their dress code than the older generation, illustrating how Islam can come in with a different force and rule of dress conduct.

Visible reminders of the war were not confined to the numerous bombed out building lining the main road between Sanski Most and Prijedor. The Hamza Bey's Mosque sits proudly in the center of town (see map 3). Its central location and daily calls to prayer often reminded me that the town was predominantly populated by Muslims. Yet, the story that surrounds its reconstruction is deeply embedded in the recent conflict. Historically, it goes back to 1557, when some claim the first mosque was built on its current location. However, nothing remains of the original building today. It was destroyed and damaged many times over the centuries. During the 1992 Yugoslav wars, it was razed to the ground, after its reconstruction eight years earlier. The current building was completed in 2000 and initially had only two minarets. The other two minarets were added in 2008, financed by a
stomatologist from Sanski Most in honor of his two brothers, who had been missing since they were imprisoned in the Manjača Camp in 1992. Miraculously, one of his brothers’ bodies was discovered only 13 days after the construction of the first (or actually the third) minaret started and the second body was discovered in the following month. The minarets stand as metaphors of the deceased. The space of the town is marked by a symbol of the war and the missing bodies, even after they were recovered.

“Our Way is Peace”

The tagline on the Center for Peacebuilding’s website, known as CIM for its Bosnian name Centar za Izgradnju Mira, is “Our Way is Peace.” This declaration offers a glimpse into the local non-governmental organization’s optimism as they work towards creating positive change in Sanski Most. This promise of a hopeful future, more than the town’s turbulent past, drew me to it. Since CIM’s establishment in 2004, it has been at the forefront of rebuilding trust and fostering reconciliation among the people of Bosnia by providing a safe place for constructive inter-ethnic and religious dialogue (CIM 2012).

Mevludin, the Co-Founder and Co-Director, is a trained peacebuilder and Imam, a leader within the Islamic community, from the ethnically divided city of Prijedor. Mevludin’s work as a local peacebuilder began in earnest when he became a father. Reflecting on the war, he explains, “I can’t imagine that these same events could happen to my own children. Through this peacebuilding work, I will try everything to change our past for a better future.” His family, friends, and community are at the center of his actions and values.
Vahid, the other Co-Founder and Co-Director of CIM, is a professional trainer in nonviolent communication and conflict resolution and also a certified Imam. He fondly remembers, “I had a beautiful life before [the] war full of love and everything I needed I had.” Then he explained: “Literally one day, we learned Serb forces were placed all over the place. At the last minute, to escape […] we took [the] last train out of village, and ended up in Slovenia.” They spent four years four months and four days in a refugee camp. During this time, Vahid heard that his village was attacked, and nearly 200 women and children were killed. The men were sent to “concentration camps.” As he put it, “They destroyed everything.” This was especially painful because nearly everyone in the village was related and Vahid’s whole family was from that village. He recalled that “every second living in Slovenia was very painful. My dream was always to come back.”

Vahid returned to Sanski Most in 1996, and then he spent three years “rebuilding”. For him coming back to Sanski Most was “really coming back home”. For years he refused to leave at all, even to visit Sarajevo. He reflects, “I felt I’d been taken out of my roots, and then coming back was like placing my roots back where they belong, to the soil that’s most nurturing and most comfortable for me.” When he first returned, he believed that revenge would relieve him of his anger and heal the scars he carried from the war. When Vahid discusses the importance of soil and roots in one’s place, this evokes a feeling of national belonging connected with territory and land. Since Vahid’s personal feelings of wartime injustice center on his local space, this same space must be encompassed in the performance of postwar justice.

However, from 1997-2002, Vahid experienced what he called a “personal transformation” while participating in interethnic dialogue and trauma healing sessions sponsored by an American organization. As he explains:
“[It] opened my heart and made me able to transform the hate and anger that was eating me up for years, to love, compassion and understanding. It taught me that this beautiful transformation was possible not only for me but for anyone who is brave enough to allow him or her to be vulnerable and go through a healing process.”

As Vahid’s powerful sentiments illustrate, acknowledging vulnerability is the starting point for healing. He now believes that reconciliation is the only way forward for his community and country. After his “personal transformation,” Vahid became more mobile, participating in the global flow and circulation of ideas. Before co-founding the CIM in 2004, in Vermont, Vahid received a Master’s degree with a concentration in Conflict Transformation and has attended peace workshops and trainings throughout the world, including in Switzerland, the Philippines, and Nepal, where he helped to found a peacebuilding organization. Vahid would often warmly remark that, “to live in Sanski Most now, it’s just a blessing. I’m grateful every second that I can live here without having my life jeopardized by anyone.” Despite his profound local attachment, he seems to have attained this personal “peace” in part through international travel.

I had the privilege of spending five days a week volunteering at CIM, getting to know the staff and the work they do. This provided an essential practical reality to my anthropological inquiry surrounding justice. My colleagues at CIM also helped me connect with residents in the community. I was fortunate enough to meet many people willing to share their thoughts, experience and lives surrounding the ICTY and justice after the war.

**Approaching the Question of Postwar Justice**

Before I started my formal interviews, I had an informal discussion with some students from the Volunteer Club, a youth group hosted by CIM. The volunteer club engages local youth
from Sanski Most and the surrounding villages, currently allowing CIM to work with a group of fifty high school and college-aged citizens (CIM 2012). The club provides CIM extra capacity in implementing projects, and more importantly, gives these youth the opportunity to develop leadership and conflict resolution skills in a small town that has few extracurriculars and high unemployment (CIM 2012). One volunteer, who has worked with CIM since graduating university, described the club as helping youth to “be the creators of social change in our community.” Since CIM’s founding, a total of 300 youth have participated in the local volunteer club (CIM 2012).

Seated in a circle with the five youth in CIM’s cozy living room, I tentatively began to ask the group about the ICTY. At this point I had no list of questions written, only an idea in my head. I was curious about how they saw the ICTY and understood justice, particularly in the post war context. Yet, I was very unsure how to approach these topics, especially without imposing my own views or asking questions in a manner that would presuppose my own ideas, rather than allow space for their own views to shape the conversation.

We began discussing Sanski Most after the war. There appeared to be a strong consensus that things were “worse” after the war, compared to before the war. As one young woman asserted, there is “still difference” and they “can’t find conclusion.” My colleagues said now it is more important to make the work together, to make the economy work again, since the war destroyed most of the infrastructure. As another young woman succinctly put, “[it’s] not important who started [the war], the fact is that nothing works.”

Then we moved to the ICTY trials. As one young man offhandedly offered, “If they punish them, cool.” Another young woman immediately added, “Punishment is important for the
“humankind.” “But,” she continued to assert that more than punishment “we must move on.” The girl next to her nodded vigorously, elaborating that it is important to “not forget, but move on” so as to “not lose time.” Later in the conversation the same young woman explained that a large part of the problem was that “Serbs don’t wanna move on.” Yet I found it interesting that this same call to stop fixating on the past and instead move on with the future was also the prevailing sentiment I had encountered from young people in Belgrade. Another young woman added that the older generations on all sides “don’t trust each other.” Towards the end of our discussion about the ICTY they told me “Everyone knows what they’ve done.” In reference to the many war crimes that occurred in and around the town, they lamented that it now has been a “long time” and still, “nothing special happens.” They continued, “We’re not getting attention we should. Attention to appreciate lots of victims. That it all happened on our territory.” This conversation helped me identify several themes to explore further as I began crafting my interview questions: the importance of punishment, the repeated need to “not forget, but move on” or perhaps “forget and move on,” and the desire for visible change within the local space of injustice.

**Centering the Conversation: Present Voices and Missing Noises**

I tried to be as inclusive as possible when looking for respondents. I was open to talking to anyone who was willing to share their opinions and experiences with me. My choice was primarily shaped by recommendations from CIM staff and referrals from the people interviewed, ultimately hoping to get a random sampling of people, as a means to explore the ICTY held by residents of Sanski Most. I also tried to seek out people who were aware in some capacity of the ICTY and felt comfortable articulating their views on justice.
During my formal research period, which lasted one month, while living in Sanski Most I interviewed 15 people who were mostly young adults, but did range between the ages of 18 to 52. The gender distribution among my respondents was quite balanced, comprising 8 women and 7 men. I met with religious leaders from three of the major communities: a Muslim Imam, an Orthodox priest, and a part Croatian Evangelical pastor. I also talked to people from a variety of professions: a radio announcer, hotel owner, forensic anthropologist and peacebuilder, as well as university students studying variety disciplines such as economics, dentistry, psychology, and history. Please see Table 2 for more detailed information on my respondents.

Although inquiring about a respondent’s ethnicity is a common background question, and I originally did not critically consider its implications, Vahid encouraged me to resist the urge to ask people and instead to “see how they choose to introduce themselves.” The people and culture at CIM reinforced his precaution. CIM staff and volunteers (especially the younger generation) seem fed up with old ethnic/religious categories and now reject such exclusive labels, moving instead to a more nuanced understanding of identity. Such notions of identity have helped to create a NGO culture which seeks to transcend simplistic stereotypes and classifications as well as the sordid connotation that ethnic labels have taken on in contemporary Bosnian postwar society. From my experiences at CIM, I came to realize that directly asking someone their ethnic/religious identity is not only deeply personal and potentially intrusive, but also forces them to conform to problematic labels they may no longer endorse. As a result of my newfound awareness and increased sensitivity, I never directly questioned my respondents about their ethnicity. However, some of them chose to identify themselves using such labels during various points in our conversations.
While I had hoped to get as representative a sample of people as possible, there were certainly limitations. Unfortunately I was unable to talk to religious leaders from the catholic community. At the same time, nearly everyone I interviewed was well educated and held a university degree or was in pursuit of one. However, a significant part of the town is involved in agricultural activities and works on farms. Also, Sanski Most has an enormous Diaspora population, especially during the summer, and it would have been interesting to hear their voices and perspectives as well. Finally, while the people I interviewed did range in age, I had hoped to get a little more diversity since most of my participants were in their mid-20s to mid-30s and no one was above their early 50s.

Developing a Methodology

Before coming to the Balkans, I had some exposure to a journalistic style of interviewing from morning NPR radio broadcasts and the local evening news. Such interchanges often seemed like an attempt to verbally pin down the respondent by appearing to know everything already (Leech 2006:665). The questions asked are always direct and are posed with a particular outcome in mind. I was certain this was not the approach I wanted to take in Sanski Most. Instead, although less familiar, I hoped to follow an ethnographic style of interviewing where I would do my best to enter into the world of my respondents by learning what was important from them instead of fishing for responses to support my own preconceived ideas. While unstructured interviews used by ethnographers are often more conversations than interviews, with even the topic of conversation subject to change as the interview progresses, I believed I would need something a bit more focused to gain enough substantial information specifically
about justice and the ICTY with only a month devoted to research. As anthropologist Beth Leech (2006) suggests in regard to unstructured interviews:

“These ‘soaking and poking’ experiences are most appropriate when the interviewer has limited knowledge about a topic or wants an insider perspective. But the tendency for such interviews to wander off in unexpected directions—although they may provide for fresh ideas—almost guarantees that the interviews will not be a very consistent source of reliable data that can be compared across interviews” (665).

Other times, if a researcher already has a lot of knowledge about a topic and wants very specific answers to particular questions, they may be tempted to use response-structured interviews with closed-ended questions (Leech 2006:665). However, from my anthropological training, I knew that such closed-ended approaches can sometimes backfire when we assume we are familiar with an area, and end up asking the wrong questions in the wrong way or omitting an important response choice and imposing our own viewpoint. As Leech puts it, “We may find ourselves with reliable data that lacks any content validity” (Leech 2006:665).

With this flexibility and openness in mind, I decided to use semi-structured format during my interviews. I believed this semi-structure would provide detail, depth, and an insider's perspective, while at the same time allowing me to gain enough meaningful information to analyze with my limited timeframe in the field. While a structured interview has a formalized, limited set of questions, a semi-structured interview is flexible, allowing new questions to be brought up during the interview as a result of what the interviewee says (Lindlof and Taylor 2002). Thus in my interviews I had a general a framework of the themes I hoped to explore: justice, accountability, healing, and the ICTY. I prepared an interview guide ahead of time, with an informal "grouping of topics and questions that the interviewer can ask in different ways for different participants" (Lindlof and Taylor 2002:196). This interview guide helped focus my
interview towards topics relevant to my research question without constraining it to a particular format. This freedom allowed me to tailor my specific interview questions to the particular context/situation, and to the people I was interviewing.

Some interviewing textbooks recommend that the interviewer "appear slightly dim and agreeable" (McCracken 1988:38) or "play dumb" so that respondents do not feel threatened or worried that they will lose face in the interview. Yet as Leech (2006) points out, this poses another danger, especially when dealing with a highly educated, positioned, or experienced respondent who may feel they are wasting their time. Moreover, in my own opinion, such misleading and elusive practices also implicitly diminish respondents’ agency and problematically establish the researcher in a position of power. Therefore as many researchers often do, I aimed for a middle ground. Concern for the feelings of my respondents’ was always paramount during my interviews. Yet, I never felt a need to feign ignorance or hide my educational background and familiarity with the region and conflict. I saw honesty as a mutual expectation; if I wanted honest responses then I needed to hold myself to the same standards and be honest too. Since I never saw my previous knowledge as superior to the understandings of my respondents, I always valued their thoughts and opinions even when they contradicted what I thought I “knew.” However, I always tried to avoid “presuming questions” which imply that the researcher already knows the answer, or least part of it (Leech 2006:666). In addition, because I tried to frame my interviews as conversations guided by certain themes, I always answered respondents’ direct questions honestly. However, I tried to insert myself as little as possible during our discussions, most often asking questions rather than providing answers, and only offered my opinion when it was specifically solicited, and always at the end of the interview.
Although the majority of the people I interviewed spoke fluent English, I also hired a translator to assist me. Upon Vahid’s recommendation, I asked Antonio, a 22 year old finance student with light thin-rimmed circular glasses and copious amounts of patience, especially when it came to my frequent questions and changing plans. He worked in the desk next to mine at CIM and we had been to lunch several times together with other CIM staff. At first, I mistook his quiet for shyness, but, as we became closer, I began to suspect that this reticence was more likely a result of his thoughtful personality. He had volunteered at CIM since October of 2011, but would soon be leaving to attend a prestigious finance graduate program in Denmark. He was born in a small town near Prijedor. He did not really remember when war began since he was just 2 years old. However, he knows stories related to him by his parents. His family moved out when war began, and they went to refugee center near Prijedor for about three months. They had heard rumors that the Red Cross was organizing safe transport out of BiH, but never received this assistance. Instead, they moved back to town where he was born and spent a year there. It was a very hard time for the family, since there was no food or electricity, and they were in constant terror from the Serbs. In 1993, they found transport with a Serb taxi driver to the border of Croatia. From there, they went to Germany since they had relatives living there. They stayed in Germany until 1998, and then they came back to Sanski Most. Their family had no real connection to Sanski Most before the war, but they moved back here because it was within the Federation territory (whereas their hometown near Prijedor is now part of the RS).

Many people were initially uncertain or shy about their English, so having a translator sit with us seemed to make them feel more at ease, and he often helped even the confident English speakers come up with a word or two during the interviews. Moreover, I actually interviewed Antonio very early on in my research. After the interview, I asked Antonio informally for his
thoughts on the experience, suggestions for improvements, and any other aspects that were unclear, confusing, uncomfortable, inappropriate, etc. We also went through each question and discussed how it might be translated. Although my questions made sense in English, some concepts did not coherently translate verbatim to Bosnian. I am extremely grateful to have had this time with Antonio, not just because it strengthened my actual interview questions, but also because it helped bridge the gap inherent within the translation processes by fostering an open, collaborative relationship between us and mutual understanding of my research. I think it allowed us to be more on “the same page” logistically as well as build a deeper intellectual understanding of one another, which further enhanced our trust and collaboration in future interviews.

Antonio provided me with some especially useful insights on accountability. Because of our post-interview conversation, I realized that I had been approaching “accountability” from a very western perspective. He explained that “accountable” meant being responsible or in charge, but the idea of establishing what we call “accountability” for past war crimes was a new and confusing concept. Although I continued to attempt to ask people about “creating accountability after the war,” I was always surprised to find it did not seem to be of much concern. Upon further reflection, I think this imperative of establishing clear “accountability” was my own value that I unconsciously imposed into my interviews by consistently inquiring about its importance, even though people rarely brought it up on their own. Thus, I may have inadvertently made it seem more important than it actually was to many respondents, just because I kept explicitly asking them about it.

From the previous interviews I had initially conducted on perceptions of the ICTY in Belgrade, I learned that the subject of justice, especially in the context of the Yugoslav wars, let
alone the prospect of being “interviewed,” was potentially intimidating. As some suggest, I would often phrase initial requests as to "Talk with you" since I had heard this was often less threatening than “interview you” (Weinberg 1996:83). Likewise, as Leech suggests, I wholeheartedly agree that “It is possible to be honest without being scary” (2006:667). To do this, I would usually briefly explain my interests as a student researcher and always appear friendly and curious. Similarly, my less rigid and prescribed interview format felt more intimate and conversational, and consequently I hoped it would make my respondents more at ease. Moreover, I anticipated that a more relaxed atmosphere would make peoples more comfortable and willing to share their thoughts and even push themselves and me to together consider and reflect upon new topics. I put a lot of thought into the order I asked my questions as well. I sensed that in an interview I should probably move from the nonthreatening to the threatening (Weinberg 1996:85), or, as Leech more casually puts it, “Ask the easy questions first” (2006:666). Usually I did this by beginning interviews with questions about age, background, and occupation first, saving more personal topics for later on in the conversation.

Well aware that many of my questions touched potentially personal, sensitive and difficult subjects, I always reminded participants that it would be completely fine to stop the interview at any time or skip any question if they felt uncomfortable. Certain participants consented to being taped, after I assured them that recordings were exclusively for my own notes and reminded them yet again that anything we discussed was confidential.

During my first few interviews, I immediately noticed that people frequently struggled when I asked broad questions about very abstract concepts, perhaps most notably the definition of justice. Yet, I initially struggled with how to adjust my approach. After constantly revising and rewording my questions, and through a fortunate process of trial and error, I eventually
realized that it was often more effective to focus on practice rather than explicitly inquiring about meaning. As Anthropologist James Spradley suggests, it can be better to ask for *use* rather than *meaning* (1979:82). Thus, I tried to incorporate questions that aimed at exploring aspects of the meaning of justice in everyday local life, instead of searching for straight forward definitions. Within the multiple truths surrounding wartime experiences, such general, unanimous definitions do not exist. For example, I would ask questions more along the Ema of “Do you see justice in your community after the war? What is present or missing?” People were much more willing and able to discuss their local, concrete experience and from this I could extract more abstract ideas.

**Confronting the Reality of the Abstractly Tragic**

The necessity of approaching justice in a concrete experience, rather than as a remotely abstract concept, became intensely apparent about half way through my time in Sanski Most when I interviewed Selma, a 32 year forensic anthropologist, who was, as far as I know, the only Bosnian forensic anthropologist in the country at the time. I was ecstatic when I heard she was willing to let me visit her at work and do an interview, since I felt her perspective was vital to my research question. She worked at a desolate concrete building just a few miles out of town. My translator’s father agreed to drive us there from CIM in the late morning. Outside, the building looked far too average, too abandoned, too sterile. We wound our way across the large vacant lot. The serenity felt foreboding. We reached a small trailer, and Antonio walked in and soon a slender, serious woman in a white lab coat came out with him. As I suspected, she introduced herself as Selma.
Before my interview, she offered us a tour of the “facility.” We followed her into the main building, which reminded me of an old warehouse turned gymnasium, with row after row lined high with bunk beds of body bags in various states of coverage. Other remains were sprawled out over black tarps on the gray concrete, patiently waiting. The smell was staggering, especially mixed with the heat, like nothing I have ever experienced. As she began walking us through the stages of identification indicated by faded laminated photographs haphazardly taped to the left wall near the entrance, I was suddenly struck by the reality of where I was standing, what I was doing.

For the first time, this genocide I had been asking people about for weeks and studying for years, felt truly real to me. It was harshly tangible, unnervingly personal. Surrounded by these remains, lofty theoretical musings of justice felt irrelevant, even disrespectful. Those were just hypothetical ideas. This was real, real life. These were real people, with real families. And now they were all gone, forever. In some cases, Selma explained she did not know if certain piles of femurs and scapulas were even paired correctly; let alone the names of the people to whom they belonged. This loss, this emptiness, this reality, it was daunting. I had no idea what to do. Where to look. How to act. What to say. Everything felt wrong. And so began the next phase of my research in Sanski Most. To even begin to grapple with these past tragedies and explore where this community might go, I knew I needed to at least initially leave the comfort of academic rhetoric behind and look more closely at local experiences and the history of the region in which they are embedded. Thus, I turn now to a brief review of the historical context surrounding the Yugoslav wars.
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<td>Sanski Most</td>
<td>Muslim</td>
</tr>
<tr>
<td>Antonio</td>
<td>22</td>
<td>Finance student/CIM Volunteer</td>
<td>Sanski Most</td>
<td>Spiritual</td>
</tr>
<tr>
<td>Emina</td>
<td>33</td>
<td>Radio Announcer</td>
<td>Sanski Most</td>
<td>Muslim</td>
</tr>
<tr>
<td>Marko</td>
<td>24</td>
<td>Orthodox Priest</td>
<td>Sanski Most</td>
<td>Serbian</td>
</tr>
<tr>
<td>Hamza</td>
<td>52</td>
<td>Manager of hotel and restaurant</td>
<td>Sanski Most</td>
<td>Muslim</td>
</tr>
<tr>
<td>Petar</td>
<td>32</td>
<td>Evangelical Pastor</td>
<td>Sanski Most</td>
<td>Mixed Marriage</td>
</tr>
<tr>
<td>Ema</td>
<td>27</td>
<td>Dentist</td>
<td>Sanski Most</td>
<td>Believes in God, but not “very religious”</td>
</tr>
<tr>
<td>Iva</td>
<td>28</td>
<td>Political Science student</td>
<td>Sanksi Most</td>
<td>Mother Serbian Father Muslim</td>
</tr>
<tr>
<td>Berina</td>
<td>27</td>
<td>Director of company that sells medical devices and worked for 2 years as Junior Osteologist at ICMP</td>
<td>Sanski Most</td>
<td>Did not specifically identify, but I believe Muslim.</td>
</tr>
<tr>
<td>Vahid</td>
<td>36</td>
<td>Professional Peacebuilder, Founder and co-director of CIM. Certified imam. Psychocranial therapy specialist</td>
<td>Sanski Most</td>
<td>Muslim</td>
</tr>
<tr>
<td>Selma</td>
<td>32</td>
<td>Forensic Anthropologist</td>
<td>Sanski Most</td>
<td>Did not identify</td>
</tr>
<tr>
<td>Adin</td>
<td>28</td>
<td>History graduate student</td>
<td>Banja Luka</td>
<td>Atheist and humanist</td>
</tr>
<tr>
<td>Melisa</td>
<td>26</td>
<td>Studied psychology. Then started own cake baking/decorating bus</td>
<td>Banja Luka</td>
<td>Not religious</td>
</tr>
<tr>
<td>Dalila</td>
<td>28</td>
<td>Psychologist</td>
<td>Banja Luka</td>
<td>Not religious</td>
</tr>
<tr>
<td>Amar</td>
<td>29</td>
<td>School psychologist</td>
<td>Banja Luka</td>
<td>Radical atheist</td>
</tr>
</tbody>
</table>

1 I use pseudonyms out of respect for my respondents’ privacy and confidentiality, not to diminish any acknowledgement of their profound knowledge and insights. I will always be eternally grateful for their substantial contributions to my research.
i Judith Marjorie "Judy" Collins is an American singer and songwriter known for her eclectic music and social activism. In 1994, she became a spokesperson for UNICEF and again spoke out against the harsh realities of war with "Song Of Sarajevo", written prior to her trip to Bosnia and Vietnam. This song later appeared on her album All on a Wintry Night as “Song For Sarajevo” in 2000.

ii Pretty Village, Pretty Flame or in Serbian Lepa sela lepo gore which literally translates as "Beautiful villages burn beautifully" is a 1996 film directed by Srdan Dragojević that offers a bleak yet darkly humorous account of the Yugoslav Wars. The plot, inspired by real life events based on an article written by Vanja Bulić for Duga magazine takes place in the opening stages of the war. It tells the story of a small group of Serbian soldiers trapped in a tunnel by Bosniak forces. Through flashbacks that recall the pre-war lives of each trapped soldier, the film describes life in the former Yugoslavia and explores why former neighbors and friends turned on each other.

iii No Man's Land (in Bosnian Ničija zemlja) is a drama set in the midst of the Yugoslav Wars centered on two wounded soldiers, a Bosniak and a Bosnian Serb who are caught between their lines in the no man's land, struggling for survival. It is by Bosnian writer and director Danis Tanović and is a co-production among companies in Bosnia-Herzegovina, Slovenia, Italy, France, Belgium and the UK. The film won the Oscar for Best Foreign Language Film in 2001.

iv Grbavica is a 2006 film by Jasmila Žbanić about the life of a single mother in contemporary Sarajevo in the aftermath of systematic rapes of Bosniak women by Serbian troops during the war. It was released in the United Kingdom as Esma's Secret: Grbavica, and in USA as Grbavica: Land of My Dreams.

v Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms. Transitional justice is not a "special" kind of justice, but an approach to achieving justice in times of transition from conflict and/or state repression. By trying to achieve accountability and redressing victims, transitional justice provides recognition of victims’ rights, promotes civic trust, and strengthens the democratic rule of law. For more information, please see refer to the International Center for Transitional Justice, an international non-profit organization specializing in the field of transitional justice, at http://ictj.org/.

vi Belgrade Open School (BOŠ) is a non-for-profit, educational civil society organization founded in 1993. BOŠ contributes to the overall development of the society through additional education and training of agents of social changes, professional support to institutions, research and policy development in order to build a modern society based on democratic values. For more information, please see http://www.bos.rs/eng/.

vii Otpor! (Translates as Resistance! in English) was a civic youth movement that existed from 1998 until 2003 in Serbia, employing nonviolent struggle against the regime of Slobodan Milošević as their course of action. In the course of two-year nonviolent struggle against Milosevic, Otpor spread across Serbia and attracted more than 70,000 supporters. They were credited for their role in the successful overthrow of Slobodan Milošević on October 5, 2000.

viii Throughout the Balkans the ICTY is regularly referred to “The Hague”.

ix An Imam is an Islamic leadership position, often the worship leader of a mosque and the Muslim community. Imams may lead Islamic worship services, serve as community leaders, and provide religious guidance.
Chapter 2: Revisiting the Recent Past: Bosnia since World War II

Working as a freelance writer covering Yugoslavia's disintegration in the early 1990s, former Eastern Europe and Moscow bureau chief for the Washington Post Dusko Doder proclaims: “In a continent haunted by resurgent nationalism and political fragmentation, the unhappy territory of Bosnia is uniquely treacherous ground” (Doder 1993:12). Dodor sensationaly reminds us what many Westerners already assume: As in any culture, Bosnian history still lives to an extent in the minds of those who lived and learned about it, and their manifestations of remembrance continue to impact the country’s future. Anthropologists have argued that justice must be understood within its historical context before international intervention can address local atrocities and be able to decipher political interests (For example see Mamdani 2009). Thus, in the Bosnian postwar context, Balkan history should be critically considered. However, unlike Doder, we must resist the urge to essentialize the region to mere fragments of the conflicts that have occurred within it.

