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**A DISCOURSE ANALYSIS OF RAPE IN WAR:
CASE STUDIES FROM BOSNIA,
BURMA AND RWANDA**

Gwyn Daniel Bassett

A dissertation submitted to the University of Bristol in accordance with the requirements
of the degree of Ph.D. in the Faculty of Social Sciences, Department of Politics

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ABSTRACT

The first wave of Feminist International Relations (IR) and Gender and IR has demonstrated the importance of gender to IR, and commonly cited the example of rape in war; however, this example has assumed a unified understanding of *rape*: the reasons men use rape against women are explored as symptomatic, and reinforcing, of patriarchy. This thesis argues that rape must be understood in its local context, and that there is a multiplicity of understandings of rape in war. Rape cannot simply be observed, but must be imposed through language. A positivist framework cannot adequately analyse this multiplicity. The thesis therefore uses a post-positivist framework – specifically a critical discourse analysis informed by Foucault – to problematise rape in war.

Three case studies are used – from Bosnia, Burma and Rwanda – to first analyse local discourses of rape in war, and secondly analyse the effect of international influences on discourses of rape in war. The case studies draw predominantly on testimonies obtained by the International Criminal Tribunals and human rights groups. By using a discourse analysis this thesis provides a critical account of understandings of rape that are assumed to be homogeneous, and of how a hegemonic discourse is emerging. In this process *the sexual* is frequently privileged over *the violent*, with rape referring to *(generic) sexual violence against women* rather than *(specific) violence conducted in a sexual way*. This thesis concludes that rape in war can have no unified or extra-discursive meaning and strategically is better understood in international law as a form of torture.

AUTHOR'S DECLARATION

I declare that the work in this dissertation was carried out in accordance with the Regulations of the University of Bristol. The work is original, except where indicated by special reference in the text, and no part of the dissertation has been submitted for any other academic award. Any views expressed in the dissertation are those of the author.

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Why it was that upon this beautiful feminine tissue, sensitive as gossamer, and practically blank as snow as yet, there should have been traced a coarse pattern as it was doomed to receive; why so often the coarse appropriates the finer thus, the wrong man the woman, the wrong woman the man, many thousand years of analytical philosophy have failed to explain to our sense of order. One may, indeed, admit the possibility of a retribution lurking in the present catastrophe. Doubtless some of Tess d'Urberville's mailed ancestors rollicking home from a fray had dealt the same measure even more ruthlessly towards peasant girls of their time. But though to visit the sins of the fathers upon the children may be a morality good enough for divinities, it is scorned by average human nature; and it therefore does not mend the matter.

As Tess's own people down in those retreats are never tired of saying among each other in their fatalistic way: 'It was meant to be'. There lay the pity of it. An immeasurable social chasm was to divide our heroine's personality thereafter from that previous self of hers who stepped from her mother's door to try her fortune at Trantridge poultry-farm.

Tess of the d'Urbervilles:
A Pure Woman Faithfully Presented by Thomas Hardy

CHAPTER 1

OVERVIEW

A Discourse Analysis of Rape in War

(1) '[R]ecreational rape' as the alleged outcome of not supplying male soldiers with 'adequately accessible' militarized prostitution; (2) 'national security rape' as an instrument for bolstering a nervous state; and (3) 'systematic mass rape' as an instrument of open warfare.¹

[N]othing is sexual but naming makes it so. Sexuality is a social construction learnt with others...²

Authors in Feminist International Relations (IR), such as Enloe, treat all instances of rape as instances of the same thing. My thesis argues that these instances of rape are different in different places. It is not possible to give a sufficiently nuanced account of these differences through positivism. Instead, a post-positivist account is required. The post-positivist account that I use is a discourse analysis. As well as using this discourse analysis to demonstrate the multiplicity of discourses of rape in war, I also highlight the hegemonic discourse of rape that is emerging from recent international attention. Rape has become an internationalised issue, and as such IR provides the best framework for this analysis.

Rape is a powerful and emotive word. The first wave of Feminist IR and Gender and IR commonly cited the example of rape in war to highlight the importance of gender to IR. These examples collected numerous incidents of rape from conflicts around the world and subsumed them within a unified understanding of *rape*. Rape was considered to be something that resulted from, and reinforced, patriarchy. And like patriarchy rape was treated as universal. My thesis argues that rape must be understood in its local context, and that there is a multiplicity of understandings of rape. Rape cannot simply be observed, but must be imposed through language.

¹ Cynthia Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives* (California: UCP, 2000), p. 111

² Kenneth Plummer, cited in David T. Evans, *Sexual Citizenship: The Material Construction of Sexualities* (London: Routledge, 1993), p. 28

Feminists have argued that *rape* is better understood as *sexual violence*; I will argue that this renaming obscures more than it reveals. *Rape* is a form of violence and must be recognised as such. *Sexual violence* instead highlights the sexual nature of the crime at the expense of the violence. It is frequently *the sexual* that is privileged over *the violent*, with rape referring to (*generic*) *sexual violence against women* rather than (*specific*) *violence conducted in a sexual way*. This recognition has led me to conduct a discourse analysis of rape in war.

The examples of rape in war that have been cited to support gender in IR are not new phenomena; feminists have discussed rape for decades. What is new is the international focus on rape in war. International perspectives have developed considerably as a result of the prosecutions of rape that followed the wars in Bosnia and Rwanda. This development has followed the developments in Feminist IR, in that it has assumed a universal understanding of rape. From this position I will critique the assumption of a universal understanding of rape, and show how it affects both IR and international law. A positivist framework cannot perform this critique: it cannot adequately analyse the multiplicity of rape. This thesis therefore uses a post-structuralist framework – specifically a critical discourse analysis informed by Foucault – to problematise rape in war. ‘Discourse theory abandons the notion of a true or perfect definition together with a conception of social identities as rooted in pre-given essences.’³ By using discourse analysis this thesis provides a critical account of understandings of rape that are assumed to be homogeneous, and of how a hegemonic discourse is emerging. The thesis concludes that rape in war can have no unified meaning and strategically is better understood in international law as a form of torture.

Three case studies are used to analyse the discourses of rape: Rwanda, Bosnia and Burma. I have taken two main approaches to each case study: the first analyses the local discourses of rape in war, the second analyses the international influences on discourses of rape in war. The case studies draw predominantly on testimonies from

³ Jacob Torfing, *New Theories of Discourse: Laclau, Mouffe and Zizek* (Oxford: Blackwell, 1999), p. 3

the International Criminal Tribunals (Tribunals) and human rights groups. This introductory chapter will outline the thesis and its relevance to IR, and cover the four components of research design: the research question, the theory, the data, and the use of the data.⁴

Why International Relations?