To understand the complexities of justice in postwar Bosnia, it is critical to provide a basic overview of the events that occurred; precisely the events that international judicial mechanisms currently seek to address. However, providing a comprehensive and objective account of wartime events poses quite a challenge, since many “facts” are still being contested and citing various statistics and historical atrocities became a popular tool of nationalist propaganda, particularly during the 1990s. When the Dayton Peace Agreement ended the physical conflict in BiH in November 1995, Kovačević Miladin remarks how another war began: a media war. From the very beginning, this war had an international character. In June 1993, questions surrounding the number of war victims (killed and missing) exploded when Bosnian
politician and academic Haris Silajdžić stated that there had been 200,000 dead among the Muslims (Miladin 2005). This figure uncritically became the basis for later media and local "empirical truths" on the number of victims (Miladin 2005). Particularly in light of Yugoslav experiences during World War II, the focus on the “numbers” of victims remains towards the forefront of contemporary disagreement.

The events that occurred in Bosnia following the spring of 1992, have too often been mischaracterized as inevitable expressions of latent “ancient ethnic hatreds.” Dusko Doder exemplifies this problematic oversimplification when writes in the journal of Foreign Policy:

“The lands of the Yugoslavs have long been haunted by conflict. Ever since Emperor Constantine decided to split the Roman Empire in the fourth century A.D., the tectonic plates of imperial, religious, and racial interests have ground together in the Balkans. Rome and Constantinople, Catholicism and Orthodoxy, Christianity and Islam, Germans and Slavs, Russia and the West-all have clashed along a shifting fault line running down the middle of the former Yugoslavia (or, more precisely, through the territory of today’s Bosnia-Herzegovina)” (1993:5).

Similar sentiments also resonate with journalist Robert Kaplan’s less abrasive Balkan Ghosts: A Journey through History (1993). As Doder moves through his carefully selected narrative of Balkan history, he settles on the onset of World War II, connecting it with the Yugoslav wars of the 1990s, during which he wrote. As World War II broke out in the Balkans, Dodor argues: “What followed can only be described as a savage religious and tribal war similar to the one being fought now” (Doder 1993:10). He continues, “Acting in the name of preserving their nations and faiths, Serbs and Croats conducted a holy war trying to exterminate each other. […] The widespread use of the knife as the instrument of death revealed the depth of their tribal hatreds” (Doder 1993:10). While such sensationalized and essentialized explanations may have
been popular among journalists reporting during the Yugoslav wars, they are quickly losing ground to more nuanced analyses of the conflict.

There is significant and growing list of scholars who disprove such claims of Balkan tribalism and ancient ethnic hatreds as a viable explanation for the outbreak of the Yugoslav wars (For example see Siber and Little 1997; Jovic 2001; Tuathail and O’Loughlin 2009; Malcolm 2009). As British historian and political columnist Noel Malcolm argues, “these animosities were not permanently built into the psyches of the people who lived in Bosnia; they were products of history, and could change as history developed” (Malcolm 2002:xxi).

Therefore, the conflicts in the former Yugoslavia during 1990s cannot be reduced to simply “a savage religious and tribal war.” Deconstructing such Western frameworks, Bulgarian historian and philosopher Maria Todorova (1997) examines the ways Europeans perceived Balkan peoples, analyzing how a centuries-old discourse has enabled politicians and journalists to portray numerous wars as a function of blood-lust, backward-looking people, and primordial traditions (Todorova 1997:3). Scholars, politicians, and journalists too often locate the cause of Balkan strife in the irrational character of the groups involved, refusing to consider that their actions could have had any rational goals. These misrepresentations, particularly of the Yugoslav crisis, by Western press and scholars deny the peoples of the former Yugoslavia agency and responsibility for their own actions (Jusdanis 1998). In attempt to help unpack these loaded assumptions of ancient ethnic animosities, I think it will be useful to provide a slightly more nuanced picture of the Balkans’ recent history, particularly as it relates to the conflicts during World War II through the mid-1990s.

While latent ethnic hatreds are not a viable explanation for the conflict of the 1990s, scholars continue to assert that history serves a pertinent role in contemporary Balkan society. As
Goran Jovanović remarks, “History functions in the Balkans as an invisible hand and puts constant pressure on the collective unconscious” (Jovanović 2000:283). History proves that ethnic hatreds are constructed. But, more importantly, history creates a frame of reference for those involved, especially nationalists and patriots who maintain that ethnic distinctions matter.

Finally, it is important to keep in mind that while I am providing a brief overview of key actors and events, history in the former Yugoslavia, like everywhere else, is much more than names, dates, and chronologies. As sociologist Iwona Irwin-Zarecka, who focuses on collective memory, reminds us:

“We cannot restrict our inquiries to tracing the vicissitudes of historical knowledge or narratives. We must also, and I believe foremost, attend to the construction of our emotional and moral engagement with the past. When looking at public discourse, this translates into questions about how the past is made to matter” (Irwin-Zarecka 2009:7).

As I will discuss in later chapters, history and collective memory create a paradigm to understand and evaluate events, since people’s sense of place is tied to history. Who controls the dominant narrative of past events shapes the contemporary paradigm in which they are not only remembered, but subsequently dealt with through mechanism of justice. A failure to incorporate local understandings and values can be a fatal flaw. Such a framework is particularly important when one considers the relationship between history and contemporary understandings of justice in the Bosnian post-war context.
Shifting Alliances: Occupation and Resistance during World War II

With the onslaught of World War II, the region became marred by both external military occupation and internal strife. World War II in the Balkans was a tangled pile of many wars: the initial one of the Axis Powers against Yugoslavia and its resistance movements; simultaneous conflict between Croatian extremists and Serbian populations in Croatia and Bosnia; and, finally fighting between the two main Yugoslav resistance groups, the primarily Serbian Četniks and Communist Partisans (Malcolm 2002:174).

Once Nazi forces conquered the Kingdom of Yugoslavia, all of Bosnia was ceded to the Nezavisna Država Hrvatska (NDH) or the Independent State of Croatia (Malcolm 2002:174-75). The NDH rule over Bosnia led to widespread persecution of many groups, particularly Bosnian Serbs (Malcolm 2002:175-76). Aligned with the Nazis, the fascist Croatian Ustaše regime sent several hundred thousand Serbs, as well as other “non-desirables,” to their death in Ustaše-run concentration camps or in widespread mass killings by Ustaše militia (Bringa 1995:23; Malcolm 2002:175-76).

In response to the NDH’s policies, many Serbs enlisted in organized resistance movements to drive out Ustaše forces (Malcolm 2002:176). There were two main resistance groups in Bosnia with differing ideological aims: the Četniks and the Partisans. They both fought against Axis powers, but would also occasionally team up with the Axis forces against one another (Malcolm 2002:182-83). With the forces under his command, army colonel, royalist and
patriotic Serb Dragoljub “Draža” Mihailović formed the group he named “Četniks”, beginning active resistance against the Germans (Malcolm 2002:176-77). Other local Serb groups sprang up calling themselves by the same name, but they had little connection to Mihailović (Malcolm 2002:177). Among the leading Četniks were several frenetic Serbian nationalists, notably Serbian lawyer and politician Dragiša Vasić and Bosnian Serb lawyer Stevan Moljević who advocated for a Greater Serbia (Malcolm 2002:178). Moljević drew up a memorandum describing the “fundamental duty” of all Serbs “to create and organize a homogeneous Serbia, which must include all the ethnic territory inhabited by Serbs,” which included parts of Bosnia inhabited by Bosnian Serbs. While many Četnik resistance groups actively espoused this type of virulently anti-Muslim rhetoric, there is no definitive evidence that Mihailović himself ever called for “ethnic cleansing” (Malcolm 2002:179). However, as Serb resistance against the Ustaše grew, certain Četnik and other local Serb groups massacred thousands of Muslim civilians, especially from 1941 to 1942 (Bringa 1995:23; Malcolm 2002:187). Josip Broz Tito led the second resistance organization: the Communist Partisans. The Partisans did not have an explicitly ethnic focus and recruited from various resistance groups (Malcolm 2002:184-85,187,191). They too, committed numerous atrocities during World War II, mainly against political opponents.

During the conflict, members of all three ethnic groups engaged in fighting and violence against other groups. Throughout the war, the toll of human life was tragic on all sides. According to Toni Bringa “Several hundred thousand Serbs died in Ustaše-run concentration camps” (Bringa 1995:23). Likewise, “Tens of thousands of Muslim Civilians in eastern Bosnia, in particular, were massacred by Serbian nationalists or Chetniks” (Bringa 1995:23). Perhaps most indicative of the interior strife was that despite the brutality of the Axis forces, “more
people in Yugoslavia were killed by 'fellow Yugoslavs' than by Italian and German occupational forces” (Bringa 1995:23).

**Tito’s Yugoslavia: Beyond Suppressed Animosities and Multiethnic Utopias**

On April 6, 1945 the Partisans captured Sarajevo and their military successes eventually prompted Ally support (Malcolm 2002:191). The end of the war resulted in the establishment of the Federal People's Republic of Yugoslavia, with the constitution of 1946 officially making BiH one of six constituent republics in the new state (Silber & Little 1997:26). With the end of the war in 1945, the charismatic Partisan hero Josip Broz Tito emerged, adroitly constructing a harmony in the region that would live only as long as the leader himself.

However, Tito’s federation attempted, but did not fully succeed in providing citizens the space to forgive or forget the violence and loss from World War II (Bringa 1995:23). While Tito is often credited with bringing internal peace to Yugoslavia, but, as Noel Malcolm asserts, “Power was more important to Tito than reconciliation” (Malcolm 2002:193). Yet, this may be a derivative of his western interpretation, linking Tito’s policies almost invariably to those of Stalin, at least during the early years. Although there were elements that resonated with such repressive policies, perhaps most notably Tito’s secret police force, residents I spoke with throughout the region routinely painted an almost mythical portrait of an idealized Yugoslav life. From university students to grandmothers to taxi drivers, countless residents described Socialist Yugoslavia as a
time of prosperity and joy. For example, a friend’s host mother, Adrijana, tells stories of seaside vacations, abundances of food and medicine and most of all, the comfort of deep reverence for their leader. When I asked Bojana, my own host mother, about her memories from Yugoslavia, with a large grin she described the huge Kras candy factory that she would always get chocolates from as a little girl. Jadranka, another friend's host mother, would remark on how everything was better in Yugoslavia since there were no problems. As she succinctly put, “Everyone got along and no one thought about the differences.” She had people of “all religions” in her family and it was “never a problem.” However, her husband Dragon once admitted that things in the country were better now than during Yugoslavia because “even if they were unhappy now, they had the right to be.” He wished there were “more social programs now like before, but he would not give up the democracy for that.” Thus, even though many people exhibited a type of “Yugo-nostalgia,” they did not always remember Yugoslavia in a completely idealized way.

“It's Hardly Yugoslavia at All”

The song “Lyla” by CocoRosie offers a contemporary nostalgic allusion to the slow decline yet abrupt breakup of Yugoslavia. As the song wistfully reminisces: “Where was I from you said/You guessed Yugoslavia/But it's not Yugoslavia/It's hardly Yugoslavia at all.” While Tito’s national policy of the 1950s promoted “Yugoslavism,” in the 1960s it began to change as Serbs, Croats, and Bosnians became recognized as equal nations within the federation, and Bosnian nationhood was formally established in the late 1960s (Malcolm 2002:198, 202). While
Bosnia was one of the poorer republics in the early 1950s, its economy recovered quickly through industrial development (Malcolm 2002:201-2002).

The Yugoslavian communist doctrine of "brotherhood and unity" was well suited for Bosnia's diverse and multi-ethnic society, and under this national policy of tolerance, Bosnia thrived culturally and socially (Malcolm 2002:201-2002). Many agree that the Yugoslav harmony, real or imposed, was challenged by changing economic conditions. Yet according to most scholars, the dissolution of Yugoslavia was the consequence of a complex interplay between a variety of economic and political circumstances. Scholars trace the breakup of Yugoslavia to the country’s stagnating economy, particularly the economic crisis of the early 1980s and the widening developmental gap between various republics and provinces (Jovic 2001:101-102). Such arguments follow that the more developed republics of Slovenia and Croatia sought independence in the hopes of increased economic growth (Jovic 2001:102). Arguably the economic crisis of the late 1970s and early 1980s triggered more intense political critique and discontent with the Yugoslav entity from various republics (Jovic 2001:102).

Few people seriously considered constitutional changes in the 1960s as Tito abandoned the unitarist approach and moved toward the notion of a Yugoslav commonwealth in which all ethnic groups were given home rule and the right to full national and cultural affirmation (Doder 1993:12). In 1964, Tito created yet another nation within his Yugoslavia: the Bosnian Muslim (Doder 1993:12). The Language Declaration initiated a mass Croat nationalist movement embraced by those voicing separatism (Doder 1993:12). The reappearance of the symbols of the Ustaše frightened the Serbs and revived memories of 1941(Doder 1993:12). Tito suppressed the Croat movement in 1972, but the Serbian population had already begun to become rattled (Doder 1993:12-13).
The 1974 Yugoslav constitution marked the climax of Tito's decentralization. It proclaimed the Yugoslav federation “a state community of voluntarily united nations and their Socialist Republics" and accorded sovereign rights to “nations and nationalities" in their respective and autonomous regions (Doder 1993:13). For Bosnian Muslims, the new constitution opened the prospects of a future nation-state. Their recognition as Yugoslavia's sixth nation 10 years earlier meant that the republic of BiH had a nation of its own, just like Croatia, Macedonia, Montenegro, Serbia, and Slovenia. The 1974 constitution fostered Bosnian Muslim national assertiveness, provoking an adverse reaction among the Bosnian Serbs in the post-Tito period (Doder 1993:13). Their loss of ethnic domination coupled with political liberalization marked a decline in the Serbs' share of political and economic power in BiH (Doder 1993:13).

Tito’s death in May of 1980 can be seen as the symbolic death of Yugoslavia since his ubiquitous cult of personality made him the personification of the state itself (Jovic 2001:112). While the communists still held the treadles of power, the Yugoslav League of Communists became bogged down in dispute (Doder 1993:14). The end of the Cold War helped accelerate the disintegration process in Yugoslavia (Doder 1993:14). After the end of the Cold War Yugoslavia lost its strategic non-aligned status between the two major world powers, and consequently could no longer procure the same amount of foreign political and economic support to which it had grown accustom (Jovic 2001:110). Moreover, democracy started to become a goal across Eastern Europe, but sometimes at the cost of larger unity. Regional Yugoslav leaders began to look to nationalism as a new source of legitimacy to maintain their power bases (Doder 1993:14). Moreover, as the republics moved to defend their own interests, nationalism continued to gain strength (Doder 1993:14).
In the crisis of the early 1990s, many republics outside Serbia began to advocate for constitutional changes, asserting that the federal system created by Tito no longer functioned adequately (Doder 1993:14). Slovenia and Croatia advocated for greater autonomy, proposing the creation of a confederate state (Doder 1993:14). Nationalist Serbian leadership viewed this plan suspiciously, perhaps seeing it as part of a larger alleged conspiracy against them purportedly masterminded by the Croat Tito and his first lieutenant Slovenian Edward Kardelj (Doder 1993:14). On the crest of a powerful nationalist wave, Serbian communist strongman Slobodan Milošević ascended to power in 1988 (Doder 1993:14). Likewise, in the 1990 elections, nationalist parties rose to power in all the republics, drastically overshadowing supranational voices (Doder 1993:14).

While there is a danger of oversimplifying Socialist Yugoslavia, particularly BiH, as a kind of “multicultural paradise,” it is essential not to fall into the trap of ethnic primordialism when discussing the outbreak of violence in the early 1990s (Gagnon 2004:xvii). Increasingly scholars, particularly in recent publications, completely discredit earlier claims of “ancient ethnic hatreds” (Malcolm 2002; Jovic 2001; Siber and Little 1997; Gagnon 2004), and instead look to different and more inherent causes. Gagnon (2004) asserts that elites, because of their control over resources (including economic, military, political, and informational), were able to use violence to try to create a particular notion of unity that did not exist before. Thus, the violence was used as a means of changing what it meant to identify as Serb, Croat or Bosniak, conflating ethnic identity and political position.

By the 1980s anti-Muslim sentiments were becoming an important part of Serbian nationalism (Malcolm 2002:205-06). Throughout the 1980s a revival of Orthodoxy also happened along with a nationalistic glorification of the Četniks (Malcolm 2002:206). Serbian
leaders’ disregarded the 1974 constitution, subsequently eliminating the autonomy of Vojvodina and Kosovo. This created a power shift that gave Serbia more control in the federal Yugoslav government, which the other republics met with growing discontent (Silber & Little 1997:73). The central government continued to weaken while militant nationalism grew apace (ICTY 2012). In response to this vehement Serb nationalism and automatic linking of Croats to Ustaše, Croatian nationalists began a stronger push for independence from Belgrade (Malcolm 2002:214). During this time, the Serb population outside of the Serbian republic was radicalized through a constant bombardment by media and local politicians of information about resurgence of “Ustaše” and “Islamic fundamentalists.” Certain Croatian government measures that were insensitive to local Serb inhabitants simultaneously exacerbated these growing fears (Malcolm 2002:217).

Croatia declared independence on the same day as Slovenia, but their withdrawal was not so bloodless. The sizeable Serb minority in Croatia openly rejected the authority of the newly proclaimed Croatian state. With the help of the Jugoslovenska Narodna Armija (JNA) and Serbia, Croatian Serbs rebelled, declaring that nearly a third of Croatia’s territory which they controlled was now an independent Serb state. Croats and other non-Serbs were expelled from its territory in a violent campaign of “ethnic cleansing.” Heavy fighting in the second half of 1991 witnessed the shelling of the historic city of Dubrovnik, and the siege and destruction of Vukovar by Serb forces.

As would later be the case in Bosnia, a significant number of the difficulties surrounding Croatia’s declaration of independence stemmed from the tension between ethno-nationalistic discourses and ambitions, which defined the state as an ethnically homogenous space (Griffith 2011:13). This sentiment was rooted in the assumption, explicitly expressed in a Memorandum
published by the Serbian Academy of Arts and Sciences in 1986, that “the ‘Serb people’ throughout Yugoslavia [were] a kind of primary entity, possessing a unitary set of rights and claims which transcended any mere political or geographical divisions” (Malcolm 1996:207).

Such aspiration for an ethnically homogenous “Greater Serbia” helped inform leaders such as Radovan Karadžić, a wartime political leader of the Bosnian Serbs, to pursue policies which would separate, by will or force, Bosnia’s ethnic communities (Griffith 2011:13; Tuathail and O’Loughlin 2009:1046).

This assumed entitlement based on which majority inhabits a particular territory provided the foundation for one of the war crimes committed in Bosnia from 1992 to 1995: “the removal by members of one group of another group from a locality they define as their own,” a process that became known as “ethnic cleansing” (Tuathail and O’Loughlin 2009:1045). By physically removing the “other” from a territory, ethnic cleansing gave “perpetrators […] a means to realize a political geography of security through separation and distinct boundaries” (Dahlman and Tuathail 2005:573).

Croatia and Slovenia's declarations of independence and the warfare that ensued placed Bosnia and Herzegovina and its three constituent peoples in an awkward position. This centrally located Yugoslav republic had a shared government reflecting a mixed (ethnic) composition, with the population of about 43% Bosnian Muslims, 33% Bosnian Serbs, 17% Bosnian Croats and some 7% of other nationalities. The republic’s strategic position also made it subject to both Serbia and Croatia attempts to assert dominance over large chunks of its territory (ICTY 2012).

A significant split soon developed on the issue of whether to stay with the Yugoslav federation, overwhelmingly favored among Serbs, or seek independence, overwhelmingly
favored among Bosniaks\textsuperscript{xi} and Croats. In 1991 several self-styled “Serb Autonomous Regions” were declared in areas of Bosnia that had large Serb populations. Evidence emerged that the JNA was being used to send secret weapons to the Bosnian Serbs from Belgrade.

By then the breakup of Yugoslavia was under way, and the partitioning of BiH among neighboring republics, a proposal discussed during talks between Croatian president Franjo Tuđman and Serbian president Slobodan Milošević, earlier in the year, remained a distinct possibility. Two Croat “communities” in northern and southwestern BiH, similar in some ways to the “Serb Autonomous Regions,” were proclaimed in November 1991. Radovan Karadžić, head of Bosnia’s Serbian Democratic Party, championed a declaration of sovereignty on October 15, 1991, which was followed by a referendum for independence from Yugoslavia on February 29 and March 1, 1992 (Malcolm 2002:228-31). In March 1992, in a referendum boycotted by Bosnian Serbs, more than 60 percent of Bosnia citizens (predominantly Muslim) voted for independence and Bosnia and Herzegovina\textsuperscript{xii} was proclaimed an independent state on March 3, 1992 by Muslim President Alija Izetbegović (Malcolm 2002:234).

Almost immediately, in April 1992, Bosnian Serbs rebelled with the support of the JNA and Serbia, declaring the territories under their control to be a Serb republic in BiH. Through overwhelming military superiority and a systematic campaign of persecution of non-Serbs, they quickly asserted control over more than 60% of Bosnia’s territory. Bosnian Croats soon followed, rejecting the authority of the Bosnian Government and declaring their own republic.
with the backing of Croatia. The conflict turned into a bloody three-sided territorial fight, with civilians of all ethnicities becoming victims of horrendous crimes.

**Bosnia in the Crosshairs**

The war was characterized by bitter fighting, indiscriminate shelling of cities and towns, ethnic cleansing, and systematic mass rape\(^{\text{xiii}}\) (See any of the numerous ICTY Verdicts, i.e. “ICTY: Blaškić verdict – A. The Lasva Valley: May 1992 – January 1993”). While the first casualty of the war is debated, significant Serbian offensives began in March 1992 in eastern and northern Bosnia. The Serb paramilitary forces, most notably Arkan’s Tigers, began to sweep across northeastern Bosnia, terrorizing local Muslims into flight and radicalizing local Bosnian-Serbs into “defending” themselves against their Muslim neighbors (Malcolm 2002:236-37). While local groups of “Serb Autonomous Regions” joined in and Milošević claimed these forces had no connection to Belgrade, other international reports and local testimonies suggest that the main conquest of Bosnia was achieved with significant support from JNA forces (Malcolm 2002:238, 242). Throughout the spring of 1992, the main opposition to the Serb invasion were Croatian paramilitary forces, which had merged with the Croatian Defense Forces, Hrvatske obrambene snage (HOS), during the 1991-92 war in Croatia (Malcolm 2002:240).

When Bosnia’s independence was recognized by the United States and the European Community (EC) in early April, 1992, the Army of Republika Srpska besieged Sarajevo, relentlessly hitting the city with snipers and heavy artillery from the surrounding hills until early 1996 (Malcolm 2002:263). During April a combination of paramilitary forces and JNA units attacked numerous towns with large Bosniak populations in eastern BiH, such as Zvornik, Foča,
and Višegrad.\textsuperscript{xiv} Most of the local Bosniak population was expelled from these areas, in a process now commonly recognized as “ethnic cleansing.”\textsuperscript{xxv} “Ethnic Cleansing” is the process or policy of eliminating unwanted ethnic or religious groups by deportation, forcible displacement, mass murder, or by threats of such acts, with the intent of creating a territory inhabited by people of a homogeneous or pure ethnicity, religion, culture, and history. Ethnic cleansing usually involves attempts to remove physical and cultural evidence of the targeted group in the territory through the destruction of homes, social centers, farms, and infrastructure, and by the desecration of monuments, cemeteries, and places of worship. The crimes committed during an ethnic cleansing are similar to that of genocide, but while genocide includes complete extermination of the target group as the stated goal, ethnic cleansing may involve murder only to the point of mobilizing the target group out of the territory. Hence there may be varied degrees of mass murder in an ethnic cleansing, often subsiding when the target group appears to be leaving the desired territory, while during genocide the mass murder is ubiquitous and constant throughout the process, continuing even while the target group tries to flee.\textsuperscript{xvi}

Within six weeks a coordinated offensive by the JNA, Serbian paramilitary groups, and local Bosnian Serb forces controlled roughly two-thirds of Bosnian territory. In May, the army units and equipment in Bosnia were placed under the command of a Bosnian Serb general, Ratko Mladić. During the months of April–May 1992, fierce attacks raged in eastern Bosnia as well as the northwestern part of the country. In late April 1992, with the aim of creating a pure Serb municipality, the SDS (Serbian Democratic Party of Bosnia and Herzegovina) that all Serb units executed a planned takeover of the Prijedor municipality in coordination with JNA. Serb authorities set up concentration camps and the first detainees were taken to the camp sometime
in late May 1992. These attacks also included areas of mixed ethnic composition, including Sanski Most (Vulliamy 1994).

Throughout much of the war, international inaction remained prevalent. Malcolm remarks how, “Few commentators and no politicians could devote any attention to what was happening in Bosnia; by the time they woke up to the existence of a war there, all they could see was a number of equally fierce-looking combatants fighting one another for equally incomprehensible reasons” (Malcolm 2002:239). Moreover, as Sociologists Thomas Cushman and Stjepan Mestrovic put: “[...] the response of the West to the crisis in the Balkans [has] been weak, indecisive and ineffective” (Cushman and Mestrovic 1996:1). Cushman and Mestrovic (1996) discuss the West's persistent rationalizations to justify its failure to intercede in the face of incontrovertible evidence of egregious crimes against humanity in BiH. In addition to the practical failings of the West, they also attack the West's moral relativism and the absence of a concerted and resolute stand amongst Western intellectuals and politicians condemning genocide. By early August of 1992, wide Western audiences could finally see the effects of war on the wider Muslim population as journalists and television crews came to Serb-run detention camps in northern Bosnia (Malcolm 2002:244). Reports emerged later that year showing that some camps were deliberately killing educated Muslims and leaders of local communities as well as systematically raping women (Malcolm 2002:245). Malcolm suggests that in large part as a response to these shocking images, Western powers mistakenly saw ethnic cleansing as a byproduct of war, understanding violence as a solely military rather than also political problem (Malcolm 2002:246). Subsequently, foreign powers focused their efforts on negotiating a cease-fire and humanitarian missions (Malcolm 2002:246-47). These small and
lightly armed UN forces were quite vulnerable to Serb troops, making Western governments very reluctant to adopt any policies that might provoke Serb retaliation (Malcolm 2002:247).