The starting point for my thesis is IR, because IR provides a broad perspective from which to analyse and synthesise seemingly disparate academic themes (such as rape and war), and because I intend for my audience to be IR-orientated. However, IR has not always exploited its broad perspective. It has been nowhere near reflexive – or reflective – enough. The state-system of IR makes certain concepts relevant, such as war, while other concepts remain irrelevant, such as gender. IR also makes certain elements within war relevant, for example Strategic Defence Initiatives that could pick nuclear missiles out of space with lasers, while other elements are irrelevant, for example rape. I will argue that these silences in IR *are* relevant, and relevant to IR. My specific focus is *rape in war*, and through this focus that I will contribute to the gendering of IR.

As a discipline, IR has been concerned with the state and, to use Weber's term, its 'monopoly of the legitimate use of physical force within a given territory'. While providing a useful explanatory handle on the international system, (Neo-)Realist IR's state-as-actor approach takes *power* as its main concept and makes power synonymous with weapons. Power has been developed by Institutionalist IR to include economic factors, such as sanctions. In recent years Feminist IR has begun to evolve and critique these concepts of power, predominantly since *Bananas, Beaches and Bases* where Enloe asks, 'Where are the women?'⁵ One issue uncovered is rape. Rape can be a highly influential force, and though women are most frequently targeted, both women

⁴ Gary King, Robert O. Keohane & Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (West Sussex: Princeton University Press, 1994), p. 13

⁵ Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (London: Pandora Press, 1989), p. 7

and men can be affected in many ways. Rape is predominantly about power rather than sex, and Enloe noted that 'not only the rapist but the state is culpable'.⁶ My research is motivated by the application of this insight to the phenomenon of rape in war, an issue that IR has ignored.

Positivist schools of IR, such as Realism, Neo-realism, Rationalism, and Institutionalism, have been criticised for their narrow conceptions of the political, taking a reductionist, state-centric approach. Part of my purpose for studying rape within IR is to re-affirm the problematic nature of a state-centric approach. Waltz characterises the state-system as anarchic, making survival the function of states, and assumes that social differences within and between states are not relevant. Waltz argues that 'states have to be conceptualised as strictly self-regarding units', with the system the only 'unintended consequence of their interaction'.⁷ Furthermore, the state is frequently taken to be a unitary, coherent entity;⁸ by analysing rape in war from an IR-informed perspective, I will re-affirm the problematic nature of this assumption. This allows for subjectivity to be reintroduced to IR, and the state. Wendt is correct when he states that (Neo-)Realism is a 'degenerating research program': its adjustments are *ad hoc*.⁹

Bull's *Anarchical Society* illustrates how an 'elementary international system has reflexively evolved into a society of states'.¹⁰ Historical forms of Realism can also recognise these points. Carr's *Twenty Years' Crisis* states: 'There is a world community for the reason (and for no other), that people talk, and within certain limits behave, as if there were a world community'.¹¹ Historical Realism and Institutionalism

⁶ Enloe, *Bananas, Beaches and Bases*, p. 195

⁷ Andreas Hasenclever, Peter Mayer & Volker Rittberger, *Theories of International Regimes* (Cambridge University Press, 1997), p. 173

⁸ Cynthia Enloe, 'Margins, silences and bottom rungs: how to overcome the underestimation of power in the study of international relations', Steve Smith, Ken Booth & Marysia Zalewski (eds.), *International Theory: Positivism and Beyond* (Cambridge: CUP, 1996), pp. 186–201

⁹ Alexander Wendt, 'Constructing international politics', *International Security*, Vol. 20 No. 1 (1995), p. 79

¹⁰ Timothy Dunne, 'The social construction of international society', *European Journal of International Relations*, Vol. 1 No. 3 (1995), p. 381

¹¹ E. H. Carr, cited in Dunne, 'Social construction of international society', p. 375

have enough in common to function together as a critique of Structural Realism.¹² However, despite its differences with (Neo-)Realism, Institutionalism takes a similarly state-centric approach: 'Survival is the primary goal of all states, and in the worst situations, force is ultimately necessary to guarantee survival. Thus military force is always a central component of national power'.¹³ Although Institutionalism considers itself to be different to (Neo-)Realism, they share a rationalist framework that recent theories of IR have critiqued.

Rationalist IR has been described as 'a backward discipline' because of its inability to integrate the meta-theoretical developments of the social sciences.¹⁴ The ontology that underlies Rationalist IR 'makes no room for intentional rules as structural features of the system'.¹⁵ If any rules or norms *do* exist then they are believed to exist independently of any meanings, interpretations or identities associated with states.¹⁶ Such ontological decisions cannot be understood without also considering the associated epistemology. Rationalist IR's epistemology is explicitly positivistic, separating subject from object. 'It then focuses on the "objective" forces that move actors in their social interactions. Finally, intersubjective meaning, when it is considered at all, is inferred from behaviour.'¹⁷ For a Rationalist ontology to accept that intersubjectivity can be recognised – 'that we *know* regimes by their principled and shared understandings of desirable and acceptable forms of social behaviour' – would be for 'epistemology to fundamentally contradict ontology'.¹⁸ (Neo-)Realism attempts to avoid this by denying intersubjectivity; institutionalism tries to formulate

¹² Steve Smith, 'New approaches to international theory', John Baylis & Steve Smith (eds), *The Globalisation of World Politics: An Introduction to International Relations* (Oxford University Press, 1997), p. 124:9

¹³ Robert O. Keohane & Joseph S. Nye, *Power and Interdependence: second edition* (Harvard University: Harper Collins, 1989), p. 27

¹⁴ Jim George, *Discourses of Global Politics: A Critical (Re)Introduction to International Relations*, (BO, CO: Lynne Rienner, 1994)

¹⁵ David Dessler, 'What's at stake in the agent-structure debate?', Friedrich Kratochwil & Edward D. Mansfield, *International Organisation: A Reader* (New York: HarperCollins College Publisher, 1994), p. 338

¹⁶ Dunne, 'Social construction of international society', p. 381

¹⁷ Friedrich Kratochwil & John Gerard Ruggie, 'International organisation: a state of the art on an art of the state', Kratochwil & Mansfield, *International Organisation*, p. 9

¹⁸ *Ibid.*, p. 9

intersubjectivity in positivistic terms through 'strong research programs'. Constructivist IR provides a useful response to the above problems, an approach I will examine in the literature review. I will also examine Feminist IR's post-positivist leanings and close fit with constructivist IR. I will then explore post-positivist methodologies to show that critical discourse analysis provides a useful tool to examine rape in war. General Patton, a World War II commander, stated that in war there will 'unquestionably be some raping';¹⁹ this assumption perversely leads to the lack of study of rape in war.