From the summer of 1992, the military situation remained fairly static. A hastily assembled Bosnian government army, together with some better-prepared Croat forces, held the front line for the rest of that year, though its power was gradually eroded in parts of eastern Bosnia. Fighting between Croat and Muslim militia forces in central BiH continued throughout 1993, in what some refer to as “freelance ethnic cleansing” and the conflict was particularly intense in Mostar (Malcolm 2002: 248-49, 254). The UN refused to intervene directly in the war in Bosnia, but its troops facilitated the delivery of humanitarian aid and later extended its role to the “protection” of a number of UN-declared “safe areas.” However, the UN frequently failed to enforce their mandates (Malcolm 2002:250, 256-57). This grave failure of Western intervention was epitomized by the Srebrenica massacre in the July 1995 killing, where more than 8,000 Bosniaks, mainly men and male teenagers, were systematically bused off to death squads by units of the Army of Republika Srpska under the command of General Ratko Mladić, while the small Dutch unit stood by helplessly (Malcolm 2002:264).

During April and May 1995 the fighting intensified in many parts of Bosnia (Malcolm 2002:261). In August and September 1995, NATO forces launched air strikes on Serbian targets after the Serbian military refused to comply with a UN ultimatum to remove artillery from the Sarajevo “exclusion zone” (Malcolm 2002:261). Further air strikes led to U.S.-sponsored peace talks in Dayton, Ohio, in November (Malcolm 2002:267-68). The agreement that resulted from those talks called for a federalized BiH in which 51 percent of the land would constitute a Croat-Bosniak federation, the Federation of Bosnia and Herzegovina, and 49 percent a Bosnian Serb
The Dayton Accords created a weak central state comprised of two entities, Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (the Federation). The Federation was then sub-divided into 10 cantons, or administrative units, loosely based on ethnic demographics of those cantons,16 and with a high degree of autonomy (Griffith 2011:14). When the Dayton Agreement officially ended the conflict in BiH on November 21, 1995, some argued that all three presidents at the time (Slobodan Milošević, Franjo Tuđman, and Alija Izetbegović) were viewed and/or portrayed (at least initially) as peacemakers (Ivkovich and Hagan 2011:22). Yet, the reality was that the Dayton agreement contained two almost inherently conflicting parts: one that divided the country into entities based on the territory captured during the war; and the other called for a unified nation with long-lasting peace (Ivkovich and Hagan 2011:8). The environment it created was not conducive to building peace (Eastmond 2010:5).
These entities were, as British Anthropologist Stef Jansen comments, direct results of the ethnic cleansing which occurred during the war. She explains, “Republika Srpska and the Federation of Bosnia-Herzegovina were founded on the expulsion and/or escape of over 90% of their inhabitants of undesired nationality, and the latter was itself largely unmixed into Croatian and Bosniac dominated zones” (Jansen 2006:179). The creation of territories whose boundaries were a direct product of military campaigns (Serb, Bosniak, and Croat) as well as the ethnic cleansing which resulted from those campaigns, significantly complicated the process and ability of individuals to return to their pre-war homes (Griffith 2011:15). However this return, as an objective of post-war Bosnia, was enshrined in the Dayton Accords as a means for “settlement of the conflict in Bosnia and Herzegovina” (Dayton Accords, Article 7). The Dayton Accords, building upon preexisting human rights rhetoric, granted Bosnians the right to return not only to their pre-war country, but to their pre-war homes as a means for “righting the wrong” of “ethnic cleansing” (Black and Gent 2006:23). Yet, while publicly stating return as policy priority, the Dayton Accords also in a sense legitimized the ethnic cleansing which occurred during the war through creating the two-entity political system.

These entities have created physical and political space for ethnic discourses and separation (Eastmond 2010:9). Perhaps this helps explain the “space of local injustice” which my respondents in Sanski Most frequently criticized. For example, when I asked Emina if she thought Dayton had promoted justice, she instantly exclaimed “No,” laughing as she emphasized again, “No way!” As I cocked my head slightly to illustrate mild confusion, she offered further clarification that “ethnic segregation” is not justice:

“If you just take a look at the statistics, that will be very clear for you. The numbers say that it’s not justice. The number of [the] population before and after [the] war, the
number of [the] population divided in ethnic divisions before and after the war. It [Dayton] was just an ethnic segregation and nothing else. And that’s not justice.”

She continued to explain the sense of restriction rather than freedom characterizing the Bosnia she lives in today:

“If I just crossed [the] border to [the] RS, it immediately changes. You cannot feel comfortable with the other ethnic division if they are there. It comes from experience. People are not equal in between Bosnia […] And that cannot be justice. [I] cannot live in [the] other country and feel like it’s my country.”

As many of my respondents frequently implied, or even outright asserted, Bosnia’s entities perpetuate ethnic exclusion and separation. As a result, residents must continue to live in this local space of injustice despite international transitional justice initiatives. Likewise, as geopolitics scholar Gearóid Ó. Tuathail and geography researcher Carl Dahlman contend:

“The more than two million persons displaced by the war not only lost their property but also their homes, communities and the personalized meanings they had built around home places…[and is] unlikely to be recovered by simple material repossession of property” (Tuathail and Dahlman 2006:246).

Through the example of returning displaced residents to their previous homes, Tuathail and Dahlman again reinforce the complexity of accommodating personal experience and meaning into institutionalized attempts to serve justice in postwar BiH.

Since the Constitutional framework created by the Dayton Agreement, BiH has followed a path of state-building, while remaining under final international supervision through an appointed High Representative (Malcolm 2002:253, 269-70). As of present, it remains a confederation of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, as well as the district of Brčko (Malcolm 2002:269).
For over a decade, there has been strong agreement in the international community that those indicted for war crimes in the former Yugoslavia by the International Tribunal at the ICTY should be brought to justice (Boyd 1998:49). However, international officials show less consensus on who should do the capturing or how taking leaders into custody would impact the already unpopular Dayton agreement among Bosnian Serbs (Boyd 1998:49). The ICTY was actually formed in 1993, before the end of the war in Bosnia, with the main purpose of punishing the offenders guilty of serious violations of international humanitarian law, deterring potential future offenders, establishing peace and security in the region and obtaining justice for the victims (Ivkovic and Hagan 2011:1). The ICTY targets the highest level actors of such crimes, indicting heads of state and other high and mid-level political, military and police leaders (ICTY 2012). It was established with the belief that bringing perpetrators to trial will deter future crimes, provide justice to victims and their families, and in turn, promote lasting peace in the region (Ibid). In February 22, 2001 the ICTY concluded for the first time that rape and sexual enslavement were violations of sufficient gravity to be considered “crimes against humanity” under international law (Boose 2002:71). By 2005, the ICTY grew into an organization with more than 1,000 employees from 79 countries and with an annual budget of $276 million (Ivkovic and Hagan 2011:1).

The tribunal also serves another less broadcasted function in the former Yugoslavia. It not only plays a role in shaping the region’s recent past, but in many ways is also writing its emerging history. As legal studies scholar Nicola Henry points out, the judgments of the ICTY make an important contribution to the collective memory of wartime violence (Henry 2011:2). Indeed, the law by its very design is fixated on memory, constructing a narrative of the past, and shaping collective memory indirectly through dictating and selecting the events that are to be
remembered (Savelberg and King 2007). Thereby the law shapes, selects, and institutionalizes the way the past is remembered (Markovits 2001). It accomplishes this through authoritatively declaring which crimes deserve international recognition and justice, and which crimes are to be relegated to the forgotten abyss of history (Henry 2011:2). In this way, war crimes courts represent a means to both forge a collective memory of the past and avert social amnesia (Henry 2011:2). As Henry explains, “the law is thus both a potent source and site of memory, but also a powerful arbiter of memory” (Henry 2011:2). At the very least, trials provide an important avenue for public debate, while international courts represent “monumental spectacles” or “moments of truth” because they provide, incite, and encourage historical interpretation and moral pedagogy (Osiel 2000:2-3). War crimes trials create a space for the airing of personal and collective memories of wartime terror and trauma. Ideally, these trials capture the public imagination by giving a voice to both victims and perpetrators, analyzing what constitutes guilt, attributing responsibility and vindicating victimhood (Karstedt 2009).

Yet, despite such benevolent humanitarian aims, the tribunal has undergone substantial criticisms, and for many fallen gallingly short of its lofty promises. One of the most familiar concerns is often voiced by Serbs throughout the region. As many of respondents from Belgrade illustrated in the previous chapter, many Serbs believe that ICTY’s indictment process is political, often citing how many more Serbs than Croats or Muslims have been indicted (Boyd 1998:51). Likewise, Adin, originally from Prijedor and still currently living in Republika Srpska, remarked: “The Hague itself was basically created by those who had some kind of political interest and were in Bosnia. They did take sides, sometimes not as much, sometimes a little bit more. So it has some kind of influence on how the system works.” I asked him which side they took. He explained, “Statistically, more Serbs [were] taken and indicted, but if you look at the
statistics of who were the victims from the war, it seems right in some way, since probably most of the war crimes were committed by Serbs, ‘statically speaking,’ because more of the victims were soldiers in the Bosnian Muslim army and Bosnian civilians.” He clarified:

“Everyone who was indicted by the tribunal had some kind of responsibility, I not questioning that. But it seems to me, it’s my impression, that [the] Muslim side had smallest number of people indicted even though it probably should’ve been somewhat higher. As far as the Serbs are concerned, it’s probably all true. But as far as the Muslim side is concerned, it seems to me that there’s maybe less people indicted than there should have been.”

However, regardless of the official “accuracy” of such statements or the strong protestations from the international community, as Charles Boyd, reflecting on his time as a reporter in Bosnia from August to September during 1998, asserts:

“Whether or not those suspicions are correct is almost irrelevant. If that is the perception, that is what Serbs will act on. If the process is to have the healing effect its proponents claim, it must be seen as fair, and for that to happen it must be explained in a much more plausible way than it has been thus far” (Boyd 1998).

Unfortunately nearly 15 years later, this warning still resonates with residents’ attitudes toward and understandings of the ICTY, yet appears to remain insufficiently heard by the international community. As I will discuss in the next chapter, a significant barrier to the ICTY’s success arises from international human rights neoliberalism and the subsequent emergence of a transnational “rule of law” movement. Such exports of justice carry implicit Western standards and ideals that do not necessarily mirror or even accommodate local Bosnian understandings and postwar realities.

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1 For more information on how statistical and demographic disciplines were exploited to support, if not prove, propaganda standpoints after the war, please refer to Kovačević Miladin’s "The weak points of statistical and
demographic analyses in estimations of war victims in Bosnia and Herzegovina in the period 1992-1995”.

\(^{ii}\) During this time, Greece and Bulgaria also had policies of expulsion towards their dreams of a “Greater Greece” or “Greater Bulgaria”.

\(^{iii}\) The Partisans also aimed at social revolution. Tito eventually became the leader of the Communist Party that ran Yugoslavia for many years after World War II. (Malcolm 2002:177).

\(^{iv}\) Some Serbian groups turned against local Croat and Muslim villagers whose acquiescence in NDH rule they regarded as collaboration (Malcolm 2002:176, 187). Consequently, several Bosnian Muslim paramilitary units joined the NDH forces, while other Muslim groups, notably in Sarajevo, condemned the persecution of all Bosnian citizens, including Serbs (Malcolm 2002:187). However, this pattern varied throughout the region and some Četnik leaders were appealing to tolerance and even support and collaboration with local Muslims (Malcolm 2002:187-88). Most often Muslims formed their own local defense units called the ‘Muslim Volunteer Legion’ and later the ‘green cadres’ (Malcolm 2002:188-90). Many Muslim political leaders saw some kind of autonomy for Bosnia as the only viable solution, so they wrote a well calculated memorandum to Hitler in November of 1942 for permission to expand the Muslim Volunteer Legion and place it under direct German control (Malcolm 2002:189). This newly formed Muslim division of SS troops, Handzar, were later stationed in northern and eastern Bosnia in 1944, where in that year they committed indiscriminate reprisals against the local Serb population (Malcolm 2002:189-191).

\(^{v}\) In the spring of 1963, the nation changed its official name to Socialist Federal Republic of Yugoslavia (SFRY) and Josip Broz Tito was named President for Life. In the SFRY, each republic and province had its own constitution, supreme court, parliament, president and prime minister. At the top of the Yugoslav government were the President (Tito), the federal Prime Minister, and the federal Parliament (a collective Presidency was formed after Tito’s death in 1980). Also important were the Communist Party general secretaries for each republic and province, and the general secretary of Central Committee of the Communist Party.

\(^{vi}\) In 1911 when the factory named UNION from Zagreb began to operate as the first chocolate maker in South-Eastern Europe. By 1950, a merger of UNION, BIZJAK, and other smaller confectioners from Zagreb took place. In that year the company got a new name, JOSIP KRAŠ, after an antifascist fighter and a distinguished leader of the workers’ movement of the time. In 1992, the socially owned company was converted into a public limited company under the name of Kraš.

\(^{vii}\) Yugo-nostalgia is psychological and cultural phenomenon occurring among many citizens of the former SFRY. While its anthropological and sociological aspects have not been clearly recognized, the term, and the corresponding epithet “Yugo-nostalgic”, is commonly used by the people in the region in two distinct ways: as a positive personal descriptive, and as a derogatory label. For more information on this phenomenon, please see Nicole Lindstrom’s essay on: “Yugonostalgia: Restorative and Reflective Nostalgia in Former Yugoslavia.”

\(^{viii}\) CocoRosie is a musical group formed in 2003 by sisters Bianca "Coco" and Sierra "Rosie" Casady who were born and raised in the United States, but formed the band in Paris. Their music incorporates elements of pop, blues, opera, electronica, and hip hop.

\(^{ix}\) The origins of the JNA can be found in the Yugoslav Partisan units of World War II. As part of the antifascist People’s Liberation War of Yugoslavia, the People’s Liberation Army of Yugoslavia (NOVJ), a predecessor of the JNA, was formed in the town of Rudo in Bosnia and Herzegovina on 22 December 1941. For more information on the JNA, please see Trifunovska, Snezana, Yugoslavia Through Documents: From Its Creation to Its Dissolution, Martinus Nijhoff Publishers, 1994.

\(^{x}\) In the summer of 1995, the Croatian military regained all but a pocket of its territory known as Eastern Slavonia. In a major exodus, tens of thousands of Serbs fled the Croatian advance to Serb-held areas in Bosnia and Herzegovina and further to Serbia.

\(^{xi}\) I use “Bosniak” instead of Bosnian Muslim. This change in designation is preferred by Bosniaks themselves and in recent literature in order stress ethnicity over religion. On the controversy over “Bosniak” identity, see Bohdana Dimitrovova, “Bosniak or Muslim? Dilemma of One Nation with Two Names,” Southeast European Politics 2, no. 2 (2001):94-108.
I will abbreviate Bosnia and Herzegovina (BiH).

The war in Bosnia was principally a territorial conflict, between three main armies: the Serb forces mostly organized in the Army of Republika Srpska, Vojska Republike Srpske (VRS), the Bosniak forces of Army of the Republic of Bosnia and Herzegovina, Armija Republike Bosne i Hercegovine (ARBiH), and the Croat forces in the Croatian Defense Council, Hrvatsko vijeće obrane (HVO). The Croats also aimed at securing parts of Bosnia and Herzegovina as Croatian (United Nations 2003). The Serb and Croat political leadership agreed on a partition of Bosnia with the Karadžordević and Graz agreements, resulting in the Croat forces turning against the ARBiH and the Croat-Bosniak war (Siber and Little 1997:185).

By this the Federal Republic of Yugoslavia, which claimed succession to the Socialist Federal Republic of Yugoslavia comprised of only two republics: Serbia and Montenegro.

The term “ethnic cleansing” gained widespread acceptance by the 1990s in academic discourse; despite originally being used by the perpetrators during the Yugoslav Wars, scholars now commonly use it to refer to “the systematic and violent removal of undesired ethnic groups from a given territory.” Please see Thum, Gregor (2006–2007). "Ethnic Cleansing in Eastern Europe after 1945". Contemporary European History 19(1): 75–81.


Please see This Time We Knew: Western Responses to Genocide in Bosnia (edited by Thomas Cushman and Stjepan Mestrovic) for a much more comprehensive exploration of Western inaction and rationalization for non-intervention in the face of media bombardment about the crimes against humanity taking place during the Yugoslav wars.

Article 13, section 2 of the Universal Declaration of Human Rights of 1948 states that “Everyone has the right to leave any country, including his own, and to return to his country.”

Homes in the context of the Dayton Accords mean physical locations. It was assumed that recreating ethnically diverse communities would recreate pre-war communities. This assumption overlooks the vast importance of social connections which were disrupted by the war, which need to be rebuilt, in addition to the rebuilding of physical structures which will allow for return (Black and Gent 2006:20).

Brčko District, in northeastern BiH, was established after an arbitration process undertaken by the High Representative for Bosnia and Herzegovina. It is formally part of both BiH entities, the Republika Srpska, and the Federation of BiH. The Brčko District was formed of the entire territory of the former Brčko municipality, of which 48% was in the Republika Srpska, while 52% was in the Federation of Bosnia and Herzegovina. After the war, the EU has maintained a diplomatic peace-keeping presence in the area.
Chapter 3: International Legal Pluralism: Towards a Critical Approach

Introduction: A New Age of International Law and Human Rights

The recent increase in international legal regulations has been accompanied by the movement of what can be understood as “neoliberal human rights.” In the political and economic realm, “neoliberalism” refers to the policies and processes whereby a relative handful of private interests are permitted to control social processes for their personal profit (McChesney 1999). It began as a political movement in the 1960s, coming of age with Ronald Reagan and Margaret Thatcher, and blended liberal concerns for social justice with an emphasis on economic growth. When the Eastern Bloc fell, neoliberalism became pervasive throughout the world. As geographer and anthropologist David Harvey concludes, near the beginning of today’s 21st century: “[Neoliberalism has] become hegemonic as a mode of discourse” (Harvey 2003:3).

As Harvey further argues, neoliberalism “has pervasive effects on ways of thought to the point where it has become incorporated into the common-sense way many of us interpret, live in, and understand the world” (Harvey 2003:3). Therefore, neoliberalism affects individual lives, as well as broader social and economic processes. Moreover, some scholars have claimed that the free trade policies associated with neoliberalism promote democracy. Scholars cite, for example, inflated education and wealth, which would prompt populations to demand an increasing voice and role in political participation and more accountability from their government (McChesney 1999).

Although neoliberalism is most often associated with free market economies, minimal governmental regulations regarding production, and the dismantling of tariffs and related international trade controls, it carries a set of values that emphasize individuality. Historian and activist Tariq Ali argued at the Human Rights and Neoliberalism Conference on March 2, 2007
that many of the most controversial foreign policy decisions pursued by the United States government in recent years have been defended as means of spreading democracy and realizing basic human rights. This has been an explicit attempt to reshape international governance, and to achieve human rights by conjoining them to neoliberal economic policies. Both the international human rights movement and the neoliberal economic imperative carry strong cultural assumptions interacting in complex ways (Ali 2007). Just as neoliberalism is associated with individuality, the Western world also emphasizes individual human rights, particularly those of democracy, freedom, and equality.

For example, organizations including the World Bank and the International Monetary Fund require nation states throughout the world to adopt human rights imperatives (which are presented as universal in structure, form, and purpose) if they wish to receive monetary aid. Such assistance also frequently stipulates the adoption of neoliberal economic practices, and in this manner, human rights and economic goals are yoked in processes with complex consequences. Indeed, imposing a universalist human rights agenda can prove quite problematic. As anthropologist Kamari Clarke has noted, “though human rights work continues to be an important ideal in the achievement of global rights and protections, we not only need to do it better, but we need to understand how universalism might challenge other forms of cultural diversity and innovation.”

Cultural practices vary greatly in terms of how different societies understand the individual’s role vis a vis his or her obligations and responsibilities to groups (family, religious, cultural, ethnic). Although efforts to spread universal human rights intend to build agreement about appropriate living conditions and proscribed behavior, those that do not engage in a critical dialogue with these cultural differences risk extending economic and political imperialism (Ali
There is a growing feeling among scholars that cultural assumptions have played, and will continue to play an essential role in the way international western powers influence global justice and institutions mandating international human rights reforms (Ali 2007).

One way that scholars have pushed back against growing transnational uniformity (particularly as it is arbitrated by legal mechanisms) is through a call for the recognition and value of legal pluralism. Legal pluralism recognizes the existence of multiple legal systems within one geographic area, not to mention throughout the globe, and has the potential to more effectively translate among and across cultures. However, scholars have begun to argue that even parallel legal processes do not operate with equal legitimacy and power. Thus, trends toward pluralistic legal systems frequently remain deeply problematic. Moreover, recent investigations into the efficacy of internationally imposed transitional justice mechanisms, such as war crimes tribunals like the ICTY, have exposed the gap between the promise and reality of justice (Henry 2011:9). This seems to confirm John Rawls’ (1971) proclamation regarding justice: that it is universal, inviolable, sacrosanct and morally imperative, but also fragmentary, incomplete, elusive and deeply personal.

As the ICTY’s trials begin to wind down, the tribunal’s advocates continue to assert the triumph of the rule of law over the impunity of war crimes in the former Yugoslavia. Rule of law is a rather ambiguous term depending greatly on its context. In the Western, particularly American understanding, it can be seen in a sense as rule under law, where no branch of government is above the law and decision makers are restricted from acting arbitrarily or unilaterally outside the law. Rule of law can also refer to a rule according to law; in this sense a strict accordance with a well-established and clearly defined set of regulations and procedures. Yet for some, particularly those with religious codes of ethics, this accordance must also resonate
with certain unwritten, universal principles of fairness, morality, and justice that transcend human legal systems.

The Spread of Human Rights Liberalism though Legal Regulation

There are different theories about how legal rules and concepts spread throughout the globe. Legal scholar Harold Koh explains that “Transnational law transforms, mutates, percolates up and down, from public to private, from the domestic to international level and back down again” (1996:184). In this way dynamic transnational legal processes are breaking down the traditional dichotomies of domestic and international, and public and private (1996:184). From this normativing process of interaction, new rules of law emerge, which are interpreted, internalized and enforced, thus beginning the process all over again (Koh 1996:184). In this sense, Koh sees the supremacy of international law as the principle modality for expansion of human rights values and practices.

Many anthropologists are aware and engaged with not only law’s increasingly international presence, but also the ways it operates transnationally. Kamari Clarke accounts for the current pace of this transnational spread through a process she terms “the rule of law movement” (See Clarke 2009). She sees the rule of law movement as the implementation of contemporary human rights discourse through legal avenues which attempt to rescue humanity from abhorrent violence. However, she criticizes the rule of law movement’s fixation on victims’ suffering, claiming this not only reduces their experiences to evidence in criminal proceedings, but inadvertently marginalizes and dehumanizes them (Clarke 2009:12).
Likewise Sally Engle Merry (1992) argues that transnational processes are becoming increasingly important in theorizing about the nature of local legal phenomena, describing how transnational processes shape local legal situations in a variety of ways, particularly in response to colonialism. Merry surveys local legal processes within a national and a transnational context and examines the possibilities of a revived theory of legal pluralism closely linked to questions of culture and power. When Merry discusses “culture and power,” she alludes to the historical presence of colonialism, and contemporary neoliberal (i.e. economic) imperialism.

As previously alluded to, the contemporary rule of law movement that Clarke refers to coincides with a particular shift in the spread of human rights through neoliberalism (Clarke 2009:46). The phenomenon of interconnected nation-state obligations and duties that gave rise to the moral impetus of international law (and the creation of the ICC) remains the moral force characterizing contemporary human rights discourse (Clarke 2009:46). One can trace the origins of the movement to the desire to punish World War II criminals. By the late 1980s “the rule of law movement” was expanding exponentially, giving rise to new institutions of social concern (primarily NGOs) and a more explicit concern for enforcing a set of global human rights (Clarke 2009:46). NGOs can be seen to function as coalition builders for international tribunals by reconfiguring and “facilitating the spread of global capitalism,” reinforcing the universal character of the new rule of law initiatives and human rights articulations (Clarke 2009:67). Thus the rule of law movement has emerged as another regime of knowledge and truth fundamentally entwined with economy (Clarke 2009:46). Likewise, neoliberalism is connected to governance through NGOs. Although NGOs function separately from Euro-American governments to some extent, through economic imperialism that results from neoliberal trade policies, Euro-American governments have developed stakes in foreign governments. NGOs are manifestations of this
economic imperialism that has been spurred by neoliberal economic policies. As a result of these contemporary global realities, the emerging rule of law movement, and the definition of justice it exports, is not uncontested or an equally exchanged concept. Rather such transnational practices of justice making are deeply embedded within complex power relations and do not easily transcend to such idealized universalist agendas.

**Approaches to Transnational Transitional Justice**

The end of the Cold War facilitated the emergence of “transitional justice”, paving the way for the establishment of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the International Criminal Court (ICC) as well as over 20 truth and reconciliation commissions (TRCs) and, more recently, the creation of hybrid or mixed tribunals (Costi n.d.:1). Thus, for the past few decades, a major focus of the emerging international law and human rights movement has been responding to international conflict, especially war crimes.

The field of transitional justice draws on the slow development of international humanitarian law and can be differentiated into three generations. It begins with early efforts to prosecute war criminals, most famously at Nuremberg and Tokyo after World War II (Costi n.d.:3). Concerned with the failure of the war crimes trials in the aftermath of World War I, the Allies wanted to ensure that high-level politicians and senior military officers would be judged and sentenced by an international body for their role, or complicity, in the perpetration of crimes against peace, war crimes, and crimes against humanity. The International Military Tribunals (IMTs) firmly established the proposition that there are some crimes of international concern and
that individual punishment is necessary for the enforcement of international law (Costi n.d.:3). The Nuremberg and Tokyo Tribunals were innovative because they rejected state sovereignty and replaced it with the notion of individual criminal responsibility (Costi n.d.:3). These IMTs had a self-proclaimed legality from the unconditional surrender of the German and Japanese sovereigns which conferred upon the victorious states the legislative power to enact and proceed with such tribunals and the accounts of systematic atrocities committed by German and Japanese forces respectively created an urge for punishment of those responsible (Costi n.d.:3-4). However, these early military tribunals did not formally define crimes against peace and crimes against humanity, instead allowing the IMTs to act with retroactive jurisdiction (Costi n.d.:4).

However, this novelty was quickly associated with the notion of victors' justice. Trials were referred to the *tu quoque* argument, whereby Germany and Japan were unable to accuse the victors, namely the Soviet Union and the United States, for atrocities committed against their citizens (Costi n.d.:4). My respondent Adin further explains this concern with the early military tribunals:

“Even in Europe after WWII, all of the trials were questionable from the aspect of legality. There was not a unitary system of handing out justice to people so it left the world not completely satisfied justice wise. It’s the same today; justice cannot be in that sense complete, and whole and completely satisfying for people. There’s of course a lot of politics in trials and war crimes tribunals. There’s influence of politics and there’s a lot of political motives, so that probably one of the main reasons it doesn’t always seem right like it should be.”

Moreover Adin concluded, “I don’t think that anyone would ever be completely satisfied. That’s just how things work after wars.” The fact that politics can never be divorced from the process is an inherent limitation with any war crimes tribunals.
The second generation refers to the creation in 1993 and 1994 of the ICTY and the ICTR in response to extensive violations of international humanitarian law in the Balkans and Rwanda. Since the crimes committed in those places represented a threat to international peace and security according to Article 39 of the UN Charter, both tribunals were established by resolutions of the United Nations (UN) Security Council acting under Chapter VII, thus binding on all member states of the UN. The ICTY may exercise jurisdiction over grave breaches of the Geneva Conventions, violations of the laws and customs of war, genocide and crimes against humanity allegedly perpetrated in the former Yugoslavia since January 1, 1991. The ICTR has jurisdiction for similar crimes that occurred in Rwanda from January 1 to December 31, 1994.

The creation of the ICTY and the ICTR showed that the international community was serious about punishing “the topmost government officials responsible” (Costi n.d.:5). As opposed to the IMTs, the crimes for which the two tribunals received jurisdiction are now well established under customary international law and the concept of individual criminal responsibility is now widely accepted (Costi n.d.:5). Moreover, the ICTY and the ICTR are real international tribunals, composed of expert judges and prosecutors, acting with respect for due process and the rights of defendants. The fact that they share a common Prosecutor and a common Appellate Chamber demonstrates “the need for ensuring some uniformity in the administration of international criminal justice” (Costi n.d.:5).

Although these tribunals have strengthened international humanitarian law, the ICTY and the ICTR continue to face serious criticisms. Views of these tribunals as remote from the people they aim to serve, biased against groups not allied with the West, and staggeringly expensive, undermine their perception as effective, efficient, or fair (Costi n.d.:6). First, they are
criticized for their remoteness since they are located in The Hague, Netherlands and Arusha, Tanzania respectively. This distance has deprived many victims’ families of direct involvement in the proceedings (Costi n.d.:6). Second, some ethnic groups in the former Yugoslavia and Rwanda view them as tools for ethnic persecution rather than prosecution (Costi n.d.:6). Third, their operating costs have been steep, causing concern. By 2003, the ICTR had completed 13 cases with 62 in progress whereas the ICTY had concluded 17 cases with a total of 60 indictments and proceedings despite combined annual budgets of $250 million (exceeding 10 per cent of the annual UN budget) and a staff of over 2200 employees (Costi n.d.:6). Considering the magnitude of the atrocities committed, it has become clear that the ad hoc tribunals cannot bring all the perpetrators to justice.

The third generation is the creation of the ICC. Despite some discussions in the UN in the early 1950s, interest in the creation of a permanent criminal tribunal soon dissipated (Costi n.d.:7). It was only with the end of the Cold War, the emergence of transnational crimes, and the establishment of the ICTY and the ICTR that the question resurfaced before the General Assembly on July 17, 1998. The ICC was established pursuant to the Rome Statute, which 120 States signed. Its mandate is to prosecute “the most serious crimes of concern to the international community as a whole” in accordance with general principles of criminal law and with respect for the rights of accused and the victims (Costi n.d.:7). The ICC may exercise jurisdiction through any of three ways: a situation is referred to the Prosecutor by a state party; a situation is referred to the Prosecutor by the UN Security Council acting under Chapter VII; or, the Prosecutor himself initiates an investigation. Article 5 defines these “serious crimes” as genocide, crimes against humanity, war crimes and aggression, although jurisdiction in regard to the latter is conditional upon the future adoption of a definition (Costi n.d.:7). State interests are
also accommodated by the principle of complementarity, which gives priority to national courts unless the state in question is unable or unwilling to carry out the investigation or prosecution (Costi n.d.:8).

The ICC still has a number of limitations. The number of cases the ICC will be able to investigate will depend on the budget afforded by the parties to the Rome Statute (Costi n.d.:8). The ICC’s temporal jurisdiction is limited to crimes committed after July 1, 2002 and its personal and territorial jurisdiction restricted to crimes committed on the territory or by a national of a state party to the Rome Statute (Costi n.d.:8). Likewise, the ICC will only try those most responsible for an atrocity, such as in the Democratic Republic of Congo, a policy consistent with other international tribunals, leaving all other suspected offenders to be dealt with through alternative means, if at all (Costi n.d.:8).

This desire for transnational transitional justice has led to questions about its structure and purpose. Scholars have hotly debated whether a criminal justice approach is more effective than a reconciliation model. The former is often seen as better at holding individuals accountable but can handle only a few cases, whereas the latter may be preferable for healing social conflicts yet fails to adequately punish perpetrators (Merry 2006b:110). There have calls for new hybrid models that incorporate some aspects of both models.

Another difficult issue transitional justice faces is the dilemma of whether to be managed by an international body or by the leaders of the nation experiencing ethnic conflict or state repression. If the same leaders are in power, a nationally based tribunal is problematic (Merry 2006b:110). In some cases, countries may seek the development of middle ground through a hybrid model. Such tribunals are “hybrid” because “both the institutional apparatus and the applicable law consist of a blend of the international and the domestic.
Foreign judges sit alongside their domestic counterparts to try cases prosecuted and defended by teams of local lawyers working with those from other countries. The judges apply domestic law that has been reformed to accord with international standards” (Dickinson 2003:295).

Another conflict that often arises is whether the goal is to hold individuals responsible or to produce a national narrative of the conflict (Merry 2006b:110). For example, the proponents of the South African Truth and Reconciliation Commissions (TRCs) saw it as the chance to tell the story of apartheid. Wilson (2005b) argues that the ongoing trial of Milošević by the ICTY is similarly producing a relatively objective history of the era, but that this is only possible because the tribunal is internationally created and managed. However, as discussed in other chapters, the failure of the ICTY to incorporate local perspectives brings the narrative it creates into question.

Increasingly, scholars criticize a Western Enlightenment notion of one universal concept of justice as being inappropriate and inadequate to many cultures and conflicts. Indian philosopher, economist, and Nobel Laureate Amartya Sen (2009) advocates for a comparative perspective of justice based on a choice between alternative judgments of what is “more” or “less” just and merits of different societies, rather than the transcendental theory of justice concerned with identifying perfectly just social arrangements. Sen’s respect for reasoned differences in understandings of a “just society” is an emerging trend in many discussions of justice.

Scholars of numerous disciplines argue that international and local understandings of the restoration of security and peaceful relations are not necessarily identical, and both perspectives must be considered for successful international intervention initiatives (Jansen 2006; Wilson 2003; Eastmond 2010:5). Scholar of International Development and Refugee Studies Marcia Hartwell (1999) strongly confirms that perceptions of justice emerge from a culturally specific context, suggesting that justice is a socially constructed concept existing only within the minds
of members of a society with no physical reality. Since norms of justice, human rights, and peace are not objective or universal, there is an increasing recognition of legal pluralism.

**Anthropology’s Critique of Legal Pluralism**

In the face of international legal pluralism, anthropologists have begun to emphasize the need to move from state-centered models that presume that law is imposed from the top to locally-centered models that provide space for understanding the changing legal consciousness of a pluralist world (Clarke 2009:117). Many anthropologists have begun to explore an interactive, fluid, and dynamic concept of justice. Instead of assuming that the meaning of legal concepts and values can be simply traced back to its international origins, anthropologists are beginning to shift the focus to the local actors who translate and transform the concepts of justice.

Anthropologist Anna Tsing (2005) moves toward a practical understanding of globalization through *friction*. *Friction: An Ethnography of Global Connection* challenges the view that globalization invariably signifies a “clash” of cultures. Tsing utilizes Arjun Appadurai’s framework on *Disjuncture and Difference in the Global Cultural Economy* and his theory on “scapes” to inform her own work in discussing friction. Appadurai’s work provides an analytical structure through which to understand the global imagined landscapes that show the fluidity of a cultural state. She develops friction in its place as a metaphor for the diverse and conflicting social interactions that make up our contemporary world, presuming globalalilty through connection. Thus, Tsing uses the term “friction” as a metaphor to describe the differences that arise and make up the contemporary world in a political, social, and economic regard. In doing
so, Tsing aims to answer questions about global connectedness. Tsing uses environmental politics to see how well universals work in tracing global connections. She seeks to answer the questions of “Why is global capitalism so messy? Who speaks for nature? And what kinds of social justice makes sense in the twenty-first century?” (Tsing 2005:2). These questions are answered around what Tsing considers metaphors for universals truths: prosperity, knowledge, and freedom. These universals are challenged by Tsing as she believes globalization is not about homogenizing the world, but instead understanding that we are actually not all the same. Tsing writes:

“The specificity of global connections is an ever present reminder that universal claims do not actually make everything everywhere the same […] we must become embroiled in specific situations. And thus it is necessary to begin again, and again, in the middle of things” (Tsing 2005:1-2).

Moreover, she suggests that meanings are not simply internalized but rather negotiated through complex forms of convergence and difference.

Sally Merry’s (2006) process of vernacularization examines another type of negotiation of sorts, focusing on the interaction of exported human rights norms with local conceptions or “the vernacular.” In this framework, conceptions of justice travel through intermediaries who vernacularize, or adapt, global models to local institutions and meanings. Merry explores the ways that international legal and human rights institutions are structured through fundamental dilemmas that lead to gaps between global and local visions of justice by considering sets of “core meanings within culturally resonant packaging.” In this sense, Merry is concerned with the production of local meanings out of global forces. Moreover, Merry contends that human rights law must be framed in local terms to be accepted and effective in altering existing social hierarchies. She points out that “the global is itself constituted by various locals” (2001:129). In
spite of its apparent universality and remoteness from local specificities, international criminal justice (like human rights) is actualized at particular places. One must look to specific micropractices to see how justice is understood.

Building off this burgeoning interest in micropractices, Kamari Clarke (2009) recommends a “strategic translation” of Merry’s model of norms spreading more easily when “vernacularized” into culturally acceptable terms. To understand the multiplicity of norms that local actors respond to and shape, Clarke focuses on understanding the micropractices involved in constructing particular moralities of criminal responsibility (Clarke 2009:51). Clarke (2009) argues that understandings of justice are shifting and highly contextualized, producing new notions of international justice. Likewise, Clarke emphasizes that international understandings of justice do not travel uncontested. Rather, neoliberalist legalism exists alongside and competes with a range of other religious and cultural formations, as well as multiple processes of justice. Ultimately, Clarke brings local actors’ agency to the center of her focus (Clarke 2009:118).

Clarke approaches local actors’ micropractices through the theory of praxeology. Clarke uses praxeology (the deductive study of human action) as an approach to understand how the cultivation of values such as human rights are produced through liberalist micropractices (Clarke 2009:51). Praxeology places the process of “doing,” as central to understanding the meaning of an achieved practice, as opposed to the previous models that revolve around individuals’ articulations of their own goals and actions (Clarke 2009:51). Thus, a praxeological approach highlights the ways that micropractices enable the internalization of values, which French sociologist and philosopher Pierre Bourdieu (1977) popularized as habitus. Clarke uses praxeology to address how micropractices constitute understanding of mainstream political and international movements even in formations that are not commensurate with the neoliberalist
principles central to rule of law (Clarke 2009:51). Thus, Clarke suggests that through the praxeological performance of micropractices, international criminal justice reflects competing moral economies of justice and the shaping of these concepts, which can be used to justify international interventions and attempt to displace vernacular forms of justice making (Clarke 2009:52).

Various transnational performances of justice inevitably reinforce the underlying values of their practitioners. However, as Clarke contends, Western practices of justice have a tendency to become hegemonic, delegitimizing local understandings. In light of such criticisms surrounding universal human rights inherent in the international rule of law movement, I now turn to a discussion of one of its manifestation: the ICTY.

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* The legal term for this is ex post facto.
Chapter 4: Manifestations of International Rule of Law: From The Hague to the former Yugoslavia

As previously discussed, one manifestation of today’s neoliberal practice of promulgating universal standards of human rights through legal avenues was the creation of the ICTY. Building off the recent push within legal anthropology to approach the implications of international human rights discourse through local practices and understandings, I explore the consequences of the ICTY’s arbitrations of justice in the postwar context through the perceptions of residents in Sanski Most.

Formation of the International Criminal Tribunal for the former Yugoslavia

The international response to atrocities throughout the former Yugoslavia, such as Srebrenica, was woefully delayed and inadequate (Power 2002; Cushman and Mestrovic 1996). International apathy included failure to acknowledge the seriousness of atrocities and even standing by and watching as thousands were taken to slaughter (Subotic 2009:3). Despite ambivalent and weak international action to prevent atrocities at the time, international actors have since expended a tremendous amount of energy in developing an elaborate system of transitional justice, which Professor of Political Science Jelena Subotic (2006) defines as the systematic addressing of past crimes after conflicts end (Subotic 2009:3). Indeed, as outlined above, the last decade has seen an unprecedented rise in institutions of transitional justice, which now include international and domestic trials for human rights abusers, truth commissions, reparations for victims, and many other projects aimed at helping societies deal with legacies of past violence (Subotic 2009:3).
The UN in late 1992 established a Commission of Experts to examine the situation on the ground. In its report, the Commission documented horrific crimes and provided the Secretary-General with evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law. The charges included violations of the laws or customs of war (Article 3), crimes against humanity (Article 5), genocide and complicity in persecution extermination, murder, and imprisonment; grave breaches of the Geneva Conventions of 1949 involving willful killing, unlawful confinement (Clarke 2009:10). Upon hearing the commission’s findings, the UN Security Council passed Resolution 808\textsuperscript{ii} to legalize the establishment of an international criminal tribunal that would investigate and prosecute crimes allegedly committed in Kosovo, Croatia, and Bosnia and Herzegovina in order to stop the violence and safeguard international peace and security (Clarke 2009:10). The ICTY, the first war crimes tribunal since the Nuremberg\textsuperscript{iii} and Tokyo\textsuperscript{iv} tribunals, was formally established in The Hague, Netherlands in May 1993 when the UN Security Council passed the subsequent Resolution 827\textsuperscript{v} (Clarke 2009:10). Throughout the Balkans, the ICTY is often referred to as “The Hague.”

At present, the ICTY has indicted 161 people for serious violations of international humanitarian law. There are currently ongoing proceedings of 28 accused, while 133 proceedings have concluded with 17 acquitted, 67 sentenced, 13 referred to a national jurisdiction, 20 having their indictments withdrawn, and 16 deceased, most infamously Slobodan Milošević. Despite these gains, emerging studies strongly suggest the ICTY does not have substantial support from its constituency in the former Yugoslavia (Arzt 2006; Human Rights Center 2000; Stover, 2005; Stover and Weinstein 2004; Ivkovich and Hagan 2011).
The Tribunal’s Goals and Objectives

The ICTY was established in 1993 as a temporary institution for the specific purpose of investigating crimes committed during the wars in the former Yugoslavia and prosecuting those responsible. As the ICTY boasts on their webpage, “This was done at a time when the domestic judicial systems in the former Yugoslavia were not able or willing to do so themselves.” In addition, as the ICTY also asserts on their website, “This date marked the beginning of the end of impunity for war crimes in the former Yugoslavia.” Ongoing, the ICTY is mandated to address war crimes and mass atrocities committed from 1991 to 2001 in the former Yugoslavia\(^vi\) (ICTY 2012). The ICTY targets the highest level actors of such crimes, indicting heads of state and other high and mid-level political, military and police leaders. It was established with the explicit belief that trying perpetrators will deter future crimes, provide justice to victims and their families and, in turn, promote lasting peace in the region (ICTY 2012). According to the ICTY’s official website, since its establishment in 1993, the tribunal’s impact is vaunted as having, “irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced.”

In its precedent-setting decisions on genocide, war crimes and crimes against humanity, the tribunal has shown that an individual’s senior position can no longer simply shield them from prosecution. By holding those with the greatest responsibility accountable, the ICTY has attempted to individualize guilt in the hopes of protecting entire communities from being labeled as “collectively responsible.” Moreover, the ICTY offers an international stage for a new classification of legal responsibility that has set a global precedent in war crime proceedings (Clarke 2009:11). Clarke points out how these emergent forms of justice are being articulated through the individualization of responsibility in the context of the Milošević trial\(^vii\):
“Amid contestations over the legitimacy of the international trial, the defense and prosecution engaged in the construction of dueling moral regimes of justice. On one side insisted that justice was possible only through the supranational conviction of Milosevic and his commanders, by which command responsibility could be used to set precedent in the establishment of a new corpus of international law. The other side, inspired by Serbian nationalist sentiment, insisted that it was only Milosevic’s release and his return to power that would enable justice to proceed” (Clarke 2009:12).

Moreover, as Clarke observes, rather than consensually establishing one overarching ethical imperative, the ICTY’s spectacular performance of justice airs “dueling moral regimes of justice” where local and international perceptions begin to clash.

However, the scope of what can be investigated and what penalties can be imposed by the ICTY are quite limited. The ICTY is in charge of prosecuting “persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since January 1, 1991” (Article 1: Statute 2006). However, the ICTY’s Statute does not create crimes tailored to the circumstances or the needs of local people; it merely lists the crimes that already exist in the body of international conventional and customary laws. These serious violations of international humanitarian law can be grouped as: (1) grave breaches of the 1949 Geneva Conventions (Article 2: Statute 2006); (2) violations of the laws or customs of war (Article 3: Statute 2006; (3) genocide (Article 4: Statute 2006); and (4) crimes against humanity (Article 5: Statute 2006) (Ivkovich and Hagan 2011:114).

Although the ICTY envisioned itself as serving a holistic mission that would provide not only justice but also promote lasting peace and end impunity (both of which were to be accomplished through the prosecution of high-level leaders deemed responsible for war crimes), most of my respondents saw it as serving a much more limited purpose and falling quite short of its greater mission. When I asked Vahdin the purpose of the ICTY, he easily responded, “To
serve justice,” quickly stipulating, “That’s what they say.” His response alludes to much larger doubts that I found many residents of Sanski Most shared about the capabilities and success of the ICTY. While most of my respondents agreed that the ICTY’s primary function was to catch and prosecute criminals, even on this point there was a noticeable lack of consensus as to whether the tribunal had accomplished this limited goal. Dalila put simply, “The function of [the] tribunal in [The] Hague is to send all the criminals where they belong.” Similarly, Berina offered, “The prosecution of war criminals.” Likewise, Sara stated that its purpose is “to catch those people who committed crimes,” quickly adding, “But I don’t think they’re doing a good job.” These responses imply that the tribunal’s main function is to incarcerate the guilty. However, as Sara illustrates, many respondents were not convinced of the ICTY’s efficacy even within this narrow punitive function.

Other respondents saw the ICTY’s goal as transcending mere punishment; rather they understood the tribunal as aiming to explain what happened during the war, to bring reconciliation and peace, and/or to prevent a recurrence of violence. However, it remains unclear whether they agreed that this could be accomplished simply by prosecuting a few guilty high-level leaders. Building off the concept of punishment, Antonio said the ICTY’s purpose is “to establish a neutral court where war criminals should have a process and that they should face their punishments.” He connected this performance of punishment to larger transitional justice ambitions by further explaining that the tribunal was “established for justice of the Balkan region and war in Bosnia.” Melisa alluded to the tribunal’s role in explaining wartime events when she described its purpose: “to find out who is really guilty for what happened during the war.” Similarly, Ema supported the idea of the ICTY, elaborating, “Someone on side line should decide what was wrong in war, not the people in this region, because we surely cannot
decide.” Emina made an interesting specification on the purpose of the ICTY, distinguishing between “reconciliation” and “justice”. She asserted that it functions “to try to reconcile every side.” She continued, “It’s not a thing of justice; it’s just a thing of reconciliation and peace in Bosnia and this region.”

Some alluded to a larger scope of purpose. For example, Amar suggested that the ICTY aims “to correct some damage that was committed by people here, Europe, America, and whole world.” With this statement he acknowledges the inevitable, and perhaps intentional, international influence in the process of justice as well signifying a shared global culpability. Moreover, as Adin well summarized, the ICTY was attempting to stabilize the region at the risk of imposing an outside image of what justice and Bosnian society should look like:

"[Its] primary purpose [is] to cleanse Bosnian society of those who are considered responsible for the atrocities committed during the war, which also means to try to remove from society those people who might be a threat to stabilization after the war. It’s of course done through certain standards of those who founded the court, which basically means countries in the EU and NATO, so through the tribunal itself they’re probably asserting their own image of what Bosnian society should look like after the war and its own standards of justice. So it’s kinda two fold. On the one hand it’s serving as a way to bring to justice, or bring to public attention everything that was happening but on the other hand it’s probably limited in some way through certain political motives and ideological motives.”

Overall, most respondents seemed to see a purpose for the ICTY beyond just punishment of the guilty. Yet, there was not one picture of what this should look like. While the tribunal has made an effort to propagate its self-proclaimed purposes in the former Yugoslavia, residents clearly do not share identical understandings. However, without one common desired outcome, meeting a multiplicity of expectations becomes exceptionally problematic.
Exploring the Tribunal's Legacy: General Criticisms

Accessing the legacy of the ICTY within the former Yugoslavia is particularly important in BiH where, according to the Research and Documentation Center, more than 80% of war crimes during the war were committed and likewise more than 80% of the Tribunal’s judgments have been related to events or actions taking place in BiH (Steinburg and Tokaca 2011:99). While some criticize the ICTY’s limited scope of prosecution to high ranking officials, ICTY Senior Prosecutor and legal scholar Dan Saxon sees this as a great political achievement one of the tribunal’s greatest assets (Saxon 2005:568). By focusing its prosecutions on the highest ranking and most notorious defendants, Saxon asserts that the tribunal sends a strong political message that no one is above the law. This prioritization of prosecution also targets war criminals who have often amassed huge amounts of illegitimate power during the armed conflict in the former Yugoslavia, creating the disarticulation of illegal and violent power structures (Saxon 2005:568).

However, one major obstacle is that the ICTY is reliant on local governments that may not be eager to prosecute war criminals. The tribunal does not have its own enforcement agency that would execute the arrest warrants nor does it have open access to the evidence, relying instead on the Implementation Force (IFOR) and the local governments to do the work for it (Ivkovich and Hagan 2011:26-29). Moreover, because many of the governments have not fundamentally changed, the governmental authorities may be affiliated with some of the very war criminals who instigated and perpetuated the war and thus may have no interest in prosecuting them. Many reports by the ICTY Prosecutor to the U.N. have described countries, particularly Serbia, Croatia and the Republika Srpska (RS) in BiH, as “dragging their feet and even openly refusing to cooperate with the ICTY in the arrest and transfer of ICTY’s indictees”
As Mirko Klarin, senior editor at the ICTY and editor-in-chief of SENSE News Agency, lightly describes the circumstances surrounding the ICTY:

“Making the Tribunal dependent on the ‘cooperation’ of the then regimes in the countries of the former Yugoslavia could be likened to instructing the ‘Untouchables’ to cooperate with Mr. Al Capone and his henchmen in their mission to fight the bootleggers” (2004:548).

In a sensationalized simile based on the 1920s, Klarin skeptically alludes to the fictitious irony of the FBI “Untouchables” working together with the most notorious gangsters (Al Capone and his henchmen), comparing such a situation to the ICTY’s current dependence on local governments’ “cooperation.” Since the same people remain in power, many of whom may have authorized or acquiesced to war crimes, they may even be subjects of prosecutors’ investigations. Thus, due to their complaisance and potential complicity, they may have strong incentive to deflect blame, withhold incriminating evidence, and delay proceedings.

Others say that the ICTY is an ineffective mechanism of justice because it was created to assuage the guilt of the International Community (IC) that failed to intervene. The United Nations was criticized for perpetuating a policy of “moral equivalency” that failed to respond militarily to violence, particularly in BiH, to a sufficient degree (Ivkovich and Hagan 2011:44). Following this argument, the IC created a tribunal to prosecute the past crimes they, in a sense, allowed to occur.

Moreover, despite the ICTY’s promising tagline (featured on the banner of its website) “Bringing war criminals to justice; Bringing justice to victims,” in the face of mass atrocities, some question whether the nature of justice can be dealt with the same as an individual crime, or
whether different measures and mechanisms are necessary, particularly in the context of the social and political climate.

War crimes trials (such as those in The Hague) and truth commissions (as in South Africa) are widely agreed to be necessary and desirable in reconstructing societies after conflict. International law compels states to deal with their violent legacies in an institutional setting rather than through blanket amnesty or “victor's justice.” Yet Political Scientist with focus in international human rights Jelena Subotic (2009) argues that this emphasis on criminal prosecution produces paradoxical results. She contends that states have begun to use emerging institutions of transitional justice as mechanisms to achieve goals beyond addressing past abuses, moving instead to displace domestic opponents, obtain international resources, and gain membership into the European Union (Subotic 2009:6). However, the use of international norms and institutions for local ends, a phenomenon Subotic calls “hijacked justice,” in turn significantly reduces the effectiveness of international justice projects and fails to provide necessary post-conflict social transformation (Subotic 2009:6). In order to avoid the pitfalls of hijacked justice, Subotic argues that the international community should focus on broader and deeper social transformation of post-conflict societies instead of emphasizing only arrests of war crime suspects.

In *Hijacked Justice*, Subotic traces the design, implementation, and political outcomes of institutions established to deal with the legacies of violence in the aftermath of the Yugoslav wars. She finds that international efforts to establish accountability for war crimes in the former Yugoslavia have been used to pursue very different local political goals. Subotic argues that although Serbia, Croatia, and Bosnia have implemented various mechanisms of "transitional justice" in response to international pressures, transitional justice efforts were guided by political
motivations. Subotic contends that when transitional justice becomes "hijacked" for such local political strategies, it fosters domestic backlash, deepens political instability, and even creates alternative, politicized versions of history.

In light of its historical legacy and contemporary social reality, it becomes clearer how people in the former Yugoslavia may see the ICTY as a way for the West to exert its interest and influence over the region. Saxon (2005) argues that “the highly technical, formalistic, and adversarial” proceedings of the ICTY are not the most effective mediums to understand and address the Balkans’ complex and traumatic history (Saxon 2005:568). Likewise, Swedish anthropologist Marita Eastmond contends that the ICTY attempted to assign guilt in a space where there were already preconceived ideas about blame and culpability by the parties involved in a pre-established societal structure of elites (Eastmond 2010:8). Moreover, she discusses how the ICTY’s efforts to individualize guilt with verdicts were paradoxically reinterpreted in ethno-national narratives and presented to masses as collective guilt or innocence (Eastmond 2010:8). As a result, the ICTY is often perceived as having the ability to formally assign a particular national group with “victim” or “perpetrator” status (Saxon 2005:563).