Why rape?

Rape has been almost non-existent within Rationalist IR, and similarly so within the more recent fields of post-positivist IR. With the rise of Feminist IR there has been a move to mentioning rape as a *bad thing* that patriarchy allows. Such an explanation is unsatisfactory, raising more questions than it answers: what does *rape* mean? does rape always mean the same thing? does rape occur in different ways in different places? do the perpetrators and the victims understand the act of rape differently? IR is a useful field in which to analyse rape, because it provides the international context in which to contrast multiple discourses of rape.

The assumption behind much work on rape is that men have an innate capacity to rape, just as they do to fight. But as Enloe has pointed out, a great deal of energy is put into turning men into soldiers, and similarly a great deal of work goes into creating rapists. In Burma, for example, 'a belief that highly visible sexual activity is essential to maintaining men's sense of masculinity' justifies the use of rape in war, and makes it appear inevitable.²⁰ Rape in war is often considered to be a by-product of war (as the above quote from Patton demonstrates). That is, rape is a natural result of men being

¹⁹ George Patton, cited in Caroline Kennedy-Pipe & Penny Stanley, 'Rape in war: lessons of the Balkan conflicts in the 1990s', Ken Booth (ed.), *The Kosovo Tragedy: The Human Rights Dimension* (London: Frank Cass, 2001), p. 67

²⁰ Betsy Apple, *School for Rape: The Burmese Military and Sexual Violence* (Earthrights International, 1998), pp. 18–19

trained and sent out to kill other men; it is the other men that get the bad deal as they are killed. (This is the view taken by Jones, discussed in the literature review.) But what of those who are raped? It is assumed that women have been, and will be, raped in war and it is this expectation that allows rape in war to continue to be ignored.

In the same way that IR assumes a unitary subject of *the state*, studies of rape assume a unitary subject of *the female victim* and *the male perpetrator*. The available literatures on rape therefore present difficulties. Since Brownmiller's *Against our Will: Men, Women and Rape*,²¹ studies of rape have taken a universalist approach. That is, the reasons men use rape against women are explored as symptomatic of, and as reinforcing, patriarchy. This sociological analysis projects back into time and across onto other cultures. This is unhelpful in analysing rape in war. What is missing is the possibility of *differences* in occurrence. The reasons for rape could vary from conflict to conflict, and vary on different sides of the same conflict.

Rape is typically considered to be sexual intercourse without the consent of one of the people involved. *Sexual violence* is a broader term including 'any kind of violence carried out through sexual means or by targeting sexuality'.²² I will take an intentionally broad definition of rape to identify and include as many instances as possible. I will take a working definition of rape as the violent use of *any means* that could be considered sexual. I will not try to identify a true understanding of rape. Given the methodological commitments of my thesis this would not be desirable. Instead I will show that there are multiple discourses of rape in war, which are socially constructed through discourse. This requires specific and localised understandings, and it is the justification of this methodology that my thesis will, in part, seek to show. I will examine this methodology after discussing the questions my thesis will answer.

The broad definition of *rape* allows the thesis to problematise rape. What actually constitutes rape makes up a large degree of the arguments about rape. There

²¹ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Fawcett Columbine, 1975)

²² Todd A. Salzman, 'Rape camps as a means of ethnic cleansing: religious, cultural, and ethical responses to rape victims in the Former Yugoslavia', *Human Rights Quarterly*, Vol. 20 No. 2 (1998), p. 349

has been a shift since the 1970s from the signifier *rape* to *sexual violence*, but there still remains a great deal of slippage in what is identified. Critical discourse analysis provides a more sophisticated way of problematising. There are many reasons for this. The thesis argues that rape exists in, and because of, discourse. (Rape is a certain interpretation of a certain sort of physical violence, which relies on discourse. This is not to claim that physical violence is free from discourse, only that rape exists *in* discourse. This issue is discussed in Chapter 3.) Developing this logic, the thesis argues that although rapists, rape-victims, human rights activists and international lawyers all have different interests in rape, *many are beginning to share an intersubjectively constructed ontology of rape*. The thesis challenges this shared ontology, this emerging hegemonic discourse. If rape can be shown to be intersubjectively constructed, rather than objectively identified – and if some discourses can make rape *worse* – then it may be possible to lessen the effects of rape. What is done to *the body* is controversial, and what is done to *the soul* more so.

The cultural associations of mind with masculinity and body with femininity are well documented within the field of philosophy and feminism. As a result, any uncritical reproduction of the mind/body distinction ought to be rethought for the implicit gender hierarchy that the distinction has conventionally produced, maintained, and rationalized.²³

There is an assumption – fed by discourses of rape – that rape can cause a loss of humanity. The discursively constructed dichotomy of man/woman and mind/body is evident in these discourses of rape. Pateman argues that contemporary notions of the individual ‘express a masculine presumption that treats the body as separable from the self’.²⁴ Instead, woman *is* her body. This in part lends rape its specifically awful overtones.

²³ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London: Routledge, 1999), p. 17

²⁴ Anne Phillips, ‘Universal pretensions in political thought’, Michèle Barrett & Anne Phillips (eds.), *Destabilizing Theory: Contemporary Feminist Debates*, (London: Polity, 1992), p. 12

Why International Relations and rape?

One of the key insights of feminism is that the personal is political, and I apply this insight at the international level. Analysing the discourses of rape in war from an IR perspective allows links to be made between the seemingly personal incidents of rape and the seemingly unrelated developments of international politics. For example, the naturalisation of rape in war has meant that there are no precedents set for collecting evidence of rape. This has been a problem for the Tribunals for Rwanda and the former Yugoslavia. There is clearly a need to collect evidence of rape, but the processes for doing so are also problematic. Acknowledging the rape is not enough; there is an additional need to describe what this violation actually did to the person's person. This is what Foucault referred to as the 'clinical codification of the inducement to speak'.²⁵ Foucault is discussing the need for confession of sexual sin, but the description transfers well as it articulates the need to speak of what the rape did to the soul or mind. This reinforcement of a mind/body dualism is part of the discourses of rape in war. The attempt to articulate *what it has done*, rather than *what was done*, will invariably draw on the discourses of rape, reproducing them so that the sexual and the violent converge. Foucault describes this 'method of interpretation' as follows:

The truth did not reside solely in the subject who, by confessing, would reveal it wholly formed. It was constituted in two stages: present but incomplete, blind to itself, in the one who spoke, it could only reach completion in the one who assimilated and recorded it. It was the latter's function to verify this obscure truth: the revelation of confession had to be coupled with the decipherment of what it said. The one who listened was not simply the forgiving master, the judge who condemned or acquitted; he was the master of truth. His was a hermeneutic function.²⁶

Sexuality is something that is constructed, performative and can be reinterpreted, and as such the discourse of honour plays a part in this reinterpretation. International law shares with rapists and rape-victims an ontology of the person as having something of a spiritual or physical trait called *honour*. This unfortunately links rape too closely with sex.