Professor of Political Science James Meernik addresses such concern in the ICTY’s motivations within a dichotomy he terms a political model and a legal model. Essentially from the political model, as he quotes from Thucydides (1996:5.89), “The standard of justice depends on the equality of power to compel” (Meernik 2003:144). Thus, in this mindset the tribunal is the epitome of “victor’s justice,” a politically inspired and manipulated entity (Meernik 2003:144). Following this argument, many critics of the ICTY feel its actions are influenced by the interests of the Western powers who demanded (and invested) in its creation and the capture of war criminals (Meernik 2003:144). Likewise, some critics (Creta 1998; Hayden 1999; Johnson 1998;
Jokic 2001) believe the tribunal is more interested in punishment than fairness due to implicit and/or explicit pressure from the major powers. Moreover, critics question the degree of judges’ discretion in sentencing, feeling that it reflects the biases of major world powers (Meernik 2003:144). These criticisms point to a larger growing concern that international justice is becoming a product of politics where laws are policed by the most powerful states who have the prerogative to enforce and interpret laws while only weaker states are subjected to these standards (Meernik 2003:145).

In contrast, the legal model, to which Meernik refers, presumes that judges are guided by the ICTY Statute and the Rules of Procedure and Evidence and thereby reach impartial and fair decisions (Meernik 2003:145). Even though they have freedom of interpretation, there are preset parameters based on preexisting rules to which judges must abide (Meernik 2003:145). Scholars subscribing to this camp therefore argue that judges’ decisions are fair and based on legally defensible criteria (Akhavan 2001; Meernik and King 2002; Meernik 2003). Indeed Richard Goldstone (2000), former chief prosecutor of the War Crimes Tribunals, emphasized that the Office of the Prosecutor’s primary goal was not necessarily to convict, but rather to “ensure that those indicted would enjoy fair processes and procedures” (Meernik 2003:141). Meernik’s analysis of indictments reinforces this promise that trials were not unfair or biased. He concludes from his analysis of data of verdicts that the level of punishment for those convicted was based primarily on the gravity of the crimes committed and the defendant’s level of responsibility in the political and military chain of command rather than political factors (Meernik 2003:140). Yet, regardless of how fair the ICTY looks when verdicts are quantitatively analyzed by scholars, Meernik concludes with the critical point that if it is to meaningfully contribute to the Balkans, the ICTY must be perceived locally as just and fair (Meernik 2003:159).
This rising concern over local perceptions of the tribunal’s “justness” and “fairness” points to larger complications of exporting justice (Saxon 2005:567-68). Placing the internationally-controlled ICTY in The Hague removed it geographically and legally from the populations it most affects, undermining its sense of local influence (Eastmond 2010:7). While in the interest of fairness, the ICTY trials are often long, boring, complex, and highly technical processes. The nature of these proceedings renders it difficult to maintain public interest and easy for politicians to distort. Therefore, few people have a broad understanding of the ICTY’s cases and functions (Saxon 2005:563). Yet there is a growing view that the emerging trend of “interventionism” where Western powers reconstruct war-torn societies for the sake of global stability and security, must transcend legal mechanisms (Duffield 2007; Eastmond 2010:4). Saxon (2005) argues that justice won through criminal proceedings at the ICTY is just one factor in the reconstruction of victims’ lives, and must also include living free of fear, securing meaningful employment, providing their children with decent schools and options for the future, and the locating and identifying missing relatives (Saxon 2005:568). As I will discuss at length in later chapters, many respondents saw similar factors (again far beyond criminal prosecutions) as essential components of justice in BiH after the war.

Although the ICTY has won the respect of leading Western governments and organizations, it still struggles to win what Mirko Klarin (2004) calls “the battle for hearts and minds” or as Sanja Ivkovich and John Hagan (2011) explain in narrow terms, “the battle for legitimacy of the ICTY in the eyes of the people of the former Yugoslavia” (Ivkovich and Hagan 2011:21). Ivkovich and Hagan (2011) overview how public opinion surrounding the ICTY in the various Balkan countries appears to be shaped by the dominant political views in the country, the country’s relationship with the ICTY, the way the ICTY is handling the defendants,
attorneys, even translators, journalists, and legal experts from the former Yugoslavia (Klarin 2004:552), the outcome of the ICTY trials (Stover 2005), and the way the ICTY is perceived to be handling the “us” and “them” issue. Ivkovich and Hagan argue that these key challenges to obtaining legitimacy in the eyes of the ICTY’s constituency originate in the ways in which the wars in BiH and Croatia ended, the way the West treated the political and military war leaders (glorifying them at one point and condemning at the next), and the dominance of nationalist tendencies in the political arenas across all three countries (Ivkovich and Hagan 2011:22). However, to sufficiently render justice in the former Yugoslavia, the ICTY must first consider its primary constituency. Thus, it should not only adhere to international norms, but more importantly, also incorporate residents’ understandings of local justice.

**Balkan Critiques**

Although case studies continue to emerge exploring the locality of justice and its negotiation with international law, minimal work has been done to explicitly address Balkan understandings of justice, particularly within the postwar context. BiH, serving as the main battle ground during the conflict as well as the major spotlight of Western aid and concern after the war, seems particularly relevant in light of its complex involvement in the war and relationship with foreign aid.

The 1999 Berkeley survey of judges and prosecutors in Bosnia indicated that the ICTY is viewed as “a political institution,” one that is “biased and incapable of providing fair trails.” The Bosnian judges and prosecutors expressed their reservations with respect to the ICTY’s location, judicial appointments, the hybrid nature of the ICTY’s procedures, the political nature of the
ICTY, and the lack of communication between the ICTY and local legal professionals (Berkeley 2000:41). The same sentiments were echoed by the residents from Mostar, Prijedor, and Vukovar who participated in the study by Corkalo (2004:147); residents of the former Yugoslavia also challenged the ICTY’s impartiality and argued that the ICTY is a political court (Ivkovic and Hagan 2011:7).

In a study of the perception of justice and social reconstruction, Biro (2004) reported a variety of attitudes toward the ICTY. Bosniaks from Prijedor (Republika Srpska) and Mostar (the Federation) expressed a higher degree of support for the ICTY than Croats from Vukovar (Croatia). Based on the comments from the respondents, Biro (2005:193) concluded that the “Croats and Serbs were deeply convinced that the ICTY was biased against them […] One of the most common comments (especially among Bosniaks) was that the ICTY sentences are too soft.”

Eric Stover (2005), a legal scholar focusing on human rights and international humanitarian law, provides an in-depth study of victims’ experiences as witnesses before the ICTY. He interviewed 87 victims, examining their motivation to testify, the witnesses’ pre-trial preparation, the actual experience of testifying, as well as their post-trial experience and in the end reported that three out of four respondents evaluated their overall experience as positive (Stover 2005:103). Stover’s findings suggest that there is no direct link between criminal trials and reconciliation. In fact, his team found that criminal trials, especially those of local perpetrators, often divided small multiethnic communities by causing further suspicion and fear (Stover 2005:15). Stover and Weinstein’s (2004) study found similar results (Stover and Weinstein 2004:323). Moreover, survivors rarely, if ever, connected retributive justice with reconciliation (Stover and Weinstein 2004:323). Thus as a result, “international justice and national social reconstruction occupied separate spheres” (Stover and Weinstein 2004:33). Moreover, in a
similar vein, Stover (2005) argues that, for survivors of ethnic war and genocide, the idea of justice encompasses more than criminal trials, including returning stolen property; locating and identifying the bodies of the missing; capturing and trying all war criminals, from the garden-variety killers in their communities all the way up to the nationalist ideologues who had poisoned their neighbors with ethnic hatred; securing meaningful jobs; providing their children with good schools and teachers; and helping those traumatized by atrocities to recover (Stover 2005:15). Likewise, as Ivkovic and Hagan (2011) point out, while Stover’s analysis allows for a valuable understanding of the experience of being a witness in The Hague, most of those who lived in the former Yugoslavia, including the victims directly affected by the war, will never be summoned as witnesses to The Hague (Ivkovic and Hagan 2011:8). Yet as a major constituency of the tribunal, their perceptions of its work are also important.

Ivkovic and Hagan’s (2011) research is based on analyses of data collected through seven surveys administered in Sarajevo, Zagreb, Vukovar, Belgrade, and Pristina between 1997-2005 (Ivkovic and Hagan 2011:9). While they found that most saw the ICTY trials and decisions as fair, residents still criticized the slow pace of the tribunal’s operations and proceedings, its lack of efficiency in making arrests, and its failure to arrest major war criminals, the so-called big fish. Moreover, Ivkovic and Hagan suggest that it is skepticism about the independence of the ICTY that prominently accounts for disapproval of the ICTY among its constituencies. In their opinion, confidence in judicial independence is essential to the goals of democratization and rule of law (Ivkovic and Hagan 2011:52).

Overall, these recent investigations into the efficacy of transitional justice mechanisms, particularly war crimes trials, have exposed the gap between the promise and reality of justice (Henry 2011:9). This confirms John Rawls’ (1971) proclamation of justice as universal,
inviolable, sacrosanct and morally imperative, but also fragmentary, incomplete, elusive and deeply personal. As Nicola Henry, Senior Lecturer in Legal Studies at La Trobe University, contends, there is an “impossibility of full justice and vindication for gross human rights violations in the aftermath of armed conflict, as well as the heterogeneity of […] victims within their communities and their differing conceptions of justice” (Henry 2011:9). Although Henry asserts this in the case of victims of rape specifically, I would argue this sentiment applies to all victims of war.

Finally, Robert Hayden criticizes both legal scholars and anthropologists. Hayden (2007) argues that international political actors insist on efforts to create a Bosnia in accordance with their own images rather than accept that many residents view their world and their fate far differently. This particularly resonates with Edward Said’s well known critique of Orientalism. In founding of the critical theoretical field of post-colonialism, Said (1989) deconstructed Western notions of objectivity by arguing that anthropology developed within an imperial context and continues to operate within it. Imperial perceptions and cultural representations, particularly of a fetishized yet inherently inferior “Other,” serve as implicit justifications for the colonial and imperialist ambitions (Said 1989:222). Thus, to have been colonized, Said asserts, is a fate with lasting implication, principally a legacy of marginalization. Post-colonial people may have freed themselves on one level, yet they remain victims of their past on another (Said 1989:206).

As Hayden contends, these imperialist legacies have problematic consequences in contemporary Bosnia. Hayden argues that privileged Western views have hindered reconstruction of the former Yugoslavia and perhaps even foreclosed the possibility that the Bosnian people will draw on their cultural knowledge to reforge their own interconnections
Moreover, he contends that the understandable urge to condemn ethnic nationalism in the former Yugoslavia has led anthropologists (and others) to foster an illusion about the nature of events there and that the dominance of this illusion is part of what has led international political actors to insist on efforts to create a Bosnia in their own image rather than accept that the peoples there overwhelmingly view their world and their fate far differently. Following Hayden’s argument, in most Western academic and journalistic writings, depictions of the recent Balkan conflicts are based on an unreal reading of life, while those of prewar Bosnia manifest an imagination of a Bosnian community not necessarily shared by the majority of Bosnians themselves. Thus, Hayden contends that the well-intentioned and morally grounded antinationalist positions of most observers skew their opinions in such a way as to hinder the understanding of nationalist conflict as a social phenomenon (Hayden 2007:105).

**The Need for an Anthropological Perspective on the ICTY**

These criticisms with the ICTY also point to the need for an even greater anthropological perspective on the debate. As legal anthropologist Gerhard Anders reminds us:

“Anthropology, with its tradition of fine-grained case studies, is well suited to engage an often polemical debate between proponents and critics of international criminal tribunals. Whereas the latter dismiss them as manifestations of the West's bad conscience, a sophisticated form of 'victors' justice', the former hail these tribunals as beacons of the rule of law. Anthropological research has the potential to investigate claims regarding the independence of these new international institutions by studying the complex interplay of political influences, the global human rights movement and the tribunals' internal operations. Anthropology could also contribute to a better understanding of local perceptions of international criminal justice” (Anders 2007:24).
Moreover, providing a deeper understanding of local perceptions of justice within the Bosnian postwar context is what I hope to contribute to in my own research as part of the growing professional and academic discourse surrounding international transitional justice initiatives.


The handful of studies dealing with international criminal tribunals mainly focus on the ICTY, which has attracted most attention in the Western media (Hagan 2003, Hagan et al. 2006, Wilson 2005). The study by John Hagan (2003), a legal sociologist, offers a historical account of the ICTY, showing how the ICTY’s development largely depended on individuals like Louise Arbour, the tribunal's second chief prosecutor, who often had to overcome the resistance of hesitating governments. A similar approach is taken by Hagan et al. (2006) in a study of the interdependence of political developments in the United States and internal dynamics at the ICTY. Political and Legal Anthropologist Richard Wilson (2005), drawing on an analysis of its judgments, argues that the ICTY produces comprehensive and less biased historical accounts than national courts. Tim Kelsall (2004, 2005), on the other hand, is less sanguine: on the basis of his observations at the Special Court and the hearings of the Truth and Reconciliation
Commission in Sierra Leone, he criticizes both institutions as mere spectacles of justice hiding the actual operation of power.

The complex interplay between external influences (political pressure) and tribunals' internal dynamics is the main focus for much current anthropological research. However, this research tends to be too little and scattered to allow many definite conclusions (Anders 2007:24). In general, more anthropological research, both at the tribunals themselves and in the regions affected by crimes against humanity and war crimes, is needed to advance the public debate on international criminal justice (Allen 2006; Anders 2007:24). Moreover, as some scholars (Clarke 2009, Merry 1992, 2006) have strongly advocated, there still needs to be a shift in focus to a more bottom-up approach that centers on local perspectives when exploring the transitional spread of rule of law and transitional justice.

*The Larger Injustices of War: Damages Beyond the Scope of Criminal Tribunals*

During the middle of my interview with Adin, I asked him directly if he thought there is now justice in Bosnia after the war. He smiled slightly and slowly shook his head, explaining, “The whole society after the war grew in the context of the war. It was formed by it, so a lot of things that are wrong […] has generalized problems that stem from war.” He continued his explanation of why justice had still “not really” been served after the war in Bosnia:

“One aspect of war isn’t questioned by judicial system, and it probably can’t be: the social problems caused by the war. Not just the killings and media threat, but there’s a lot of people who got rich from the war and who used their assets to form the political structures after the war, and to be part of them, to rule them to control them. So there is a complete absence of justice in that sense. The war itself was a huge pillage. There is the whole sector of society that got rich by the war and that built its current status through the war and after it. Justice in that sense is completely absent.”
Nearly all of my other respondents also voiced concerns over the unaddressed injustices of the social problems caused by the war, particularly economic and political corruption. This raises a daunting obstacle to transitional justice efforts. Such complexities certainly support an essential point made by Clarke (2009) near the end of her ethnography. She begins to grapple with how to move beyond merely recognizing the plurality of justice to actually navigating these contested views within global realities, calling for a “critically engaged transnational legal pluralism” (Clarke 2009:238-39). What this means in terms of arbitrating standards of justice within legacies of unequal footing continues to be major challenge of the 21st century’s international rule of law movement. Moreover, if injustices in contemporary postwar BiH transcend past individual acts and instead permeate society as a whole, then how can justice adequately be served? Such a broad and complex undertaking seems beyond the capabilities of a criminal tribunal.

In the next chapter, I will discuss the ICTY’s role in crafting wartime truth and the implications of its hegemonic narrative. As will soon become apparent, one of the tribunal’s most significant deficiencies lies in its inability to accommodate (or even recognize) multiple, dynamic, and potentially ambiguous understandings of local truth. Instead, as a product of the Western mindset that assumes truth is singular, static, and universal, the tribunal deleteriously drives understandings of justice into restrictive categories in its quest for efficacy.

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1 The Srebrenica massacre, also known as the Srebrenica genocide, refers to the July 1995 killing during the Yugoslav war of more than 8,000 Bosniaks, mainly men and boys, in and around the town of Srebrenica in BiH, by units of the Army of Republika Srpska (VRS) under the command of General Ratko Mladić. In April 1993, the United Nations declared the besieged enclave of Srebrenica in the Drina Valley of north-eastern Bosnia a "safe area" under UN protection. However, in July 1995, the United Nations Protection Force (UNPROFOR), represented on
the ground by a 400-strong contingent of Dutch peacekeepers could not prevent the town's capture by the VRS and the subsequent massacre. The mass murder was described by the Secretary-General of the United Nations as the worst crime on European soil since the Second World War. In 2004, in a unanimous ruling on the case of *Prosecutor v. Krstić*, the Appeals Chamber of the ICTY ruled that the massacre constituted genocide, a crime under international law.

\[a\] In the United Nations Security Council resolution 808, which was adopted unanimously on February 22, 1993, the Council, after stating its determination to put an end to crimes such as ethnic cleansing and other violations of international humanitarian law, decided that an international tribunal should be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in former Yugoslavia since 1991. This later became known as the International Criminal Tribunal for the former Yugoslavia.

\[ii\] The Nuremberg Trials were a series of military tribunals, held by the Allied forces of World War II, most notable for the prosecution of prominent members of the political, military, and economic leadership of Nazi Germany. The trials were held in the city of Nuremberg, Bavaria, Germany, in 1945–46, at the Palace of Justice.

\[iv\] The Tokyo War Crimes Tribunal, also known as The International Military Tribunal for the Far East (IMTFE), was convened on April 29, 1946, to try the leaders of the Empire of Japan for three types of war crimes. The tribunal was adjourned on November 12, 1948.

\[vi\] United Nations Security Council resolution 827, adopted unanimously on 25 May 25, 1993, approved report S/25704 of Secretary-General Boutros Boutros-Ghali, with the Statute of the International Tribunal as an annex, establishing the ICTY.

\[v\] According to the ICTY (and for the purposes of its jurisdiction) the former Yugoslavia is the territory that was up to June 25, 1991 known as The Socialist Federal Republic of Yugoslavia (SFRY). Specifically, the six republics that made up the federation were Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia (including the regions of Kosovo and Vojvodina) and Slovenia (ICTY 2012).

\[vii\] Slobodan Milošević was the President of Serbia from 1989 to 1997 and President of the Federal Republic of Yugoslavia from 1997 to 2000. He was indicted in May 1999, during the Kosovo War, by the ICTY for crimes against humanity in Kosovo. Charges of violating the laws or customs of war, grave breaches of the Geneva Conventions in Croatia and BiH and genocide in BiH were added a year and a half later. Please consult the ICTY’s case file for more information on the trial, available online at http://www.icty.org/x/cases/slobodan_milosevic/cis/en/cis_milosevic_slobodan_en.pd.

\[viii\] The Implementation Force (IFOR) was a NATO-led multinational peacekeeping force in BiH under a one-year mandate from December 20, 1995 to December 20, 1996 under the codename *Operation Joint Endeavour.*
Chapter 5: Defining Truth, Arbitrating Justice

Introduction: The Implications of Absolute Truth for Transitional Justice

The Balkans have a tenuous past fraught with Western attempts to “modernize” the region by imposing their own normative model of truth, law, and justice. Yet as Balkan historian Nicolae Iorga points out, asserting international laws in the pursuit of modernization does not always easily translate to local practice or acceptance. In reference to earlier modernization efforts in the Balkans Iorga (1992) states:

“Let it be a lesson to all reformers of today and tomorrow […] to all those who come to the government with pockets full of bills which get passed but are never applied, because the poor nation lives much better on its customs than on all the laws; it turns a good law into a custom, leaving aside the bad ones.”

Such precautions about the difficulty of translating international priorities into local goals certainly speak to international postwar intervention and transitional justice initiatives in the former Yugoslavia. The ICTY as a mechanism of justice emerging from the Western adjudicated rule of law movement brings with it a lens that overlooks (and at times even dismisses) experiences and understandings of justice in BiH that do not fit within its creator’s framework.

The West has a legacy of seeking and defining a fixed, singular truth. Thus it is little surprise that through its indictments, prosecutions, and verdicts the ICTY also attempts to standardize one notion of truth in its pursuit of justice for the peoples of the former Yugoslavia in the postwar context. And yet, while in the Balkans truth and the justice that accompanies it often elude Western categories and mechanisms, many of my Bosnian respondents still voiced desire for a definite truth that resonated within their realities of postwar justice.
Universalist models become especially problematic in postwar contexts such as the former Yugoslavia when injustices are experienced on an extremely personal level. As many of my respondents consistently reaffirmed, the “justice” rendered by international mechanisms does not adequately touch peoples everyday lives. Large scale impersonal mechanisms of justice do not fill the void created by individuals’ local experiences of injustice. As Hamza asserted, remote theoretical models played out on the international stage are not sufficient for Bosnia. In order for justice to be served in Sanski Most much more attention must be given to what happened at the local level. As he discussed regarding justice not only in Sanski Most, but generally in BiH:

“There has to be a big amount of interest in it for it to be achieved. And there is an insufficient amount of work of people who are involved in working on justice. Because they have to face all the things that we have faced in order to understand what it means when injustice happens to you. So the things that happened to us, there is no school or there are no scholars who are teaching the justice or injustice in a formal way. So there is no religion which told to people they should behave like that, what they did.”

As his comment reflects, Hamza and others in the Bosnia have a deep desire to make sense of what happened in their own lives, as well as with those of their neighbors and communities during the war. Moreover, Hamza seems to express that true understanding of wartime events can only be reached by those who actually experienced the conflict firsthand. He implies that justice cannot be taught (rejecting international expertise) and rather that it is something that must be lived to be truly understood (embracing local actors and their community engagement). In this regard knowing the truth, as it is experienced by each community, is an integral component of attaining justice in BiH.
Approaching Spaces of Ambiguity

The Balkans continues in the minds of many as a space of ambiguity. Maria Todorova’s (1997) *Imagining the Balkans* demonstrates that ambiguity is a persistent feature in discussions surrounding the Balkans. Indeed, when Balkan and Western authors address the Balkans, they continue to portray it as a space of ambiguity, a border area, an intersection of different cultures and civilizations. Maria Todorova, a trained historian and native of Bulgaria, distinguishes portrayals of the Balkans as follows:

“What practically all descriptions of the Balkans offered as a central characteristic was their transitional status. The West and the Orient are usually presented as incompatible entities, antiworlds, but completed antiworlds. [...] The Balkans, on the other hand, have always evoked the image of a bridge or a crossroads” (Todorova 1997:15).

A transitory state is by nature indefinite and often enigmatic. Thus, while many writers identify the Balkan’s apparent ambiguity, it is little surprise Westerners seem to have more difficulty accommodating it. Todorova draws attention to the dichotomous framework that has been used to compare the West and the Balkans.

Although portrayals of the Balkans incorporate elements of Orientalism and its creation of the “other,” the Balkans has its own distinct relation with the West. Todorova describes how “the historical and geographic concreteness of the Balkans as opposed to the intangible nature of the Orient” and the creation of Balkan self-identities in “resolute opposition to the ‘oriental’” distinguishes the Balkans from the Orient (Todorova 1997:11, 493). Likewise, while the West and the Orient were traditionally viewed as an “unbridgeable chasm” or “incompatible entities,” the Balkans has been seen as “a bridge or crossroads” (Todorova 1997:15). That is why she opts for the term “Balkanism.”
However, the Western portrayal of the Balkans’ as a geographic bridge between East and West also denotes a primitive label. In this Western conceived hierarchy of progress, the developing Balkans is always inferior to the developed West. In this sense the Balkans becomes a bridge between stages of growth, invoking labels such as “semideveloped, semicolonial, semicivilized, semioriental” (Todorova 1997:16). Following this image, Western writers have often described the Balkans as the “other” of civilized Europe, the “normative” reference to which it is consistently placed in opposition. Thus, as Todorova explains, “What has been emphasized about the Balkans is that its inhabitants do not care to conform to the standards of behavior devised as normative by and for the civilized world” (Todorova 1997:3). Categorized as the inferior other, “the Balkans” and “Balkanism” has often taken on a negative connotation with longstanding implications. This is particularly true with similar terms such as Balkanization. As Todorova explains that in contemporary scholarship, “‘Balkanization’ not only had come to denote the parcelization of large and viable political units but also had become a synonym for a reversion to the tribal, the backward, the primitive, the barbarian” (Todorova 1997:3). However, despite its reputed inferior status by the Western world, the Balkans’ exact position continues to defy a static category, continually portrayed in a transitory or developing state. Recognizing the region’s persistent transitory standing, Todorova describes Balkanism as “a discourse about an imputed ambiguity” (Todorova 1997:17). Western scholars have forced the Balkans into a binary framework in order to conceptualize it and more conveniently deal with it.

The constraints of understanding the region’s ambiguity have been a hindrance for transitional justice initiatives in the former Yugoslavia. Several of my respondents discussed this in reference to specific concerns with Dayton. Dayton’s recognition of only several specific categories of people in BiH’s constitution created an absence of space for the equivocality of
Bosnian identity. Petar expressed his frustration with the artificial separation created by Dayton. When I asked him whether the Dayton partition promoted justice in BiH he replied:

“In some way they do, because definitely there are two sides who don’t want to agree and they want to go, but then there are people around the Muslims and the Serbs who don’t want this. For example, I’m born a mixed marriage, so I would like my full identify, where’s my right? I want my fourth entity, for those who want everything together. In that sense, emotionally, it is unjust. But in a way it is just. The problem of the Balkan, we are not like Western people. You guys have a statement back home, Can we agree to disagree. It’s impossible to apply this statement here. We can’t agree to disagree.”

Although Petar acknowledged that Dayton helped stop fighting in BiH and did in some capacity appease two warring factions that appeared incommensurate, he also felt its simplified classifications excluded his own identity and others of mixed ethnicities or religions that eluded simplistic labeling. Yet it is interesting that he also placed the Balkans lack of consensus as an inherent trait in direct of opposition to the West.