²⁵ Foucault, *The Will to Knowledge: The History of Sexuality, Volume 1* (1976), trans. Robert Hurley (London: Penguin, 1978), p. 65

²⁶ *Ibid.*, pp. 66–7

Rape is considered the most personal of violent acts, and this is further exacerbated by the fact that it is women (who are associated with the personal) who will invariably suffer it. Taking such a personalised view of the potential victims differs from the more general gender-neutral language that most international law uses. Rape is seen as a personal affront to women and womanhood, rather than a crime that utilises gender. Rape is given a separate status because it is believed to be a violation of personal dignity that is much more effective than any other form of torture. Those who press for international law to recognise rape specifically as a war-crime-against-women themselves reinforce the gender dichotomy of rape. It is one thing to avoid being gender-blind; it is another to be gender-polarised, such as when Barstow reinforces rape as something men do to women:

Women suffer not only from torture, kidnapping, and murder, *as men do, but also from* sexual mutilations and forced pregnancies and sexual slavery, which is the violation of their bodies by rape.²⁷

Although men cannot undergo forced pregnancy they can be sterilised, and they can suffer sexual mutilation and sexual slavery; and it does not help to define women 'through their capacity for child-bearing'.²⁸

Both those providing and recording testimonies must rely on earlier understandings of rape to reproduce it. The discourses of rape are not just produced through testimony, but are also reproduced from other meanings considered sexual. If rape affects people in more than just physical ways (and this is partly the result of discourses of rape related to honour and mind/body dualism), then it could be possible to minimise these effects. This argument has been made by Foa²⁹ and more recently by Marcus: 'A feminist politics which would fight rape cannot exist without developing a language about rape, nor, I will argue, without understanding rape to be a language'.³⁰ By analysing these discourses, and de-naturalising them, I hope to add to this line of

²⁷ Anne Llewellyn Barstow, 'Introduction', Anne Llewellyn Barstow (ed.), *War's Dirty Secret: Rape, Prostitution and Other Crimes Against Women* (Ohio: The Pilgrim Press, 2000) p. 10, emphasis added

²⁸ Phillips, 'Universal pretensions', p. 20

²⁹ Foa, 'What's wrong with rape?', Mary Vetterling-Braggin, Frederick A. Elliston, & Jane English (eds), *Feminism and Philosophy* (Totowa, New Jersey: Rowman & Littlefield, 1977), pp. 347-59

³⁰ Sharon Marcus, 'Fighting bodies, fighting words: a theory and politics of rape prevention?', Judith Butler and Joan W. Scott (eds), *Feminists Theorize the Political* (London: Routledge, 1992), p. 387

thought. Rape, with the *sexual* understanding removed from the *sexual violence*, is predominantly violence and so it is the degree of violence that is central. If someone's orifices are frequently violated with various objects, their breasts cut, bitten and so on, then these are acts of violence against the victim; it is then a case of how they come to terms with that violence after-the-fact, and it is here that the discourses of rape can be crucial. Chantal states: 'In Kibuye [Rwanda], the genocide was completely successful. So where are we to find the witnesses? Even most of the other girls who were raped were subsequently killed'.³¹ In this respect, the discourses that are attributed to rape and its survivors become even more crucial.

International laws and human rights should be the counter-discourses to discourses of rape. But I argue that they are partly responsible for the reproduction and monopolisation of the sexual and honour as a central factor in the discourses of rape in war. That is, are international laws producing a hegemonic discourse of rape in war where once there were many discourses? (In the same sense that the language of international law creates claims by states of sovereignty.) UNICEF perpetuates such a discourse of rape in a report: 'Rape, identified by psychologists as *the most intrusive of traumatic events...*'³² and, 'Sexual violation of women erodes the fabric of a community in a way that few weapons can'.³³ These points *may* be a correct description of events, but are they *necessarily true*? Foucault's 'rule of the tactical polyvalence of discourses' speaks of how there are not so much *counter* discourses, but rather *reverse* discourses.³⁴ These discourses can 'circulate without changing their form from one strategy to another, opposing strategy'.³⁵

The universalist nature of the UN results in its legal bodies having to deal impartially with different cultures; this is the ever-present debate about international justice. I will not rehearse this debate, but it is important to note that the difference in

³¹ Chantal, cited in African Rights, *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995), p. 761

³² UNICEF, 'Sexual violence as a weapon of war', *The State of the World's Children* (<http://www.unicef.org/sowc96pk/sexviol.htm>, 1996), p. 1, italics added

³³ *Ibid.*, p. 1

³⁴ Foucault, *Will to Knowledge*, pp. 100–2

³⁵ *Ibid.*, p. 102

cultures and communities creates a problem for how rape in war is approached from an international perspective. The discourse of rape in international law is a presently emerging one. Who gets to inform it, and who is allowed to speak because of it, are important questions. What was a subordinate discourse of rape – rape as sexual violence – is emerging as the hegemonic discourse of rape.

A value-neutral description of *rape* is not possible. I hope to contribute positively to a certain side of the argument through a critical discourse analysis of rape in war. I am against rape being considered the result of natural male urges, and favour punishing rape: the currently existing international laws regarding torture provide a strategic framework for this. Rape is most usefully treated as a sub-set of violence, which is identified by its targeted violence that uses sexuality. Furthermore, this (sexual) violence is a form of torture, and should be recognised as such; this would prove efficacious in allowing rape to be prosecuted under existing legal norms surrounding torture.