Petar also asserted that in the Balkans one must always recognize a middle ground and leave space for exceptions that may defy expected norms. When discussing the difficulty of categorizing people as good or bad, he observed that such categories were often inadequate, especially during the war. Petar continued, “It’s like you want to do good things, but the bad thing come across your mind, so you end up doing bad things instead of good things. Most war criminals had something that triggered inside the horrible things they would do. I don’t say this to justify their behavior, just to say that there is an ongoing cycle, a curse in a family. But you can’t make a rule, there are always exceptions.” Again Petar articulates how a person’s character, similar to their ethnic identity is also ambiguous and cannot be neatly prescribed to one category or another. Many of my respondents seemed to share this sentiment regarding uncertainty of wartime actors and events.
As Romanian political scientist Alina Mungiu-Pippidi reminds us, “In order to stimulate change in a society, we must first understand how it works” (Mungiu-Pippidi 2005:49). As she continues, “Far too often, externally induced processes of modernization end up as ‘simulated change’ against the backdrop of structural, informal continuities” (Mungiu-Pippidi 2005:49). She points to the Balkans as a particularly relevant example this disjuncture between international understanding and local reality. In addition to the ambiguity inherent in the Balkans, Western institutions mistakenly approach the Balkans within a universal “modern” framework, failing to appreciate its very local character. Mungiu-Pippidi identifies this unique quality in the Balkans as “particularism”, distinguishing it from the Western-preferred model of “universalism.” She places particularism in opposition to universalism, comparing them as follows:

“In a universal society, rules of the game tend to be the same everywhere; in particularistic societies, they tend to be extremely specific for that society only. Local knowledge is essential to particularistic societies although observers can find some common features across such societies” (Mungiu-Pippidi 2005:50).

As she explains in a universal society there are principles that are imposed everywhere regardless of local context. However, in particularistic societies rules develop from within the local context.

Mungiu-Pippidi believes that the Balkan’s Communist history reaffirmed particularism throughout the region. She argues that the essential contradiction embedded in the communist power structure, which legitimized status groups such as the nomenklatura who enjoyed political and economic monopolies, subverted Western capitalist projects of modernization (Mungiu-Pippidi 2005:53). According to Mungiu-Pippidi, universalism is impossible when power access is uneven since this will inevitably create privilege. As Communism collapsed and the Yugoslav wars broke out, the Balkans continued as particularistic society, never adopting a Western universalist approach. Thus local understandings and variation remained of paramount
importance. Likewise, she describes particularism as “a mentality prevailing in collectivistic societies in which the standards for the way a person should be treated depend on the group to which the person belongs” (Mungiu-Pippidi 2005:53). This implies a type of social negotiation that stands in contrast to the Western concept of universal truth. Moreover, it also has important implications for how justice and the workings of the ICTY may be viewed from a particularistic lens.

In contrast to local particularization, Mungiu-Pippidi sees Europeanization as a specific modernization process consisting of the enactment of new formal rules imported by international institutions and their subsequent local implementation. The rule of law movement and the mechanisms it creates can certainly be seen as one of these institutions. Institutions play a socializing role in this process of dissemination by prescribing (and even rewarding) desirable behavior while proscribing undesirable behavior (Offe 1996). However, as Mungiu-Pippidi reminds us, “institutions do not exist in a vacuum; they perform in certain environments, and the understanding of a specific environment, in its historical evolution and present context, is crucial for institutional transfer or change” (Mungiu-Pippidi 2005:50-51). Formal institutions are often associated with an emphasis on rational-legal legitimacy while informal institutions tend to favor charismatic and/or local authority. Widespread informal particularistic behavior, which deviates from formal universal and legally established norms of conduct, can subvert the rule of law. The monetarist requirement of the rule of law as a precondition for market and democracy implies a dominance of formal institutions. However, rule of law cannot coexist with particularism’s informal behavior and local supremacy.

Likewise, the Western approach to knowledge and understanding does not deal well with ambiguities or multiple local understandings, instead often ignoring or dismissing them. As
British anthropologist Mary Douglas argues (2001[1966]), objects and ideas that confuse or contradict esteemed classifications provoke pollution behavior that condemns them (Douglas 2001[1966]:2). Douglas calls these contradicting elements “ambiguous, anomalous, or indefinable.” Drawing on a general consensus that “all our impressions are schematically determined from the start,” and that “our interests are governed by a pattern-making tendency,” she holds that we ignore or distort “uncomfortable facts, which refuse to be fitted in […] so that they do not disturb these established assumptions” (Douglas 2001[1966]:37-38). This same tendency makes Western thought attempt to rationalize ambiguity by diminishing it.

Western ideology defends its rejection of anomaly as rational. But rationality, and the truth upon which it is based, can be relativistic. In her essay "Thought Style Exemplified," Douglas suggests that "rational behavior" can be viewed in extended terms of Ludwik Fleck's concept of a "thought style" (Douglas 1992:211). Ludwik Fleck argued that any community or thought–collective develops its own thought style, a consensually agreed upon set of principles regarding how the world is conceived and what is a fact or speculation. Following Fleck's idea, Douglas describes a thought style as a general framework of norms and principles within which members of a community place their experience in order to interpret and establish its meaning. Therefore, in this framework, communities are not creating universal truth. Rather, since every culture protects some presumptions or principles from questioning by declaring them above scrutiny, following Douglas's extension of Fleck's concept, thought style becomes a web of norms and values that unite a particular community. Since a thought style differs from one community to another, it cannot be a universal knowledge or ultimate framework, even though within a particular community it may be represented as such. Thus, Western principles of truth
and justice can be seen as a thought style of one community who presumes its values are universal.

Elaborating on the existence of certain principles in particular communities that cannot be scrutinized, Douglas claims that "the ideal order of society is guarded by dangers, which threaten transgressors" (Douglas 1988:2). Douglas argues that “ideas about separating, purifying, demarcating and punishing transgressions have as their main function to impose system," that can be formed only by "exaggerating the difference between within and without, about and below, male and female, with and against" (Douglas 1988:4). In other words, Douglas claims that establishing an order is possible only through forming strong hierarchical binary oppositions. However, as noted by Petar in his critique of Dayton, separation in the Balkan context may create order but at the expense of diversity in identity, perhaps posing an even greater threat to long term reconciliation efforts.

Although Douglas recognizes the difference between anomaly (not fitting a given set or series) and ambiguity (inducing two interpretations), she concludes that there is no practical advantage in distinguishing between the two. Thus, she treats ambiguity as anomaly. Because of their indefinable character, persons or phenomena in transitional states, just like in marginal ones, are considered dangerous, both being in danger themselves and emanating danger to others. Likewise as Maria Todorova contends, “in the face of facts and ideas that cannot be crammed into preexisting schemata, or which bid more than a single interpretation, one can either blind oneself to the inadequacy of concepts or seriously deal with the fact that some realities elude them” (Todorova 1997:17). My research suggests that the reality of justice in the former Yugoslavia eludes the Western format of the ICTY. Yet it is questionable how critically Western
interventionists took into account the complexities and nuances of local realities in postwar BiH throughout their pursuit of justice.

Dalila highlighted this disconnect between international universalist aspirations and local contextualized understandings of justice. When I asked her if she thought the ICTY was promoting justice, she responded, “Yes and no, depends. Justice is not always the same for everybody, so that it cannot please everybody the tribunal in [The] Hague. What is justice for somebody, some other person don’t think so.” Thus she recognizes that justice varies from person to person, implying that the justice delivered by the ICTY was too broad-brushed and did not account for individual perceptions which arose from lived wartime experiences during war as reflected. She further explained “It’s a utopian thing that justice is for everyone the same, it’s not really so. I think Bosnian people have […] some opinion of justice […] the same, like anywhere else. War did affect that.” Since Dalila doubted the tribunal’s grasp of her local context, she questioned its ability to provide meaningful justice in BiH. She reiterated similar sentiments when I asked her whether the ICTY provided effective accountability for war crimes. She replied, “In some way yes, but Bosnian war criminals should be prosecuted her in Bosnia, because the judges in [The] Hague cannot really understand our cultural way of thinking and Bosnian people.” She again points to a distinct and essential understanding of justice arising from the local Bosnian context rather than the international criminal tribunal.

*The Constructs of Western Modernity: Capturing Truth and Standardizing Efficiency*

Western conceptions of truth are intertwined with an exclusive notion of modernity. Western modernism strives for a type of mastery and translucent understanding, leaving little room for ambiguity or even multiplicity (Du Preez 2008:430). While philosopher Martin
Heidegger was a vocal critic of instrumental rationality, he proposes an alternative but also limiting conception of modernity. Heidegger adheres to an idea of modernity which depicts a Cartesian individual’s visual interaction with the modern world as if they were reading a map (Heidegger 2002[1938]:132). In this model, rationality and the ascendance of man allow for a mode of perfect seeing, which translates to clear knowing (Heidegger 2002[1938]:128-129). Yet, this rigid framework necessitates a flattened two-dimensionality of identity and knowledge, including truth. As religious scholar Diana Eck, with reference to the Indian context, suggests, such “monotheism of consciousness” contributed to Western fixation on a singular and objective truth (Eck 1998:22). Moreover, this Western mapping of modernity reflects an understanding of truth as an objective and independent distillable entity. As a result, the Western notion of truth allows for an objective externalizing of cognition without communicating with others (Wendl 2000:99). Thus, in such conceptions truth is extracted from its original cultural context and the local actors who shape its meaning.

This Western view of truth is based on a construction of human beings as essentially cognitive creatures who represent the world of objects through ideas and concepts expressed in assertions. In this framework, truth denotes the correspondence between mental or linguistic representations, facts, and events in the world. Heidegger altered this concept by arguing that for there to be a correspondence between ideas or statements and objects, these objects must first become manifest. The truth is their manifestation; in other words their disclosure or uncovering rather than correspondence. Yet aiming to uncover truth implies that it is a discernible static entity rather than a dynamic social negotiation.

While Western thought sees objects and concepts as possessing their own objective truths; particularly when connected to postwar justice, truth is deeply rooted in daily personal
experience. Such locality in understandings provincializes Western notions of a singular objective truth. Thus truth is embedded inextricably in its cultural context, and does not exist separately (Wendl 2000:98-99). Serbian priest Marko summarized how the nuance and multiplicity of truth is an inherent part of justice’s very definition. He explained, “Justice is something that should satisfy the truth […] as something that would satisfy all the three parts, all the three nations. But it’s very hard to find that today in our society, in our time. I’m not the referee.” In the second part of the quote Marko also implies that postwar justice is dependent on cultural context, specifically alluding to its three majority peoples Bosniaks, Serbs, and Croats. Moreover, he reaffirms that justice must be mutually acknowledged and sought collectively by those who experience injustice rather than solely arbitrated by an impartial onlooker.

Because Western thought sees objects as possessing their own objective truths, it propagates a universal model of justice the neoliberal rule of law movement can export through neutral identification and implementation. However, contemporary scholars challenge such notions of detachment. This critique has been articulated with particular strength in the field of visual culture. Scholars assert the need to evaluate visual practices within their cultural context. In any culture, meanings of images are dynamic because an object’s sense “[…] emerges through the relationship of image with viewer, who brings his or her community’s own interpretive strategies to bear with the encounter […]” (Davis 1997:9). Thus an object’s location, or frames, affects the way people conceptualize and interact with it (Davis 1997:9).

Yet I argue this same idea applies to notions of justice. Building off Douglas’ (1992) interpretation of a thought style as a general framework of norms and principles within which members of a community place their experience in order to interpret and establish its meaning, local justice becomes increasingly distant from the Western ideal of a static universal concept
that judicial mechanisms can simply define and extract. The way people conceive justice is not only dynamic, but also inextricably embedded within the cultural context from which their understandings emerge. Like an image, a person’s location within society (their positionality emotionally, socially and geographically) particularly their personal relationships and daily experiences, shape the way they conceptualize, articulate, and engage with purported mechanisms of justice (i.e. evaluating the ICTY, discussing and remembering the past).

Anthropologist Arjun Appadurai’s (1990) more flexible approach to modernity also offers insights into the ways people dynamically and interactively conceive justice. Appadurai sees modernity as irregularly self-conscious and unevenly experienced rather than one single moment of break between past and present. This broader notion of modernity which allows space for accommodating changing experiences and the politics of “pastness” certainly applies to postwar conceptions of justice in BiH. Understanding justice in the former Yugoslavia requires recognition of blending and dynamic interchange between the West and the Balkans. Though some local conceptions of justice have been portrayed in opposition to Western views and practices, Western foundations are critical to understanding contemporary Balkan understandings of justice because they help place these ideas in their social and historical frames.

With increasingly global interactions, understandings of justice continue to transform. Appadurai (1996), a thinker on globalism with particular interest in South Asian visual culture, asserted that Enlightenment values have been distributed throughout the world by means of globalization. Consequently many cultures around the world have adapted (to varying degrees) these Western values. However, these values have almost always been altered or “indigenized” by the adopting culture. Thus local cultures have modified Enlightenment values by translating and altering their meaning to fit within the culture in which they have been subsumed. Therefore,
to understand mass movements and global flow in their contemporary expansion and dynamism, Appadurai proposes five “scapes” or dimensions of global cultural flow: ethnoscapes, mediascapes, technoscapes, finanscapes, and ideoscapes (Appadurai 1990). Through these processes, he argues that norms are adapted as they circulated, but are also influenced by the places they came from. Within these five essential constructs, Appadurai’s concept of ideoscope connects to the circulation of human rights values. Appadurai affirmed that ideoscapes, like mediascapes are “concatenations of images” (Appadurai 1990). Ideoscapes are thus classes of images related to ideas and more specifically the Enlightenment values of freedom, welfare, natural rights, representation, democracy and others. Likewise, as Appadurai’s notion of the “interocular field” proposes, throughout the world there is an interconnectedness of visual experiences and a transfer of meaning where “[…] each site or setting for the socializing and regulating of the public gaze is to some degree affected by the experiences of the other sites” (Appadurai 1995:12). Similarly perceptions of justice in the former Yugoslavia are influenced by and connected to Western conceptions. Yet local residents are not passive recipients of larger Western trends, but rather participants in shaping their own meanings of justice in postwar BiH.

My respondents’ perceptions of the ICTY reflect its inability to adequately integrate, or even consider, local conceptions into the formal proceedings of justice. The Western creators of the ICTY perhaps privileged Western conceptions of justice over local understandings because they saw Western formations as more rational, and thus more effective. German Sociologist Max Weber (1978[1904-1905]), describes a characteristic of Western conceptions of modernity as Zweckrational or instrumental rationality, which involves a type of cost-effective means-end reasoning. Within this understanding, maximally effective means are used to reach the goals (Niiniluoto 2001). While rationality is not unique to Western culture, some see Western
countries differing crucially from the Eastern countries in terms of which aspects of life are rationalized and in what direction (Gronow & Töttö 1996). For example, according to Weber, Western rationality is reflected in market behavior, the law, administration, and professional ethics. By market behavior, Weber refers to the tendency of not just individuals but also the law and institutions to promote computability and efficiency. At the same time, the possibilities of steering the economy on grounds other than mere efficiency diminish. Instead human actions are guided by instrumentality and speculation. This eliminates the possibility to foster substantial types of economy that would aim to satisfy collective needs. In turn, the legal system encourages actions parallel to market behavior. This means that appreciation of content is completely alien to the administration of justice, and cases are settled with strict abstract and formal rules. In this way, Western rationality becomes alienated from the principles of substantial justice (Hietaniemi 1987, Gronow & Töttö 1996). Consequently, cumulative rationalization results in growing administrative bureaucracy where matters are solved in line with formal judicial rules and practices based on the “ethics of fraternity” become inapplicable.

However, Weber views such a strict rational assessment which emphasizes process over content as too limited for understanding human action and values. As Weber (1949) explains, explanations are far more complex and tentative: “There is no absolutely ‘objective’ scientific analysis of culture [...] [because] [...] all knowledge of cultural reality [...] is always knowledge from particular points of view” (Weber 1949:72, 81). Culture for Weber (1949) is a value concept. Weber clarifies, “Empirical reality becomes ‘culture’ to us because and insofar as we relate it to value ideas” (Weber 1949:76). According to Weber, people are very much motivated by economic and cultural interests. However, culture can act like a switch on a railroad track, changing the course a person will act on in regard to their specific values. As Weber describes,
“Not ideas, but material and ideal interests directly govern men’s conduct. Yet, very frequently the ‘world-images’ that have been created by ‘ideas’ have, like switchmen, determined the tracks along which action has been pushed by the dynamic of interest” (Weber 1948:280). Weber uses culture as an overarching and dynamic framework which he sees pervading relationships between values and beliefs (generally expressed in religion), social structure (overwhelmingly informed by the economy), and the psychological orientations of actors.

With Weber’s analysis in mind, John Kelsay, a religious ethics scholar focusing on Islamic and Christian traditions, also argues that Western rationality does not take into account personal values like spirituality, instead justifying actions in purely consequentialist terms (Keslay 1996:120). Kelsay extrapolates that because it is bound to a consequential imperative, instrumental rationality is also “deliberately impersonal” since it “demands adherence to formal norms, for the sake of results measured in terms of increased efficiency and material gain for society as a whole” (Keslay 1996:121-122). Moreover, this priority on quantifiable results makes instrumental rationality “this-worldly,” privileging material as opposed to spiritual wellbeing (Keslay 1996:122). This mindset creates a strict divide between the material and spiritual, casting them as incommensurate realms.

Yet establishing and perpetuating this opposition is particularly problematic within the context of the conflict in the former Yugoslavia, where religion, and thus spiritual wellbeing through the justice it requires, plays an important role in resident’s everyday lives and personal identity. Moreover, incorporating or at least addressing religion in the processes of justice is even more pressing due to religion’s role in the conflict, as ethnic identities became convoluted and even fused with religious affiliations. Thus, spirituality, and the values underlying it, cannot be
ignored by transitional justice efforts in the former Yugoslavia nor be filtered out and set aside from judicial mechanism such as the ICTY.

Many of my respondents mentioned specific values based on religious doctrine, describing these principles as essential to justice, yet felt the ICTY fails to address them in its secular formalistic proceedings. I directly asked Petar what his religion teaches him about justice. He explained:

“The ten commandments that God gives to us is the cornerstone foundation for universal justice. [The] bible doesn’t set exact rules, but that doesn’t mean it’s ok to do those things. God gives us the wisdom that we should learn and figure out what is the wisest thing concerning my past experience, today’s circumstance, and the future’s hopes and dreams. What is the wise thing to do. The better question, what is wise thing for me to do.”

Petar’s short explication alludes to many challenges to the Western universalist approach. First, when Petar talks about God giving him the wisdom to “figure out what is the wisest thing” based on his own unique past, present and future, this implies that he sees justice as deeply personal. Second, rather than emphasizing efficiency or process, Petar seems to express that justice must fundamentally rely on how people treat one another, since this is central to the Ten Commandments. Also, it is interesting that he describes this code of behavior can be generalized, even explicitly calling this version of religiously-informed justice universal. Finally, Petar asserted that justice must rest on wisdom, a wisdom given by God. This is a deeply personal religious value rather than a standardized process and measurable result. When I questioned him further about justice he continued articulate a spiritual basis that bears no relation market efficiency, “Ultimate justice is coming from Jesus teaching of sermon of mountain, which implies grace to [the] whole concept of justice.” Petar again asserts that the highest form of justice lies in the spiritual realm within the control of God.
Serbian priest Marko briefly alluded to justice beyond solely divine love. He repeatedly emphasized how interpersonal love that transcends religious affiliation is a core value inherent to justice. He explained that in the context of postwar justice, “As any other religion, orthodox preach love for the people to live together. Nevertheless of ethnicity and religion there has to be love between people if you’re a true believer.” Thus, for Marko it seems there is not a clear detachment from the earthly and spiritual realms. Earthly love is still important for heavenly justice. However, Petar never explicated whether justice could ever be sufficiently accomplished within the earthly world. Overall it seems like a tribunal system that does not recognize these spiritual values such as ethical relationships, wisdom, grace and love would not be seen as fully legitimate or satisfactory among its constituents in the former Yugoslavia.

Indeed, many of my respondents identified justice with God rather than in a worldly “rule of law” creation, suggesting that human justice was at best a partial reflection of divine justice. For example, Petar saw justice literally as “God”. He further explained, “When I say God, I believe that ultimately God is just. There is this justice that is not so much visible in this world as it will be one day. There are reflections and some parts of God’s justice present here in the world, but there is definitely more injustice then justice.” Similar to Marko, Petar also appears to question whether justice can ever be amply attained in the human world.

Within the Islamic faith, Vahid, a certified Imam, also expresses an intrinsic connection between religion and justice. He explained:

“One of the God’s name is the Justice or the Just one. We strongly believe that even if somebody does something wrong against you and you don’t get that justice on earth, you will get that on the last Day of Judgment. It helps me deal with the fact with the guys who committed genocide or massacre in my village or worldwide, even if they’re not punished on earth, they will be invited for responsibility in heaven. And it makes it easier to live with all the injustice on earth.”
Vahid suggests that knowing true absolute justice will inevitably come in heaven helps placate his disappointment with unaddressed injustices in his lifetime on earth, particularly those committed against him during the war in BiH.

Many of my respondents spoke of true justice inhabiting a divine space, portraying it as a utopian concept that should be sought, but will never be sufficiently attained. Some of my respondents were even skeptical of any human justice system, doubting whether it could even partially achieve “true” justice. They sometimes attributed this hindrance to human corruption. However, most often it seemed to stem from their steadfast faith in the ultimate and exclusive moral authority of God. For example, Marko saw a very limited role for the court system in Bosnia’s postwar justice. He stressed that “Only justice can be achieved with God. It should be that people should get to courts and they should be processed. But the only true justice is with God.” Thus, while he encourages the gesture of adamantly seeking justice on earth, he sees ultimate justice resting only within God’s capabilities. It is still unclear to what degree he believed humans could accomplish justice on earth. When I asked him if justice could be achieved here on earth, he looked uncomfortable, mumbled something hardly audible, and my translator told me he would not like to answer. Similarly, when I asked Emina what first came to mind when she heard the term justice she slowly responded, emphasizing each word with small nods, “Something that you cannot reach on this world.” She again reaffirms the notion that true justice cannot be attained in the earthly world. Moreover, Petar was even more skeptical of human projects towards justice. He described, “Human justice in another way, as quoted in the bible, is like a filthy dress, which means […] ultimately I believe that humans are corrupted with the sin […]. It is a danger thing for humankind to practice justice because they themselves are
Petar is not only skeptical about the efficacy of human mechanisms of justice, but also implies they can counterproductive. Moreover, he expresses doubt in the fundamental capabilities of humankind.

Despite their skepticism of the ICTY and the Western claims of truth through a mastery of translucent understanding its model of modernity presumes, many respondents still felt humans must try to create justice. When I asked if we should try to create justice on earth, Petar quickly nodded and with a smile responded, “We should all grow into maturity what justice is, and learn and discover, and learn from the mistakes that people did before and try to correct. To learn from God is the best way.” While God provides the inspiration and guidelines of justice, it is still on believers to put his teachings into practice. Also, the idea of growing into “maturity,” learning and discovering what constitutes justice implies a dynamic process embedded in personal life experiences rather than one static all-encompassing definition. Likewise, learning and correcting others’ mistakes implies a type of social negotiation within the pursuit and understanding of justice.

Vahid also wholeheartedly believes that humans should seek justice on earth. He expressed qualified but passionate hope. He asserted we must pursue justice, explaining:

“I believe in humankind. I believe in human beings. I think that we in our core are just beings. I don’t blame Satan. I blame our nature or our capability of doing wrong deeds to other people, but we love justice, we appreciate justice, but sometimes we are also capable of doing things that are not right and that’s what minimizes our sense for justice and we lose our courage to be just all the time.”

Thus, in Vahid’s opinion, all humans have the capability to exercise justice sufficiently, but they must also have the inner strength to put their potential into practice. Overall many of my respondents seemed to commend genuine human efforts towards justice on earth. However, they
did not see all of their values, particularly those stemming from their religious beliefs, incorporated into the ICTY. Thus for nearly all of them, its criminal proceedings did not equate to true justice. Based on their reactions, it seems a rigid Western legal system that dismisses spiritual values will not satisfy local needs in postwar BiH, at least with the community of Sanski Most.

On the other hand, although Ema also saw the connection between justice and religion, she doubted the benefit of an explicitly religious framework within the context of postwar BiH. As she put, “Every religion says the same thing about justice, but as we saw in war, religion divided people. In my mind faith is one thing and religion is completely different and I’m not very fond of religion.” This is a good example of how while many respondents idealized justice as stemming from a divine manifestation, at the same time, nearly just as many of my respondents also remarked on religion’s destructive role in the war, and now completely rejected it as a personal label for themselves. Whereas the Western rational system might use religion’s destructive role as a basis to reject religious influences altogether, my respondents tended to suggest that a middle ground is needed.

Moreover in addition to overlooking values stemming from spirituality, the rigid Western mindset leaves no place for values and understandings which cannot fit into certain defined categories. Truth often becomes forced into a dichotomous framework that cannot adequately account for the multiple, shifting and overlapping realities that exist in the former Yugoslavia. The classic western view of truth is binary, admitting only two states: itself and its negation (Duranti 1993:218). Exemplifying this concept of truth, German philosopher Immanuel Kant states:
“The nominal definition of truth, that it is the agreement of knowledge with its object, is assumed as granted [....] If truth consists in the agreement of knowledge with its object, that object must thereby be distinguished from other objects; for knowledge is false if it does not agree with the object to which it is related, even though it contains something which may be valid of another object” (Kant- *Critique of Pure Reason*).

Thus, as Kant suggests, all inconsistent views that do not fit into this preconceived dichotomy of knowledge are subsequently discarded. This preoccupation with the agreement of knowledge to its correspondent object points to an understanding of truth that relies heavily on a Cartesian dualism between mind and reality.

American sociologist Talcott Parsons sees modernity as characterized by the phenomenon of “differentiation,” particularly the differentiation of religious and nonreligious institution (Ritzer 2007). Yet as Kelsay explains, the Muslim critique of modernity challenges this Western notion of “bipolarity” between spheres of activity. Instead, as Keslay quotes from Bosnian Muslim President Alija Izetbegović, “bipolarity is not finally constitutive of human nature […] Matter and spirit, body and soul, material and spiritual welfare are ultimately held together as distinctive aspects of the experience of the one, human being” (Kelsay 1996:131). As Izetbegović, suggests, within many Islamic teachings, human nature is characterized by unity and the integration of various aspects of existence into a whole (Keslay 1996:131).

However this strict sorting has often been promoted as an essential component of Western modernity. Indeed, American Jewish scholar Richard L. Rubenstein (1983) depicts Western modernity as “an age of triage,” that is, a sorting by hierarchy of importance. Yet, as Kelsay points out, modernity’s urge to sort social life according to quality is “haunted by the specter of millions upon millions of people who, for a host of reasons, have been excluded from participation in the modernization of specific societies” (Keslay 1996:124). Thus in such a
limited conception of modernity, modes of organizing life are legitimated in terms of instrumental rationality’s concern for increased efficiency and return for society as a whole. Yet this limits the range of populations, practices, and concepts understood as valuable, or even “legitimate” within particular societies (Keslay 1996:125). Moreover, this necessitates a hierarchy which places certain actors in charge of the “triage,” who have the “legitimate” authority to make such categorizations (Keslay 1996:125). Consequently, those who do not conform to the new rational objective modernity, and the categories specific empowered actors create, are marginalized as offering merely “surplus,” “unnecessary,” and “undesirable” ideas (Keslay 1996:125). The ICTY has arguably philandered with such risks.