Researching International Relations and rape

There are numerous problems with the use and study of *rape*, both as a concept and an event. Rape is not a Women's Problem, as labelling it as such is problematic for a number of reasons. Firstly, men are considered as neither part of the problem nor the solution, and the question becomes: 'what can women do about it?' It is frequently men that commit rape³⁶ and the problem lies there. Therefore, the discourses of rapists constitute part of the problem; there is no point in just analysing the victims' understandings. Excluding men from the problem of rape creates another problem because what is less commonly discussed (because it does not fit the standard frameworks) is that men are also raped in war. This does not fit with the assumption of rape as the release of pent-up masculine sexual energies in war. My reassessment of

³⁶ I say 'frequently' because women can also commit rape when *rape* is defined in the broader context of (sexual) violence, rather than just penis/vagina.

rape analyses the discourses of rape in war from two main perspectives: the local discourses, and the broader international perspective.

My analysis will be a qualitative, not quantitative, study of rape in war. That there were between 250,000 and 500,000 women raped in the Rwandan genocide of 1994, 50,000 women raped in Bosnia during the dissolution of Yugoslavia, and at least 36,800 (top estimate 1,500,000) women raped in Burma is not the type of research material I require. That rape has occurred in these wars has been established. I will augment these studies by problematising the way that *rape* is understood. My qualitative analysis will focus on the discourses of rape in war, including any discourse that could influence the way in which rape is understood and enacted, for example the roles of women as mothers or wives with honour in need of protection. My central research question in *A Discourse Analysis of Rape in War* is:

Can we identify the multiple discourses of rape in war, and is there an emerging hegemonic discourse of rape?

The formulation of the question demonstrates the post-positivist leanings of my thesis, but this does not predetermine the answer. I believe that the lack of attention to rape in war should be rectified, and I find my way of answering this question to be useful and interesting. This thesis has five central themes:

1. The problematic nature of moving from *rape* to *sexual violence*, and my preference for retaining the term *rape*. I will address this issue in the next chapter, my review of the literatures of rape.
2. The problematic nature of the universal framework that is commonly used to study rape, and the need to better understand *rape* within local and cultural contexts. Both the *sexual* and the *violent* must be contextualised. By rationalising the roles of the actors exogenously – without considering their understandings – important insights into specific uses of rape in war are missed. I will outline this in the next chapter, and will support this position in the first half of each of the case studies.
3. The need for discourse analysis to provide a sufficiently nuanced account of the differences in the discourses of rape in war. I will make the case for a critical

discourse analysis in my review of the discourse literatures and throughout the case studies.

4. The emergence of a hegemonic discourse of *rape* as a result of the increased international focus on rape in war since the 1990s. This has built on the more universal definitions of rape-as-sexual-violence that were already in existence (see theme two). I will support this position in the latter half of each of the case studies.
5. The possibility of a coherent international framework to understand rape in war that draws on current international laws regarding torture. This will form the basis for my concluding chapter, and will be referred to throughout the thesis.

I will return to these themes throughout; together they constitute the substance and logic of my thesis. In formulating the research question, and contextualising it within an IR framework, I have also made a number of assumptions:

1. Feminism and gender studies provide a critical approach to the study of IR.
2. Discourse analysis provides a new and critical approach to the study of rape within the field of Gender and IR.
3. Empirical case studies will confirm that rape is not a universal phenomenon in terms of its understanding and impact.
4. Understandings of rape in different cultures are produced by different discourses, and so will show variations.
5. The discourses of Tribunals and human rights are resulting in the emergence of a hegemonic discourse of rape.

These assumptions and the above themes will be readdressed at the end of the thesis.

Methodology

Through our post-Freudian eyes we all too readily envisage sex as a natural force pitted against civilisation, instinct against morality, and so take it for granted that sexual 'restraint' is 'repression', i.e., damned up energies will break through one way

or another. Surely it is dangerous to universalise...from our late twentieth century perspective in which we have sex on the brain and before our eyes as never before?³⁷

Sociological analyses of rape typically project back into time and across onto other cultures. My contention is that this is unhelpful in analysing rape in war. It is not only necessary to understand what *male, female, sex, violence* and *rape* mean in any given culture, but also what the terms mean within broader, interrelated contexts. The emphasis is on making sense of sex and gender symbols in terms of other cultural beliefs, conceptions, classifications, and assumptions.³⁸ Non-reductionist theorising provides a more realistic basis for framing research questions, and allows questions to be asked about how rape fits into war, as well as the broader IR spectrum.

My research will draw specifically on the work of Foucault, whose *Archaeology of Knowledge* sets out a framework for the analysis of discourse. Discourse, generally defined, is intersubjective knowledge within a shared linguistic culture. This intersubjective knowledge cannot simply be identified, but must be interpreted and constructed through struggles for hegemony. It is this process of interpreting understandings and constructions in their local contexts that will add an extra dimension to the majority of literatures on rape. In *The Will to Knowledge*, Foucault offers a case study of how 'the deployment of sexuality' creates and influences the self. My research will consider what discursive formations of sexuality are present in the case studies, and what effect they have. By offering a discourse analysis approach to rape in war, I hope to uncover what discourses are providing the 'conceptions of possibility' for rape as a tool of war.³⁹ I place an emphasis on de-naturalising and deconstructing these discourses of rape, examining rape as both

³⁷ Roy Porter, 'Rape – does it have a historical meaning?', Sylvana Tomascelli & Roy Porter (eds.), *Rape* (Oxford: Basil Blackwell, 1986), pp. 219–20

³⁸ S. B. Ortner & H. Whitehead, *Sexual Meanings* (Cambridge University Press, 1981)

³⁹ Mark Laffey & Jutta Weldes, 'Beyond belief: ideas and symbolic technologies in the study of International Relations', *European Journal of International Relations*, Vol. 3 No. 2 (1997), pp. 201 & 218

discourse and action: how do the ideas and the practices interact? Rape itself is a discourse and 'a discourse makes "real" that which it prescribes as meaningful'.⁴⁰

This insight is exemplified by a traditional Muslim aphorism that states: 'As our women are, so also is our community'.⁴¹ That is, Muslim men in Bosnian society may believe that because their women have been made impure by rape, so has their society. This emphasis on *intersubjectivity* within the thesis does not attempt to account for individual psychologies. (Discourse analysis does not attempt to do this.) Discourse analysis is better considered as a method, rather than a methodology: there can be general insights, but these are subjectively – rather than mechanically – applied to a field of interest. Because demonstrating the value of a discourse analysis approach to IR is part of my thesis, I will discuss discourse theory in detail in the second literature review.

Taking a post-structuralist methodology could be seen to cause a problem for undertaking a social science thesis. The comparative case study basis of the chapters – on Rwanda, Bosnia and Burma – is not and cannot be truly comparative because of the nature of the methodology. '[W]hen constructivists draw general conclusions about norm foundation, maintenance and change the factors they focus upon are not treated as context-free independent variables that may be transferred unproblematically to any and all situations to produce a necessary outcome.'⁴² Ultimately, any claim of a causal nature in the social sciences is to some degree problematic, and I do not seek to make causal claims about rape in war. If the discourses I identify are the only instances in which they occurred, recognising that they existed is still a valuable process.