Thus as Kelsay contends, BiH illustrates a failure of modernity to fulfill its universal aspirations. He argues that the claims of Western modernity to support freedom of conscience and human rights are a deception, concealing a deeper unwillingness to deal with an Islamic “other” (Keslay 1996:133). Within the Western model of modernity, European and North American societies speak of human rights through visions of universal tolerance and respect driven by rationality and differentiation between religious and nonreligious spheres (Keslay 1996:134). Yet such a demand, founded in this rigid efficiency-driven model of rationality, can only be met by reducing the quantity of legitimate claims or views. As a creation of the very epitome of Western modernity (the United Nations) which aimed to solve the problem of transitional justice after the war in the former Yugoslavia, the ICTY condensed the multiplicity of understandings of truth and justice so they could fit into the abridged categories instrumental rationality requires. The next chapter will explore how the ICTY’s performance of justice privileges this exclusive western notion of truth, concealing other local narratives.
Chapter 6: The Power of Performance: Deconstructing Notions of Absolute Truth

Introduction: Standardizing Truth through the Spectacle of Justice

As discussed in the previous chapter, the ICTY emerged from a Western framework grounded in a very narrow conception of truth. This legacy of seeking and defining a fixed, singular truth is manifested in the ICTY’s indictments, prosecutions, and verdicts, which also attempt to standardize one notion of truth in the pursuit of justice. The tribunal assumes that the truth can be rationally determined through a process. The ICTY propagates this Western legacy of creating categorized dichotomies as it seeks to determine the definitive “facts” of BiH’s wartime events in a binary fashion. Within the official court records, an event either did or did not happen. As the process is carefully constructed, following it becomes the highest priority. However, the process the ICTY employs necessarily excludes many local narratives since it rejects multiplicity and ambiguity, instead asserting one particular explanation of past events. Therefore, the process distorts truth not only through its exclusion of local experience, but also by inherently privileging the very narrative the tribunal creates during its proceedings.

International criminal tribunals produce a very limited and specific type of knowledge based on a particular set of techniques employed during criminal investigations and trials. For example, evidence presented in court has to meet specific standards before it can be accepted as “fact.” Likewise, witness testimony is structured by the highly formalistic dialectic between prosecution and defense (Anders 2007:24). Moreover, the ICTY looks at a relatively narrow set of events. The ICTY is in charge of prosecuting “persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since January 1, 1991” (Article 1: Statute 2006). Since countless local stories and experiences are never shared in the
chambers of The Hague, they are absent from the court’s official record. Therefore the history uncovered through the ICTY process is inevitably partial and incomplete.

In addition, the dichotomous framework of the ICTY’s judicial system creates distortions of the truth that do not resonate with local Bosnians. In the ICTY, as in other Western judicial systems, the accused is either innocent or guilty, leaving no space for ambiguity, even though in the eyes of many residents there can be significant grey areas when determining culpability. When asked about accountability during the war Marko responded, “People are not accountable” because they “did it unconsciously.” He quickly qualified that “I was just a child,” continuing, “But I think it was something that just happened.” He softly concluded, “People [were] not really accountable. Things happened really fast.” In Marko’s view, people cannot be deemed simply good or bad based on their activities during the war. Rather he suggests that their actions arose from the difficult and complex wartime atmosphere which requires a more nuanced judgment. However, the ICTY’s firm foundation in a Western binary model of truth drives it to classify people as either perpetrators or victims, even though many people in the conflict could be seen as either depending on who is judging.

The rejection of ambiguity is accentuated by the imposition of the burden of proof. The ICTY operates under a very narrow definition of truth. The prosecutor must prove “beyond a reasonable doubt” that the defendant committed the crimes as described in the initial indictment (Ivkovich and Hagan 2011:117). While this degree of certainty is not synonymous with absolute truth, the verdict of guilty or innocent still proclaims a definite assertion of culpability. Petar was upset and confused by this false promise that the ICTY would consistently determine absolute guilt since he saw people he knew committed crimes during the war walking free in his community. He explained:
“Sometimes I see that the people who did bad things during war, crimes […] those who prospered in a time when you definitely shouldn’t prosper, killed, raped, did all kinds of bad things, justice came. They finished their prison, ended up having some kind of sentence. But on the other hand, I also see that wicked people, people who don’t care about things and run over everybody to gain their goals, they also prosper. Then you get confused, shouldn’t it be just.”

Petar seems to imply that the ICTY’s indictments cannot bring sufficient justice since the truth of culpability has been only partially satisfied. Thus, even though some higher level leaders who committed specific crimes within the ICTY’s particular scope and interest are processed and imprisoned, this is overshadowed by his community encounters with the guilty who continue normally throughout their daily lives without any acknowledgement or consequence for their crimes during the war. Overall, the ICTY does not have a mechanism to deal with the multiplicity, ambiguity, and contradictions of wartime culpability or the very subjective and localized experiences of truth Bosnian residents possess.

The ICTY’s Western lens and absolutist framework inhibits its larger goals of bringing justice and peace to the former Yugoslavia. Scholars of numerous disciplines argue that international and local understandings of the restoration of security and peaceful relations are not necessarily identical and that both perspectives must be considered for successful international intervention initiatives (Jansen 2006; Wilson 2003; Eastmond 2010:5). Hartwell (1999) strongly confirms that perceptions of justice emerge from a culturally specific context, suggesting that justice is a socially constructed concept existing only within the minds of members of a society with no physical reality. Therefore, norms of justice, human rights, and peace are not objective or universal. Likewise, anthropologist Johanna Selimovic (2010) asserts that after mass atrocities meanings of truth, justice and reconciliation differ between constituent peoples. As growing
research affirms, lasting peace requires accommodating a multiplicity of understandings and definitions.

French philosopher Jacques Derrida developed the theory of deconstruction in an attempt to undermine the oppositional tendencies that have befallen much of the Western philosophical tradition. Deconstruction seeks to expose, and then to subvert, the various binary oppositions that undergird dominant ways of thinking. Metaphysics creates dualistic oppositions and installs a hierarchy that privileges one term of each dichotomy. Deconstruction seeks to unmask these sedimented ways of thinking by reversing dichotomies and attempting to disrupt the dichotomies themselves. In this sense, deconstruction embraces ambiguity by acknowledging undecidables which cannot conform to either side of an opposition.

In *Fictions of Justice* Kamari Clarke (2009) applies this deconstructionist approach to the study of justice through her anthropological critique of the international rule of law movement, particularly the International Criminal Court (ICC). Clarke shows that underlying this movement are unspoken assumptions, or “fictions,” that privilege Western ideas of justice over African understandings and obscure the post-colonial economic forces behind African conflict. This same pattern of privileging Western values through rule of law can also been seen in the international justice-making efforts in the former Yugoslavia. Although these criminal tribunals were designed to end impunity for the perpetrators of the most serious humanitarian crimes, such international judicial mechanisms privilege certain aspects of an overall heterogeneous conception of justice.
Foucault's Regimes of Power in the Performance of Justice

Many theorists challenge the concept of absolute truth by asserting that power drives conceptions of truth. Seeing truth as a function of power, Foucault believed that power produced truth. Foucault explains, “We are subjected to the production of truth through power and we cannot exercise power except through the production of truth” (Foucault 1980:93). Foucault contends that power cannot exist unless it is exercised (Foucault 1982:788). Thus the very act of speaking the truth is an exercise of power. This poses very interesting implications for those who testify and are brought before the ICTY. He attempted to show that what most people think of as the permanent truths of human nature and society actually change throughout the course of history (Foucault 1982:778). Since power drives conceptions of truth, Foucault argues that there is no absolute truth.

Foucault depicts history as existing under layers of suppressed and unconscious knowledge. These concealed layers are the codes and assumptions of order, the structures of exclusion that legitimate the epistemes by which societies achieve identities (Appignanesi and Garratt 1995:83). This is similar to Said’s assertion of representation as merely a mimetic depiction of a subject (Said 1989:206). Foucault’s focus on what mechanisms operate behind the totalizing discourse of truth resonates with Said’s interest in the historical context of imperialism which Said argues shapes marginalization of the “Other.”

Likewise, Said implies that the Western phenomenon of imperialism is a type of power that influences truth. While the Balkans were not subjugated to colonial powers in the traditional sense, it certainly operates in a complex web of European legacies in today’s postcolonial world. Said argues that the observer can never escape the power structure of imperialism (Said 1989:216). Their whole interaction with and observation of people are affected by their unequal
power relations. Therefore, as both scholars illuminate, representation and the “truth” it offers is inextricably tied to the historical legacies and ongoing power dynamics that surrounds it.

Moreover, Foucault argues that power creates subjectivity, seeing subjectivity in the ways that identity is conceptualized and constructed through patterns of interaction. Such patterns create triangular interconnection between knowledge, power, and truth. Foucault states that, “It is this distribution that we must reconstruct, with the things said and those concealed [...] the variants and different effects – according to who is speaking, his position of power, the institutional context in which he happens to be situated [...]” (Foucault 1978:100). Foucault’s theory can be applied to the ways larger systems of justice shape individual views. By imposing a justice system, the ICTY constructs different truths about criminals by reappropriating culpability, moving in from collective to individual responsibility. Just as Foucault asserted that “permanent” truths of human nature and society actually change throughout the course of history, Clarke (2009) contends that unspoken assumption underlying the international rule of law movement privilege Western ideas of justice, thereby operating as “fictions” of justice (Foucault 1982:778).

Foucault’s underlying mechanisms which operate behind the totalizing discourse of truth also apply to the practice of justice in the former Yugoslavia. From this perspective, it would seem that the ICTY does not inherently have power. Rather its power exists as it is exercised, through its criminal prosecution. With such approaches in mind, it is interesting to explore how this exercise of power shapes resident’s understandings of justice.

Moreover, the performances of justice itself help construct and reinforce truth regimes in various ways (Clarke 2009:13). Building on French philosopher Michel Foucault (1972),
professor of Anthropology and Historical Studies Ann Stoler (1995) states that truth regimes work through domains of knowledge and have the power to both reveal and conceal understandings about our social worlds, including what constitutes justice. Following this view, Clarke contends that the exercise of these authorial meanings of justice creates a “fiction of justice” through the necessary concealment of other justice narratives (Clarke 2009:13).

The ICTY’s one-dimensional version of truth may appear to local residents as a fiction of justice. When I asked Melisa if the ICTY was promoting justice she replied, “For sure they are saying they are. But I don’t think that’s what’s really going on.” I asked her what was really going on. She explained, “They have one picture, they want to show it to the world. Ok it’s like this, they use it to say ok really look we are saying those are more guilty and those are less guilty, and I don’t think it’s real. I think they’re just promoting the picture they want it to be.” Clearly Melisa sees a difference between what the tribunal self-conception and her understanding of efforts towards justice in BiH. Likewise, when I asked Petar if he had heard of the ICTY, he smiled and quickly responded, “Of course, they brainwash us every day.” This statement points again to an acute awareness of the imposition of the Western mode.

Some theorists posit that notions of justice are not always imposed by the state onto the individual. In Discipline and Punish, Michel Foucault (1977) disturbed the foundations of sovereignty by recentering them in the disciplining action of the individual. Likewise, in the Bosnian context, anthropologists have argued that understanding and meanings are dynamic. By tracing the reappearance of socialist-era symbolic forms or principles in the post-war Bosnian present, Andrew Gilbert (2006) argues that such example of recontextualizations illustrate how the war and its effects complicate some of the linear assumptions in the socialism/post-socialism analytic framework. He asserts that this suggests that thinking in terms of continuity or rupture
may limit our analysis of the complex ways in which the past is or is not relevant to the present (Gilbert 2006:18).

Western thought and systems such as the ICTY privilege assumptions that truth is static and objective, ignoring the ambiguities and dynamic nature of truth and justice. The ICTY has favored process as the means to achieve justice. But for the people of Bosnia such a narrow view may create, using Clarke’s terms, a fiction of justice.

**Integrating Retributive and Restorative Models of Justice**

The narrow vision of truth to which Western transitional justice initiatives in the former Yugoslavia adhere can be difficult to integrate with models of both retributive and restorative justice. Restorative justice in often seen in the form of Truth Commissions, such as in Latin America or South Africa, which aim to expose the truth and name perpetrators but lack the judicial authority to prosecute (Eastmond 2010:6). Focusing on victims rather than perpetrators, these mechanisms emphasize acknowledgement of suffering, nurturing of forgiveness, and individual healing (Eastmond 2010:6). Thus, this model of justice is founded in the belief that societies and individuals can heal through acknowledgement and forgiveness (Lederach 1997; Minow 1998; Eastmond 2010:6).

The partial truths arising from the ICTY seem ill-equipped to accommodate restorative justice, which rests on acknowledging the truth of what happened during wartime trauma. Advocates of restorative justice see the legal system as insufficient or even damaging to long term reconciliation efforts. While Argentinian legal scholar and human rights advocate Juan Mendez sees Truth Commissions as promoting reconciliation, he contends that war crime trials
are ultimately vindictive (Mendez 1997:267). Hartwell also questions the utility of formal criminal trials in transitional justice efforts. She argues that “while slow moving formal trials can serve a ritualistic purpose in much the same way as formal truth commissions, the limitations of a criminal trial where punishing perpetrators may not automatically benefit victims, must be confronted.” Therefore to bridge this gap between establishing perpetrators’ accountability and addressing victims’ needs, she suggests that “building a long term social reconciliation that encompasses all members of society – victims, perpetrators, their beneficiaries, and bystanders – may require other forms of justice in order to understand and develop their place in the new political, social, and economic order” (Hartwell n.d.:2).

On the other hand in retributive justice, criminal tribunals (such as the ICTY) are created to punish those responsible for gross human rights violations and to establish a factual record (Eastmond 2010:6). This model relies on a fundamental tenet of transitional justice, which contends that the prosecution of specific perpetrators individualizes guilt and diminishes the demonization of entire groups (Eastmond 2010:6). However, with its narrow focus on truth, the ICTY is not structured to hold all accountable. Moreover recent studies bring the effectiveness of retributive models of justice into question. In fact, Stover and Weinstein’s study (2004) found no direct link between criminal trials and reconciliation. Moreover, they found that criminal tribunals often further divided small multi-ethnic communities by causing further suspicion and fear, particularly with local perpetrators (Stover and Weinstein 2004:323). Finally, survivors rarely, if ever, connected retributive justice with reconciliation (Stover and Weinstein 2004:323). Thus as a result, “international justice and national social reconstruction occupied separate spheres” (Stover and Weinstein 2004:33). To create substantial transitional justice, this gulf between international mechanisms and local everyday realities must be bridged.
Vahid distinguished between retributive and restorative justice when he discussed what aspects of justice were currently missing in Sanski Most. He explained that punishment imposed by the tribunal felt remote and something mostly to satisfy the international community. He clarified the current system of justice in BiH:

“We have justice now where victims aren’t really asked what they want, but wrongdoers are being punished by states because states need it or systems need it. But victims don’t have really voice, in [the] sense if they want to forgive or they want this person to really be punished or there is no apology at all. According to our religious law, victims are the ones who should make decision what kind of justice they would like to have. If they had that it’d be much easier and much better for everybody, for victims and victimizers. In this context, even when victimizers are punished by death penalty, victims aren’t happy or satisfied with it. If victims could decide how they would like [it to] be, to have reparations, it would be much better for everybody.”

In other words, according to Vahid the ICTY’s retributive justice was not sufficient. Victims need to be heard and other elements including apologies and forgiveness need to be included to achieve restorative justice at the local level. For Vahid and many of my other respondents, the retributive justice of the ICTY was perhaps a necessary step, but is alone insufficient to create the restorative justice they deeply desire.

Since retributive justice may fail to bring reconciliation, which is founded on acknowledgement, policy makers and NGO activists widely agree that justice seeking to bring about reconciliation must be based on truth instead of state censorship or nationalist propaganda and on individual responsibility instead of impunity, revenge, or collective guilt (Bass 2000; Stover and Weinstein 2004). Even though the narrow universalist truth which the Western ICTY attempts to impose is not appropriate, as discussed above, I was fascinated that my respondents still expressed an urge for some type of definite yet locally understood truth.
As discussed earlier, the truth my respondents seek cannot be an externally conceived absolute. Rather it must arise from an internal negotiation to allow the space for accommodating local realities and multiple wartime narratives. As linguistic anthropologist Alessandro Duranti suggests, truth should be socially negotiated. Duranti (1993) explains how in practical application truth becomes a social matter that people must reckon with together. He believes that social negotiation is essential not only because of the need for conventions and public criteria in the assessment truth, but also due to the nature of truth itself. He argues that truth “becomes an instrument, a mediating concept living in particular practices, through which important social work gets done” (Duranti 1993:218). Thus for instance, the truth discussed in public arenas is debatable not only because there are parties representing and pushing for different versions of it, but also because it is through the confrontation of the different versions that a collectively acceptable reality is sought (Duranti 1993:218). In such debates, truth is not just a goal in such public confrontation. It is a criterion through which power is both defined and claimed (Duranti 1993:218). Moreover, Duranti suggests that if a group succeeds at making the criteria acceptable, the details of a crime or even the identity of the offender may be seen as relatively unimportant.

However, the truth of social action is distinct from the truth of logical connectives. In social life, truth cannot be taken as a given, either as a static property of objects or events or as a property of their relations. Instead, it must be thought of as a process, which requires action to be realized (Duranti 1993:236). Recognizing truth’s dynamic negotiation, sociocultural anthropologists often study how members’ productions of acceptable versions of reality are embedded in local theories of what constitutes an acceptable account and who is entitled to tell the facts or assess their value and consequences. As Foucault (1973, 1980, 1989) reminds us, the definition of truth, whether in the laboratory or in the courts, exists within the local technology of
power, operating in an area where social systems are tested. Thus, as Duranti argues, if words are seen as equivalent to deeds, their combination in meaningful ensembles can be seen as an attempt to both portray and shape the world.

Many of my respondents appear to see the ICTY as assuming a pivotal role in the recovery and clarification of truth, but falling very short of expectations. For example, Melisa described the purpose of the ICTY as “To find out who is really guilty for what happened during the war.” Thus she implies that the role of the ICTY is to proclaim ultimate guilt, a form of absolute truth. However, the dissatisfaction with the ICTY may be the result of its structural inability to facilitate a socially negotiated truth.

Likewise numerous respondents imply the importance of truth far exceeds that of punishment. For example, Antonio expressed his frustration that the trials allowed some “big leaders” to speak out, distorting the truth he knew. As he explained:

“If you just take a look at the leaders of these processes, you can see Milošević or Karadžić speaking about Serbia, big Serbia as it is something that never happened. Genocide never happened in Bosnia. People were killed normally, all part of war actions. This depressing for persons actually involved in that, who knew what actually happened.”

This implies that Antonio believes there is one particular series of events that happened and in a sense one true narrative of the wartime past rather than a multiplicity of understandings.

Mendez adamantly proclaims a victim’s right to see justice done, but also asserts truth is always preferable to justice (Mendez 1997:261, 267-68). While these two concepts are not necessarily inseparable, he perhaps sees truth as a viable alternative to justice (Mendez 1997:261, 267-68). Likewise, Peace and Conflict scholar Roland Kostic also comments on the effects of understanding Bosnian reconciliation and peacebuilding in terms of truth. He sees it as
the mutual acknowledgement of suffering, the development of a shared view of wartime events, and the collective envisioning of a common future (Kostic 2008:394, 399). Perhaps it is this type of broader socially negotiated truth which my respondents also sought in Sanski Most.

Iva saw a similar relationship with justice and truth, framing it through honesty. She said there is no justice in BiH yet. She further elaborated:

“Everybody has to be honest about what happened during the war. Everybody’s taking sides and is sensitive when we’re speaking about his nation. Everybody should be honest about what happened, that’s what’s missing. Everybody’s hurt and everybody think it’s the other’s at fault. But should really say what was really going on and maybe it’s nobody’s fault but we should know what really happened. That’s what’s missing.”

Iva implies that merely assigning guilt for past wartime events is unhelpful to the present pursuit of justice in BiH. While she indicates there is a distinct truth concurrent with “what really happened,” she still does not see culpability in terms of black and white. This is particularly resonate toward the end of her statement when she insists, “Maybe it’s nobody’s fault but we should know what really happened.” Selma expressed a very similar sentiment. She insists, “We have to be honest, that’s the biggest part of moving forward after everything.” Selma illustrates a very common sentiment among many of my respondents: one must honestly face the past to successfully move on with the future. Moreover, both Iva and Selma seem to believe that acknowledging the truth is more important than assigning blame. However, because the ICTY is primarily tasked with determining culpability and its process greatly restricts narratives of truth, it is little surprise that all my respondents remain dissatisfied with it.
The Absence of Local Justice

This is not to say that respondents see no place for retribution or punishment. However, the ICTY’s focus on overarching crimes and leaders, instead of locally experienced injustices, creates a profound gap in the experience of justice. Iva alluded to this gulf when she explains how “the biggest crimes that had been committed are going well in international court so far, but little crimes, like the ones that occurred in my town are not.” Iva continued, “There were really bad things that happened. Everybody knows whose fault it is, but those people are free. So those little crimes are not justified yet.” The idea of international justice not touching local lives is a common concern among nearly all of my respondents. Also many respondents consistently reiterated Iva’s sentiment that “everybody knows whose fault it is.” This frames the truth of culpability in very definite way, in a sense rejecting ambiguity but in a different way from Western models.

Moreover, international justice has yet to answer many residents’ lingering questions surrounding local experiences of wartime injustices. When I asked Selma what first came to mind when we speak about justice in BiH, she replied:

“A lot. Maybe first connotation, for God’s sake why all this? Where is justice? Looking from some bigger bigger picture from destiny’s side, from God’s side, if there is some kind of justice, why so many innocent people were killed? On the other hand I’m serving justice. I’m serving legal and law enforcement here in Bosnia to prove war crimes. I’m serving justice from family side. I brought their loved ones who went missing 20 years ago to peace, to one single grave to rest. So there is a lot of things I think when you say justice. In the end, I think justice here in Bosnia, it’s not at all satisfied. There is no matter of justice. On everyday basis when you walk through towns in Bosnia you see so many poor people, so many unhappy faces, why? Where is justice?”

Selma recognizes and even participates in international efforts towards serving justice in BiH, yet she does not see these initiatives as sufficiently touching her community’s experiences of
injustices. As Selma’s words exemplify, the ICTY’s inability to incorporate local contexts into their international performance of justice, which rests firmly on a Western imperative of universal truth and efficacy of process, has created widespread local skepticism. Many question whether the ICTY is actually serving justice or simply reinforcing the same corrupt structures that grew out of the war. Scholars, particularly anthropologists, have often warned that foreign intervention can be counterproductive when imposed rather than adapted to local contexts, even reinforcing the very cleavages and inequalities they set out to eradicate (Eastmond 2010; Subotic 2009; Delpla 2007; Shaw 2010).

Adin highlights a particularly visible wartime injustice that remains unaddressed by the ICTY, explaining:

“One aspect of war isn’t questioned by judicial system, and it probably can’t be: the social problems caused by the war. Not just the killings and media threat, but there’s a lot of people who got rich from the war and who used their assets to form the political structures after the war, and to be part of them, to rule them to control them. So there is a complete absence of justice in that sense. The war itself was a huge pillage. There is the whole sector of society that got rich by the war and that built its current status through the war and after it. Justice in that sense is completely absent.”

Adin not only recognizes the disjuncture between international mechanisms and local realities, but also questions whether the tribunal can every truly bridge this gap. Melisa also noted that the ICTY had done nothing to eradicate corrupt power structures. As Melisa explained, “Common people, they don’t have justice. You have to pay or any small crime or something that is not a crime at all but it’s just defined it is a crime. If you’re powerful and rich and in politics you don’t have to take care of anything, you can just do what you want.” Thus, Melisa sees justice as unevenly administered throughout her community. Those with power appear above it. Her
everyday experiences of injustice contradict the ICTY’s promises to end impunity throughout the region.

Petar also pointed to the prevalent corruption in BiH as a source of injustice. He explained that after the war ended the economy never successfully developed. Nowadays, he continued:

“It is hard, very hard. There’s a lot of corruption, on every level in the society. There are very few people who are running their business in the right level, that they are honest in their business. But that is because the government doesn’t allow them. It doesn’t help them to run. So then they cheat and then it’s an endless circle. They cheat the government, then the government asks them to pay huge taxes, and this discourages them to start a business. It’s a very challenging time to live in BiH. It is even harder than it was during the war. In the war at least you knew how to fight.”

For Petar, and many of my other respondents, wartime injustice transcended merely individual crimes. They see the overall destruction of society and the corruption that grew out of this chaos as an overarching injustice that international mechanisms of justice still need to address.

My respondents often expressed a supremacy argument for Bosnia’s current lack of justice by blaming injustice on politicians’ manipulation of ignorant masses. In such scenarios, residents believed corrupt politicians systematically aggravate separation to augment their own influence. When I asked Sara why there was so much injustice still present in Bosnia, she instantly responded, “Politics,” continuing, “Politicians play with people. They control our minds because people aren’t educated enough.” Marko succinctly expressed similar sentiments about justice in Sanski Most. He explained, “Politicians are making the difference between the people here in this community. If there’d be no politics, there’d be no problems.” Just as Marko asserts, many of my respondents saw politicians as the principle culprits inhibiting local justice.
Adin offers a more detailed explanation of this widespread dissatisfaction with local politics. He described how the ICTY had done nothing to alter the basic political structure that had led to the war. He began, “Generally speaking, I do believe that after the war there should be war tribunals, however I don’t agree that The Hague is the best way to do so.” He continued to explain how the ICTY could be revised. “First of all, it should happen here. It’s probable that such a thing was not possible immediately after the war.” He compared BiH’s postwar situation with that of Germany after World War II. He elaborated:

“In Germany the structures of power were taken down by the war. They were completely removed after 1945, so the tribunal itself had the chance to work openly in Germany. However here, the same people who conducted war, who were heads of the belligerent sides, basically remained in power after the war, and the whole structures that were built during the war kept on doing their job as usual after 1995. So there weren’t as many favorable conditions to establish a home tribunal. Basically those same forces today assert maybe in some milder form all of the same propaganda and ideology that was used during the war. It’s a question of completely removing the people who were in power during the war and remained there afterwards. And who used the same rhetoric, the same ideology, the same ideological systems, you have to remove them in order to establish something which would be just. On the other hand, The Hague itself was basically created by those who had some kind of political interest and were in Bosnia. They did take sides, sometimes not as much, sometimes a little bit more. So it has some kind of influence on how the system works.”

Thus Adin asserts that it is not merely the legitimate performance of justice that is important, but also the larger structures in which it operates. Moreover, he does not only blame corrupt national political interests for BiH’s lack of justice, but also questions the political motives and influence of the Western powers who created it.