⁴⁰ George, *Discourses of Global Politics*, p. 29

⁴¹ Salzman, 'Rape camps as a means of ethnic cleansing', p. 366

⁴² Richard Price & Christian Reus-Smit, 'Dangerous liaisons? Critical international theory and constructivism', *European Journal of International Relations*, Vol. 4 No. 3 (1998), p. 274

Social sciences are concerned with 'the persistent relations between individuals (and groups), and with the relations between these relations'.⁴³ This open nature of social systems creates an epistemological problem, which Giddens has termed the double hermeneutic:

[T]he social scientist studies a world, the social world, which is constituted as meaningful by those who produce and reproduce it in their activities – human subjects. To describe human behaviour in a valid way is in principle to be able to participate in the forms of life which constitute, and are constituted by, that behaviour.⁴⁴

In such systems, both the observer and the observed could influence the outcome of any event, and replicating the results obtained becomes very complicated, if not impossible. 'Giddens takes it to be a defining feature of social agency that it could act otherwise.'⁴⁵ This seriously affects the possibility of prediction, but it also provides a space in which to think about the relationship between discourses and people, and how discourses can change and emerge. Hard sciences, as closed systems, are not affected by predictions in terms of physical outcomes: they have 'reality constraints'.⁴⁶ How events are interpreted and understood may vary greatly across societies or time, but any predictions will not affect the outcome because it is closed. Open social systems, however, can be affected. '[B]eliefs, whether about society or nature, are clearly social objects',⁴⁷ and social objects can change. '[P]eople have memories, learn from experience and undergo shifts in the vocabulary they use to construct reality.'⁴⁸ Rape in war can take on numerous meanings, both intended and unintended. How actors think about rape could affect how those who have been raped think about it. Those involved with the aftermath of rape in wars – the interviewers, the defence, the prosecution and the judges – could affect the development of discourses, and contribute to an emerging hegemonic discourse of rape in war.

⁴³ Roy Bhaskar, *Reclaiming Reality* (London: Verso, 1989), p. 71

⁴⁴ Anthony Giddens, *Profiles and Critiques in Social Theory* (London: MacMillan, 1982), p. 7

⁴⁵ Torfing, *New Theories of Discourse*, p. 145

⁴⁶ Jutta Weldes, 'Constructing national interests', *European Journal of International Relations*, Vol. 2 No. 3 (1996), pp. 286–7

⁴⁷ Bhaskar, *Reclaiming Reality*, p. 87

⁴⁸ Steven Bernstein, Richard Ned Lebow, Janice Gross Stein & Steven Weber, 'God gave physics the easy problems: adapting social science to an unpredictable world', *European Journal of International Relations*, Vol. 6 No. 1 (2000), p. 47

The types of laws and explanations offered by the hard sciences are ‘logically incompatible’ with the beliefs of human societies that the social sciences study.⁴⁹ ‘Law-like relationships – even if they existed – could not explain the most interesting social outcomes, since these are precisely the outcomes about which actors have the most incentive to learn and adapt their behaviour.’⁵⁰ As feminists developed a discourse of rape as *sexual violence* based on available and desired international law, international law is also developing a discourse of rape and sexual violence based on their work.

Gaining enough evidence is a problem in any science, especially social science: ‘international relations rarely generates data sets in the high double digits. Where larger samples do exist, they often group together cases that differ from one another in theoretically important ways’.⁵¹ (I will discuss the selection of the case studies below.) Wittgenstein suggests we ‘*look and see* whether there is anything common to all. — For if you look at them you will not see something that is common to *all*, but similarities, relationships, and a whole series of them at that’.⁵² I will not assume that there is something common to all instances of rape, but will include anything that could be considered to be *rape*. Wittgenstein’s idea of ‘family resemblances’ allows us to group things without imposing the same order on them.⁵³ I wish to group disparate instances within the rubric of *rape* so that it can be problematised. What we can and cannot call rape is part of the multiplicity of discourses of rape.

Constructivist theories follow this argument, where ‘it is explicitly recognized that there is some looseness of fit between theoretical models, models of data, and the real world’.⁵⁴ Therefore, it is important to realise the contingencies involved when

⁴⁹ Winch, *Idea of a Social Science*, p. 72

⁵⁰ Bernstein *et al.*, ‘God gave physics’, p. 47

⁵¹ *Ibid.*, p. 46

⁵² Wittgenstein, *Philosophical Investigations* (1953), trans. G. E. M. Anscombe (Oxford: Blackwell, 1967), p. 31 (paragraph 66), italics original

⁵³ *Ibid.*, p. 32 (paragraph 67)

⁵⁴ Mary Hesse, ‘Models and analogies’, W. H. Newton-Smith, *A Companion to the Philosophy of Science* (Oxford: Blackwell, 2000), p. 303

making causal claims and surmising models. In what might seem a contradiction, post-structuralist methodologies are keen to let the facts speak for themselves. But this does not mean that the conclusions are objectively derived; instead, presenting the evidence in a certain way is considered in itself a worthwhile objective. It is better to offer a limited thesis – one that offers as much description as possible and points to possible connections – than draw erroneous conclusions of causality and prediction:

One of the often overlooked advantages of the in-depth case-study method is that the development of good causal hypotheses is *complementary* to good description rather than competitive with it. Framing a case study around an explanatory question may lead to more focused and relevant description, even if the study is ultimately thwarted in its attempt to provide even a single valid causal inference.⁵⁵

‘Focused and relevant description’ is more my goal than the construction of ‘causal inferences’. ‘It is now almost generally accepted that in the analysis of the causes of wars, the variation across time and the complexity of the interaction among putative causes make the likelihood of a general theory extraordinarily low.’⁵⁶ Offering description and facts that speak for themselves still requires subjectivity and interpretation in the process. Hence, I hope to deconstruct rape in war through critical discourse analysis. ‘What will clinch the argument is showing that textual analysis is better able than other methods to capture sociocultural processes in the course of their occurrence, in all their complex, contradictory, incomplete and often messy materiality.’⁵⁷

Data

Despite identifying the above problems, the selection of case studies is not arbitrary. When selecting case studies there must be a certain degree of bias involved: ‘As with the chicken and the egg, some theory is always necessary before data collection and some data are required before any theorising’.⁵⁸ Data cannot be independent in the

⁵⁵ King *et al.*, *Designing Social Inquiry*, p. 45, italics original

⁵⁶ Bernstein *et al.*, ‘God gave physics the easy problems’, p. 46

⁵⁷ Fairclough, *Critical Discourse Analysis*, p. 186

⁵⁸ King *et al.*, *Designing Social Inquiry*, p. 46

sense of having no connection with concepts, but it can be 'independent in the sense that [it does] not assure confirmation of theories'.⁵⁹ Within the general literature of feminism/gender and IR, certain wars attract claims of a high degree of rape, and my case study selection was influenced by my initial survey of the field. Claims of rape are important in undertaking a discourse analysis: large amounts of statements in various forms provide discourses to analyse. (The selection of statements for analysis is discussed in more detail with the discourse methodology in Chapter 3.) The cases selected are contemporaneous, which provides a stronger justification for identifying patterns between the case studies. It also ensures that discourses should be as numerous and accessible as possible.

The case studies are the genocide of the Tutsis and 'moderate' Hutus by the Hutu majority in Rwanda, the 'ethnic cleansing' in Bosnia, and the use of rape against ethnic minorities in Burma. The regions for study have been selected with reference to continents, cultures and contemporary nature. There are two important elements to selecting case studies. Firstly, *each observation* of a statement as a single component of a case must have some reason for inclusion. Secondly, it must also be clear what the *related universe* of each case study is. Each observation of a statement included will be included because it mentions an attitude to, or understanding of, *rape* or *sexual violence*. At one level, each observation could be considered its own universe. This is because of the complexities involved in identifying the relevant discourses. However, some degree of similarity between the observations must be assumed to allow for their study. The case studies will show that discourses of rape in war in different cultures are produced by different discourses, and so will show variations. Conversely, it must be assumed as an entry point for the purposes of the research that each country constitutes its own universe as a case study: 'Any group which shares both linguistic resources and rules for interaction and interpretation is defined as a *speech community*...' ⁶⁰ After the initial analysis of each country, I will consider the influence

⁵⁹ John A Vasquez, 'The post-positivist debate', Booth & Smith (eds.), *International Relations Theory Today*, p. 227

⁶⁰ Coulthard, *Introduction to Discourse Analysis*, p. 35, italics original

of discourses outside of that universe (such as human rights and international law). Finally, I will consider all of my case studies as constituting one related universe: the international.

Any rules identified in discourse formations will be a result of the research rather than an assumption. This is why I analyse each country in turn rather than identifying and analysing different types of discourse formations as case studies. I do not wish to imply or assume a universal or singular theory or knowledge of rape (this is not possible) and so will keep the cases separate in my initial analysis. But the three case studies do have sufficient elements in common to allow comparisons. They all occurred in the 1990s, have high claims of *rape* (or *sexual violence*) being used as a weapon of war, and have high degrees of conflict that have led to claims of genocide. What differentiates these cases is they are from different continents and cultures, and have had different levels of international attention.

My analysis will take a qualitative approach to transcribed interviews provided by others, such as Tribunals, academics, human rights groups and women's rights groups, as well as examining the cultural contexts within which these interviews are situated. Due to the prominence of the events in Bosnia and Rwanda, a large amount of material is readily available to carry out a critical discourse analysis; however, material relating to Burma is less obtainable. To strengthen and triangulate the statements available for the Burmese case study, I carried out fieldwork in Chiang Mai, northern Thailand, near the Thai-Burmese border, in March and April 2002. The fieldwork was funded by the University of Bristol's Department of Politics. I was graciously hosted by the Migrant Action Program, a Thai Non-Governmental Organisation. This allowed me access to locally published reports, pamphlets and other texts on rape and sexual violence in Burma.⁶¹ I attended the *Burmese Refugees*

⁶¹ Of specific relevance are: Asian Centre for Women's Human Rights (ASCENT) & Novib-Netherlands, *Capability Building for Burmese NGOs in Responding to Women's Human Rights Violations in Armed Conflicts. Programme for phase one: training on how to investigate, document and report women's human rights violations* (Philippines: Asian Centre for Women's Human Rights (ASCENT) & Novib-Netherlands, 2000); Brenda Belak, *Gathering Strength: Women from Burma on their Rights* (Chiang Mai: Images Asia, 2002);

Conference at the Holiday Garden Hotel, Chiang Mai (1 April 2002), and organised two seminars on rape and sexual violence for the staff of Migrant Action Program (April 2002). I was also able to attend other less specialist events and undertake more informal discussions regarding how *rape* was conceived of. The fieldwork provided invaluable material for the Burmese case study.

The empirical sources that the thesis analyses are predominantly of a western-orientated nature, which is the result of accessing discourses that are in English. This is not as problematic as it might seem, because numerous materials are available originally in English or they have been translated. For example, news reports, human rights reports and Tribunal documents all contain large amounts of statements about rape (or sexual violence). This reporting and translating of statements about rape means that these discourses have been made available for some reason. Much of the evidence must consist of *post hoc* rationalisations, which is to say that the discourses of rape are interpreted after the act. That this presents a number of discourses that can result in a statement is not a problem: the multiplicity of discourses of rape in war is something the thesis wants to analyse.

In order to avoid bias in statement selection as much as possible, the thesis selects as broad an array of sources as possible to triangulate the evidence. Hence any

Friends Without Borders, *Taking Shelter under Trees: Refugee Protection and Sustainable Forest Management* (Chiang Mai: Friends Without Borders, 2001); Migrant Action Program, *Seeking Safety; Meeting Violence; Migrant and Refugee Women's Journey from Burma* (Chiang Mai: Migrant Action Program, 2001); Migrant Action Program, *Summary of Thai Laws and International Laws Relating to Violence Against Women* (Chiang Mai: Migrant Action Program, n.d.); Indai Lourdes Sajor & Judy Taguiwalo, *Report on the Training Needs. Analysis of the Capability and Response of Novib Partners in Burma in Addressing Violence Against Women in War and Armed Conflict Situations* (Philippines: Asian Centre for Women's Human Rights (ASCENT), 1999); Jackie Pollock, *Violence Against Women: Thailand Country Report 2000* (delivered: Cambodia, 17–19 Jan 2000); Amornsiri Sansuratkul, Wance B. Thitprasert & Suphawadee Petrat, *Rape: Sexual Violence in the Patriarchal Society of Thailand (1985-1995)* (Friends of Women Foundation, 1997); The Thanakha Team, Alternative Asean Network on Burma, *Burma: More Women's Voices* (Bangkok: ALTSEAN-Burma, 2000); Women Exchange, *Guidelines* (Chiang Mai: Migrant Action Program, n.d.); Nang Lao Liang Won, *Burmese Migrant Women in Thailand: Guidelines on Strategies and Responses to the Needs of Burmese Migrant Women in Thailand* (Chiang Mai: Asia Pacific Forum on Women in Thailand, 1999).