As my of my respondents imply, the ICTY has failed to integrate local desires for restorative justice into its mechanisms of retributive justice. Yet simply adopting a restorative model of justice is not necessarily the panacea for local disappointment in BiH. In the South African context, Richard Wilson (2001) argues that TRCs’ restorative justice approach to human
rights violations during apartheid did not always serve the needs of communities at a local level. Integrating aspects of restorative justice into transitional justice efforts in the former Yugoslavia may, however, prove beneficial. Isabelle Delpla (2007), a philosopher engaged in the overlap of anthropology and international ethics and justice, argues that while local victims endorse some categories of international criminal law, they still understand justice in a narrower, more personal and local sense, focusing on the individuals whom they knew before the war and who committed atrocities in their municipalities of origin. In light of these understandings, having a local space to voice wartime narratives might be a useful addition to the international pursuit of postwar justice. While an ideal solution which integrates retributive and restorative models of justice may not be readily apparent, my interviews affirmed Eastmond’s (2010) contention that failure to meet local needs in BiH may be creating rifts. Many residents I spoke with saw aspects of the ICTY’s efforts as counterproductive, inhibiting the achievement of justice as it reinforced violent structures, separated people further, and reemphasized difference.

Adin further articulated the ICTY’s failure to incorporate local perspectives. He explained how the structure of the tribunal is problematic to its project of justice:

“It’s of course done through certain standards of those who founded the court, which basically means countries in the EU and NATO, so through the tribunal itself they’re probably asserting their own image of what Bosnian society should look like after the war and its own standards of justice. So it’s kinda two fold. On the one hand it’s serving as a way to bring to justice, or bring to public attention everything that was happening but on the other hand, it’s probably limited in some way through certain political motives and ideological motives.”

Adin does not completely discount the role of the ICTY, appreciating the spectacle of justice it creates. However, he sees it as propagating an international vision of transitional justice rather
than seeking to integrate a more local perspective. I proceeded to ask him if the “motives” he mentioned, align with his own views. He paused for a minute before responding:

“Actually I think that the tribunal itself is not enough democratic, in the sense that it does not include enough people from Bosnia itself. It does not give people here a chance to formulate their own standards of justice in a way that would be accepted by those who live on the entire territory of Bosnia.”

Adin seems to find it deeply problematic that the ICTY’s international performance of justice lacks the local voices of its intended audience.

When asked why she saw justice as completely absent in BiH, Ema replied, “I think the biggest problem is our political party system, because you have to be in specific party if you want to have job, if you want to be treated equally. If you’re in the wrong party like I am, then you don’t have any rights. In Sanski Most there is SDA they’re Muslim nationalists, I’m in SDP we’re multinational party.” When I asked her if the various political parties wanted justice she shook her head, replying:

“No they don’t want to make justice, especially in nationalist parties they just want personal gain. They want to divide people, divided people will vote for them. It only serves them, not the people. But many people are too blind to see them. Divide and conquer. That’s the way that it happens here in Bosnia. So I don’t think that they want justice here, because it serves them better if there isn’t justice.”

Similar to many of my other respondents, it seems like Ema is suggesting that nationalist politics do not desire or promote justice in BiH. Finally as Amar concluded near the end of my interview, “There is no justice anywhere, neither in Bosnia.” I asked him what is missing. He shook his head and replied:
“Everything is missing. This is in whole world, not just in Bosnia. This is some kind of play, drama. In whole world, we have American hegemony. We have some crazy religious fundamentalist and I don’t see any force of justice. I only see personal interest.”

Amar’s disillusionment paints a rather bleak future for transitional justice not only in BiH, but throughout the world. However, more often I found residents responding to their current disappointments with hope for the future.

**Conclusion: Refocusing the Universal Frame of “Modern” Justice**

Mungiu-Pippidi repeatedly returns to a central jeopardy facing those who wish to create change in particularist societies. She asserts that there is a looming possibility that “societies will only see formal and superficial changes, leaving their deep structure untouched” (Mungiu-Pippidi 2005:67). My respondents often alluded to this concern with creating only shallow change, framing it as a veracity of deep disappointment and dissatisfaction. Perhaps this is due to the lack of visible local change, a frustration to which my respondents repeatedly returned.

For example, as we discussed the Dayton Accords and general international initiatives Antonio remarked:

“[The] international community expected [the] constitution would be changed in just a couple of years so that BiH would be efficient. But this never happened. Today we are talking about change, but I don’t see progress. The constitution is absolutely inefficient. BiH can’t develop with this constitution.”

Antonio’s frustration with the lack of visible change in postwar BiH also points to the larger lack of structural change. In order to encourage substantial and long lasting change, transitional justice initiatives in the former Yugoslavia must recognize and integrate the dynamic multiplicity
of local residents’ understandings and help facilitate a local negotiation of their own truths rather than arbitrating a western concept presumed universal.

Moreover, instead of insisting that, “Southeast Europe is to be Europeanized”, as Mungiu-Pippidi implies as an ultimate goal of Western initiatives in the region, “modernization” need not be perpetually sought with Europe as the normative reference and pinnacle of desired progress (Mungiu-Pippidi 2005:67). Policymakers need to move their attention from the international laws they pass to the local people who engage with them every day. Rather than placing particularism as “deeply opposed to true modernization” and framing its flexibility as a liability which will “pervert slow and inconsistent attempts at institutional change,” instead a new vision of the ideal postwar Bosnian society should be locally negotiated and then collectively worked towards (Mungiu-Pippidi 2005:67).

However to accomplish this, it is essential to bridge the space between international and local justice. Adin explained this within his discussion of the efficacy of the ICTY.

“It depends on what you mean by effective. If you mean by the standards of the people who founded the tribunal, then yes. But as far as the country itself is concerned, I believe that the countries themselves need to have a lot of soul searching, and there should be a lot of new forces, fresh people coming to the forefront and trying to do justice in the country itself. I believe the best way for the countries themselves is a local way.”

As Adin suggests, mechanisms of transitional justice must be refocused to better integrate the desires of the local constituents they aim to serve.
Conclusion: Bridging Spaces of Justice

When I asked Ema where justice has been served in her community after the war, she explained, “I don’t know what is present; I only know what is missing.” She paused briefly, and then assuredly concluded, “No, there is not justice.” Ema did not experience any visible consequences of the ICTY, thus for her justice was not present regardless of what goes on in the Netherlands. For justice to touch Ema’s everyday life, it must include a local component. Thus, just as Ivkovic and Hagan (2011) suggest, “To be seen as legitimate, justice delivered by the ICTY ultimately also must be seen as local justice” (Ivkovic and Hagan 2011:81). It is essential to bridge the international performance of justice with local experiences of injustice.

The Performance of Punishment

According to Professor of Law, Jurisprudence and Social Thought Lawrence Douglas (2001:112-13): “The trial must be seen not simply as a procedural device […] but as a complex ritual which produces and suppresses narrative and clarifies and obscures history.” Just as we find within the context of the former Yugoslavia, this performance of justice, which goes beyond mere punishment, has significant ramifications.

As Antonio explained the ICTY most basic function is to hold some people accountable:

“[The Hague] is an effective way because if you just say that people were not accountable for their actions during war that is no way that we will have justice. People will just say ‘What happened in the war, I was not accountable because it was a specific time or whatever.’ This fact to hold people accountable for their actions during the war is like the basic for creating justice in this region. ICTY serves this purpose.”
However, even in regards to its most narrow function, accountability and punishment, the majority of my respondents were dissatisfied. They felt the ICTY did not treat everyone equally and perpetrators lived better than the victims they transgressed. Sara’s remarks about the ICTY well encapsulate a prevalent qualm among my respondents. She did not think the ICTY was “doing a good job” in its goal of “catch[ing] those people who committed crimes.” She continued to explain why their conditions at The Hague were unfair and unacceptable:

“Because they [ICTY] are just catching a few of them [war criminals] and the few of them are treated just like kings. The conditions they are living in are better than the conditions we are living in. Everything is good to them. No one can attack them no one can tell them anything. So they’re protected.”

Perhaps this recurring displeasure perhaps reflects unfamiliarity with the Western penal system’s more humanitarian approach to punishment.

As Foucault discusses, Western systems have moved from a public ceremonial system founded on torture and execution, to a system demanding restraint of judicial violence so that it did not exceed the legitimate exercise of power (Foucault 1975). In this framework, one must punish just enough to prevent recurrence. Thus with reform an important distinction was drawn: criminal justice should punish, rather than take revenge. Moreover, Foucault does not see penal reform as motivated by a love of one's enemy, rather, fundamentally reform is concerned with efficiency and illegality. Beneath the humanization of penalties are rules that demand "leniency" as a calculated economy of power to punish. Yet the reform movement was humanitarian in the sense that man, and the pain he felt, became a standard against which punishments were assessed (Foucault 1975). In the face of atrocities, my respondents may have had difficulty understanding this concept of leniency.
Hannah Arendt reflects on the legitimacy of post-conflict mechanisms of justice when trying individuals for grave crimes against humanity. She famously declared that the criminal law should focus exclusively on the prosecution of the accused, contending, “The purpose of a trial is to render justice, and nothing else; even the noblest of ulterior purposes […] can detract from the law’s main business: to weigh the charges brought against the accused, to render judgment, and to mete out due punishment” (Arendt: 1994:253). Thus, Arendt conceives tribunals as serving a very specific and limited role in transitional justice.

However, the ICTY, like its contemporary counterparts, has not limited its goals as to simply “mete out due punishment.” Many transitional justice scholars also emphasize the necessity of criminal prosecutions as a tool to secure deterrence and the prevention of further atrocities. For example, Argentine moral, legal and political philosopher Carlos Santiago Nino (1996) argues that criminal trials in the aftermath of politicized violence are not only necessary for victims to reclaim their self-respect, but also important for the collective conscience of society and for reawakening a nation’s ethical foundations. Likewise, Professor of International Law, with particular expertise in human rights law and war crimes tribunals, Diane Orentlicher observes that while many victims of gross human rights violations have been disappointed in international criminal courts, they generally agree that trials are necessary for restoring “fundamental norms of human decency […] to secure the moral integrity of future generations” (2007:15). In response to current debates over prioritizing the retributive function of criminal justice, in recent years contemporary war crime courts have increasingly looked beyond the perpetrator, judgment and punishment in a modified vision of transitional justice. We see this exemplified on the ICTY’s website, which proclaims a mission combining victim vindication and societal reconciliation (ICTY 2012; Henry 2011:25).
Despite the ICTY’s good intentions, the danger remains that its spectacular performances of justice constructs and reinforces hegemonic truth regimes (Clarke 2009:13). As discussed in the previous chapter, Stoler (1995) extends Foucault’s concept of truth regimes. She argues that such potentially hegemonic narratives have the power to both reveal and conceal understandings of social worlds, particularly constructions of justice, as they work through domains of knowledge. This resonates with Clarke’s contention that through the necessary concealment of alternative narratives of justice, the exercise of authorial meaning in international criminal tribunals creates a “fiction of justice” (Clarke 2009:13). Similarly, other contemporary legal scholars view law as a narrative through which cultural and social understandings of human relations are constructed and suppressed (Brooks and Gewirtz 1996; Douglas 2001; Minow, Ryan and Sarat 2004; Patterson 1990). However, Foucault (1975) asserts that people must watch or a ritual will have no meaning. If so, then the distance and lack of immediacy of the ICTY would prevent people from fully taking in the other social understandings that it attempts to create and achieve and contribute to the tribunal’s deficiency of local legitimacy. Far more importantly, the danger is that the very workings of the ICTY obscure local understandings of truth.

According to Derrida, achieving justice implies the exercise of a performative force and production of an “interpretative violence that in itself is neither just nor unjust” (Derrida 1992:241). It is force that creates the power to legitimate “paths to justice” (Derrida 1992:241). Therefore using Derrida’s theory, Clarke asserts that practices of justice are processes circumscribed by particular values (Clarke 2009:148). With this premise that justice is not a thing but a set of relations through which people establish norms of acceptability, Clarke argues
that it is limiting to assume that “rule of law” is the only way justice can be achieved (Clarke 2009:147).

This truth-power relation remains at the heart of all mechanisms of punishment, and is found in different forms in contemporary penal practice, including the ICTY. Foucault’s explanation of public execution is to be understood as a political as well as a judicial ritual, in a sense similar to the proceedings of the ICTY. In Foucault’s scenario, the conflict and triumph of the executioner over the body of the accused was like a challenge or joust, yet this is perhaps not so far from the perceived combative role of the international community in prosecuting war criminals. Yet as local residents’ grievances affirmed, the tribunal system as it is currently conceived seems incapable of giving perpetrators what they deserve in the light of their crimes. Even when residents perceived fairness in the judicial system, this did not equate to justice. When the process was fair in people’s minds, because so few have been held accountable and prison time duration made punishment feel insufficient, the ultimate outcome still appeared to remain unjust. My interviews coincide with the observations of Boston Globe correspondent Elizabeth Neuffer (2002), whose discussion of individual experiences in the Bosnian and Rwandan conflicts began to cast light on the discrepancies between perceived legal justice according to international humanitarian law and the level of justice desired by survivors.

**Satisfying both National Justice and Local Accountability**

Moreover, such popular dissatisfaction alludes to a more complex relationship between accountability and justice that requires tangible effects at a local level. Many residents emphasize the imperative for “some people” to be held accountable, affirming that accountability did
positively reinforce societal norms and provide a degree of deterrence and safety. This fundamental concern with security is a major component of justice that the tribunal touches, at least superficially. The ICTY provides the illusion of safety by serving as an imagined entity of security. “The Hague,” as it is regularly referred to in the Balkans, has become fantasized as a sacred place of justice, making it an even greater disappointment when juxtaposed with local reality where justice is experienced as elusive and partial. This helps explain why local residents are often unhappy that more proceedings are not domestic. They want the tribunal’s aura of safety to be more concrete, more tangible, more real.

Many of my respondents implied that punishment is not enough for those who were directly affected by the war. For example, Emina asserts that discussing justice in Bosnia is very complicated especially in the context of war because it is impossible to punish everyone and punishment cannot right many wrongs. She explains, “You cannot get back if you lost a child, if you lost your husband and so on. And there is just the punishment for the person who committed those crimes are not enough. It will never happen that every person who committed crimes will be punished. So it’s very hard to talk about justice, that justice will be reached, here in BiH.” She continued to describe how “People are feeling more and more bad after everything that happened, all sides.” For justice here it would be very logical for everyone to be punished, and brought to court, “but on the other hand it’s very logical that it won’t happen.” In reference to war crimes perpetrators, she further explained:

 “[The people who committed crimes during the war] should underlie the laws for punishment in the state in which they live, never mind if it’s in [the] Hague, or BiH or Serbia. But it is just not possible that every person will face their punishment because there are a lot of persons who were involved in crimes. So it’s very good to think that there is a place everyone will face their punishments or benefits, it’s in faith where God decides.”
As Emina suggests, even though all the guilty will never face the tribunal, it is still important to try those who can be caught. Moreover, in a sense she has made peace with this reality of incomplete prosecution through her faith that perpetrators will inevitably face their punishment either in this life, or the next. Patiently, she awaits this justice.

**A More Holistic Justice: Tempering Revenge with Fairness and Mercy**

Accountability and punishment are insufficient to achieve full justice in the Balkans. Others have explored in various contexts how perceptions of justice are interpreted in terms of fair or unfair treatment, and that these understandings are linked to processes of forgiveness and revenge during post-conflict transitions (Hartwell n.d.). Moreover, psychologists have conducted empirical research on the relationship between justice and fairness, showing how people “react to third-party allocations and dispute resolution decisions by evaluating their fairness, not simply their absolute or relative favorability” (Tyler 2000:850). Tyler has stated that this sense of fair treatment is usually derived from four key factors: opportunities for participation or “voice” in stating one’s case and making suggestions, neutrality of the authorities and forum, the degree to which the motives of authorities are trusted, and the degree to which all parties are treated with dignity and respect (Tyler 2000:117,121; Hartwell n.d.:3).

Although, “the term justice can evoke a more formal or legal concept of “what is right or due” while fairness evokes a more general or intuitive perception of the same, the ways in which justice is perceived to be fair are extremely important as “people’s views about what is just and fair are a social facilitator through which the interaction among people and groups is enabled”
Hartwell explores “the ways in which perceptions of justice and formation of a victimization identity are linked to a complex parallel, evolutionary, and inevitably political process of forgiveness and revenge during post-conflict transitions” (Hartwell n.d.:1). In fact, some scholars identify “receiving fair treatment” as the type of justice most effective in order to create a post conflict environment that reflects “positive social transformations” arising as “beneficial effects of the terminated political turmoil” (Montiel 2000:96; Hartwell n.d.:23).

However, others argue that most legal systems by their nature are more motivated by revenge than by fairness or mercy. Indeed Aladjem (as quoted by legal scholar, Austin Sarat) claims that “vengeance always cloaks itself in the most current styles of ‘justice.’” Hartwell explains that certain calls for justice involve a pursuit of revenge rather than fair treatment (Hartwell n.d.:29). However, this does not necessarily impede justice. Hartwell explains how retribution dispensed by more institutionalized types of mediation and arbitration, intercession, settlement, can be seen as a type of punitive justice, even though it is motivated by a desire for revenge (Hartwell n.d.:25). Likewise, Wilson acknowledges that a “permeable boundary,” yet inherent ambiguity, exists between “institutions of retribution” which “feed off the unrefined emotion of vengeance, channeling it into conventional procedures, but never quite breaking with the expectation of due punishment for wrongs and suffering for the offender” (Wilson 2001:164). This “raw power of vengeance” supports the legitimacy and power of judges handing down sentences (Wilson 2001:164). Likewise, in her work on revenge Wild Justice (1985), Susan Jacoby also noted a fine line between retribution and revenge in the formal legal system.

Although institutional legal systems may emphasize retribution, some argue that a higher, more evolved sense of justice must include forgiveness and a fundamental regard for all persons.
Psychologist Robert D. Enright outlines the evolutionary process of justice and its relation to forgiveness in his “Stages of justice and styles of forgiveness development.” In the first stage, the authority decides justice, “as Heteronomous Morality.” At this stage one believes “justice should be decided by the authority, by the one who can punish. This leaves the outcome in the hands of others, and absolves the person of responsibility for the decision.” In the second stage, justice is defined by individual reciprocity, put simply “If you help me, I must help you.” In the third stage, the group consensus decides what is just through “Mutual Interpersonal Expectations.” In the fourth stage, “Social System and Conscience,” society’s laws dictate justice. In stage five, there is a presumed understanding, or “Social Contract,” that some things are just right and must be upheld regardless of majority opinion. In an eventual stage six, a precedent for universal human rights is achieved through “Universal Ethical Principles.” In this model “justice is based on maintaining the individual rights of all persons. People are ends in themselves and should be treated as such.” Similar to Enright’s evolution, others see justice and reconciliation as a higher moral endeavor. Many argue that reconciliation transcends the absence of physical violence, encompassing a transformation of hostility into cooperation and respect of common values (Rehn 2003; Hartwell n.d.:18; Lederarch 1995; Krisberg 2004; Pankhurst 2008; William and Scharf 2002).

Antonio did not see any connections with ICTY and healing. He saw CIM as leading this true feeling and reconciliation. He said there were some other organizations in BiH, too. He felt that the healing and reconciliation should be led by governments and by all countries involved in the Balkan wars. As for the place of the international community, he felt that they should play the role of mentoring this process so that it can start much earlier than it would if simply led by the Bosnians.
Emina saw the purpose of the ICTY as “to try to reconcile every side. It’s not a thing of justice; it’s just a thing of reconciliation and peace in Bosnia and this region.” I then asked her if it was effective in this purpose. She responded that, “It is efficient, but there are many things that are happening that are not shown to people, that are done in secret.” While this represents the frequent Balkan paranoia regarding Western motivations and influence in the region, it also illustrates that the ICTY’s intentions and proceedings are not accessible to Emina.

Stover (2005) suggests that for many witnesses, reconciliation would only take hold once their neighbors from opposing groups had acknowledged their complicity in war crimes. These are, of course, matters over which the ICTY has little, if any, influence. But they remind us that tribunal justice should not be regarded as a panacea for communities divided by genocide and “ethnic cleansing” (Stover 2005:143). But what will be the standards for this reconciliation? At a minimum local understanding must be integrated into universalist models of human rights. As Williams and Scharf explain, “In the context of peace-building, truth relates to an accurate understanding and recording of the causes of a conflict, as well as which parties are responsible for which actions, and which parties, including individuals, may be characterized as the victims or the aggressors” (Williams and Scharf 2002:12). Yet establishing a standardized wartime narrative becomes extremely problematic since notions of truth, particular in the context of local injustices, are very much contingent on personal experience.

While some feel that empathy (Haider 2009) and a more emotional and subjective approach are paramount for reconciliation and justice, Eastmond’s main argument (2011) is that viewing reconciliation as a moral endeavor with universal standards may actually impede efforts to rebuild communities in a post war environment. This precaution also speaks to larger transitional justice efforts in the former Yugoslavia. Eastmond contradicts Enright’s suggestion
that the final stage in the six stage evolution of justice should be universal ethical principles, instead advocating that communities with former adversaries are more likely to rebuild social relations and a sense of trust if encounters emphasize a sense of normalcy rather than moral right and wrong (Eastmond 2010:11-12). This raises the question about whether ethics, and perhaps justice as a subset, should be distilled from reconciliation.

There is a growing consensus that constituents’ understandings must be recognized for international transitional justice efforts to be locally significant. Stover well outlines this rising awareness with his conclusion on the limitations of the ICTY.

“It is folly to suppose that the ICTY, located over a thousand miles away from the former Yugoslavia, can forge a version of the history of the Yugoslav conflict that would be accepted by all sides. Even if the tribunal establishes a factual record of what happened, it cannot contribute to national reconciliation if the peoples of the former Yugoslavia are unable or unwilling to recognize and internalize this record. As history constantly reminds us, memories of wartime atrocities, like all memories, are local; they are embedded in the psyche of individual victims and witnesses and, through the process of retelling and memorialization, they are deposited in the collective memory of the community” (Stover 2005: 142).

As Stover reminds us, the ICTY is certainly limited in what version of truth it can construct and promote through its proceedings. Moreover, as Stover implies simply establishing a “factual record” does not necessarily bring about reconciliation, particularly if it is not a local truth.

“Justice is Slow, But it Will Come”: Towards an Anthropology of Hope

Most of my respondents did acknowledge some postwar improvements in BiH, and were tentatively optimistic about the country’s future. Despite everything that happened, they still had hope. Sara saw Sanski Most healing after the war. She explained, “Just after the war, my mom
told me things were really tense. Serbs couldn’t speak with Muslims and reverse. But now people are talking to each other. There aren’t so many nationalisms in people.” She added, “For communities like this one [Sanski Most], the very localized reconciliation efforts from organizations like CIM are what is helping to create the substantial, significant progress.”
Likewise, reflecting upon the community of Sanski Most, Petar more conservatively explained the local healing he observed at the end of our interview:

“I see [healing] in some very, very small scale. I have hopes for younger generations, because they are not so much poisoned by [the] junk of information. But some generations are totally lost. They will hate for the rest of their life. When you have the root of hate in yourself, you can’t be healed. You can say I’m a normal person and all that. I don’t blame them, I just say it’s there, it’s the fact. The only way to fight this is education, creating the environment and educational system that will address these things in the right way. Bringing universal truths, rather than bringing that they are different. Take the good things. [Our] remarkable poets. [Our] remarkable history.”

Thus, as Petar illustrates, for many of my respondents, their strongest hopes lie with the younger generations. Despite their current disappointment with postwar justice, particularly the ICTY, they remain cautiously optimistic about BiH’s future.

Overall, my research has built on the growing body of literature advocating for the necessity of international transitional justice to take into account local perspectives. I explore notions of justice in the Bosnian postwar context held by residents of Sanski Most in the hopes of bringing forward a sampling of these critical voices. I have begun to illustrate how people’s understandings of justice impact their opinions of foreign-led transitional justice initiatives, particularly the ICTY. Despite the tribunal’s benevolent undertaking, my research coincides with the growing body of recent scholarship which suggests that such international judicial mechanisms may not always be consistent with the needs of the local communities they aim to serve. As previously discussed, anthropologists increasingly argue that human rights law must be
reframed into local terms for significant acceptance and success. My research adduces these calls, asserting the imperative of shifting the focus from an international performance of justice in The Hague to the local spaces of injustice in the former Yugoslavia.

In addition to further exploration on notions of justice within BiH, more work should be done on domestic judicial systems in BiH. Although I am aware of the Court of Bosnia-Herzegovina established in July, 2000, in Sarajevo, which includes international judges and prosecutors, and consists of three divisions including the Criminal Division which contains the War Crimes Chamber and tries more local cases, often passed down from the ICTY, my time in the field was too short to compressively address these local courts. However, it would be interesting to compare how residents’ perceptions of these domestic courts may differ from those towards the ICTY. Although many people express discontent with the ICTY’s location abroad, others feel this geographic distance is essential to insure fairness.

More broadly, while the need to incorporate local understandings is apparent, how to accomplish this remains rather confounding. How can we integrate restorative and retributive models of justice? Can concepts with definitive connotations, such as truth, be successfully socially negotiated? What would a space look like that incorporates multiple wartime narratives while still crafting the singular “factual record” residents desire? Clearly there are far more question than answers.

Near the end of her ethnography, Kamari Clarke begins to grapple with how to move beyond merely recognizing the plurality of justice to actually navigating these contested and seemingly incommensurable views within global realities, calling for a “critically engaged transnational legal pluralism” (Clarke 2009:238-39). What this means in terms of defining, and
more importantly, adapting rather than imposing universal standards of justice within legacies of unequal footing will be the major task of the 21st century’s international rule of law movement. Moreover, as the push for relativist approaches to justice emerges, the challenge for the next chapter of international law will be how to accommodate a multiplicity of understandings while still providing a framework of fairness and standard of human rights.

Despite the complexities inherent to transitional justice, we must continue to work towards innovative approaches. While legal mechanisms certainly have an important role in justice, they need to be utilized as inspiration rather than solutions in themselves. We must push ourselves to bring the more personal victim-centered emphasis of TRCs into the perpetrator-driven legal context. Rather than accepting tribunals’ limitations, we should look towards new approaches and structures that incorporate both fairness and accountability as well as forgiveness and redemption.

While the task is daunting, I find my inspiration through the patience and perseverance held by the residents of Sanski Most. One particular remark continues to resonate. At the conclusion of our interview, I asked Petar if there was anything else he would like to add. He thought for a bit and then calmly looked up with a smile: “Justice is slow, but it will come. Either in this world, or we’ll see each other on the next level.” I too have faith that justice will come.
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