available source will be considered as a possible valid observation if it offers some statement on rape (or sexual violence). Random selection is not the same as being haphazard: randomness allows all possibilities an equal chance of selection.⁶² There is therefore a role for works such as novels that draw on the discourses that surround rape. For example, Drakulic's *As if I Am Not There*,⁶³ which tells the tale of a woman held in one of the Bosnian *women's camps* – a euphemism for rape camps. Such sources are relevant because they allow us to understand how a collective memory of an event can pass into a culture, and how it can therefore affect the culture. Just as there are long-term effects from using depleted uranium, so there are long-term effects from rape too: how are the women and men later treated, and how do they treat themselves? These are important questions of international politics, and it is important that IR begins to question tools of war other than weapons of mass destruction.

There are clearly ethical considerations in researching a subject as emotive as rape. The major concern would be the conduct of interviewers with victims of rape; this has been called the *psychological* or *second rape* of rape victims. First-hand testimonials are obtained from specialised agencies with the skills to do so; in addition to overcoming any ethical concerns, this sourcing and critical analysis of statements that have been both confessed by the victim and deciphered by the interviewer is an essential part of the thesis. (The problems of selecting statements, identifying discursive formations, confessing and deciphering statements, and the absence of any extra-discursive position from which to judge are discussed in Chapter 3, the discourse methodology.) These sources will provide the bulk of the first-hand testimonials. The other main ethical consideration relates to the confidentiality of the information supplied by research subjects, and the anonymity of the interviewees will be maintained. This does not compromise the outcome of the discourse analysis because the identity of those involved with the discourses is irrelevant from a discourse analytic point of view.

⁶² King *et al.*, *Designing Social Inquiry*, p. 124: 2

⁶³ Slavenka Drakulic, *As if I Am Not There: A Novel About the Balkans* (Translated by Marko Ivic, London: Abacus, 1999)

Concluding remarks

The main area of inquiry that this thesis will fit into is the growing literatures on feminism, gender and IR. I also hope the work can augment the already established sociological literatures on rape, as this area pays little attention to rape in war. This intersection of social scientific research and rape must be negotiated carefully. Although my research will be independent and impartial to the research evidence, the work is clearly founded on the assumption that rape is a *bad thing*. This ties into the relevance of the work: I hope to raise awareness of rape in war and to advance understanding of it within the dominant discipline of IR. Furthermore, human rights and women's rights groups could benefit from additional research of the subject within an international political perspective. Subjectivity is inevitable in an area as emotive as rape and in a critical discourses analysis; however, it will add to, rather than detract from, the relevance and use of the research.

My intention for the case studies is to identify the multiple discourses that surround rape in war, and the emerging hegemonic discourse of rape. Researching, highlighting and describing certain discourses – and making connections between these discourses – is a valid (and intentionally limited) research goal. The data will therefore be used to make connections between statements and discourse formations that may previously have been unconnected, or not considered at all. By conducting a study of rape within issues that are clearly IR-based, I will reinforce my position that IR can benefit from a gendered lens within a post-positivist framework of discourse analysis. Hence the additional aim of this thesis is to justify and demonstrate the value of gender-aware, post-positivist discourse analysis to IR.

By demonstrating that any necessity or inevitability of rape in war is a result of the discourses that surround and constitute rape, I hope to contribute to the growing literatures that deconstruct the myths of rape. Discourses combine to produce these

'imagined communities'⁶⁴ and they could be unimagined by changing the terms of these discourses. That is, if rape does not causally follow from war then why need it follow at all?

⁶⁴ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism: revised edition* (London: Verso, 1991)

CHAPTER 2

LITERATURE REVIEW:

INTERNATIONAL RELATIONS AND RAPE

International Relations provides an interesting framework in which to analyse international political issues, such as rape in war. Rationalist IR has been slow to integrate theoretical developments within the social sciences. The linguistic turn within the social sciences came late to IR. But *the marginal* is no longer marginal in IR. Feminism, post-colonialism, Critical Theory, post-structuralism, postmodernism, and discourse analysis have made important developments in, and criticisms of, IR.¹ Structuralism, the ontological status of the state, sovereignty,² anarchy,³ nationalism,⁴

¹ Among the texts that have brought the marginal into the mainstream in IR are: Chris Brown, "'Turtles all the way down': anti-foundationalism, critical theory and international relations", *Millennium: Journal of International Studies*, Vol. 23 No. 2 (1994), pp. 213–36; David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Manchester: MUP, 1992); David Campbell, 'Why fight: humanitarianism, principles, and post-structuralism', *Millennium: Journal of International Studies*, Vol. 7 No. 3 (1998), pp. 497–521; Terrell Carver, Molly Cochran & Judith Squires, 'Gendering Jones: feminisms, IRs, masculinities', *Review of International Studies*, Vol. 24 (1998), pp. 283–97; Jenny Edkins, *Poststructuralism and International Relations: Bringing the Political Back In* (London: Lynne Rienner, 1999); Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (London: Pandora Press, 1989); Cynthia Enloe, *The Morning After: Sexual Politics at the End of the Cold War* (California: UCP, 1993); Cynthia Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives* (California: UCP, 2000); George, *Discourses of Global Politics*; Vivienne Jabri & Eleanor O'Gorman (eds), *Women, Culture and International Relations* (London: Lynne Rienner, 1999); John MacMillan & Andrew Linklater (eds), *Boundaries in Question: New Directions in International Relations* (London: Pinter Publishers, 1995); V. Spike Peterson (ed.), *Gendered States: Feminist (Re)Visions of International Relations Theory* (Boulder: Lynne Rienner Publishers, 1992); Jutta Weldes, Mark Laffey, Hugh Getterson & Raymond Duvall (eds), *Cultures of Insecurity: States, Communities, and the Production of Danger* (University of Minnesota Press, 1999); Marysia Zalewski & Jane Parpart (eds), *The 'Man' Question in International Relations* (Oxford: West View Press, 1998).

² R. B. J. Walker, 'State sovereignty and the articulation of political space/time', *Millennium: Journal of International Studies*, Vol. 20 No. 3 (1991), pp. 445–461

³ Alexander Wendt, 'Anarchy is what states make of it: the social construction of power politics', Friedrich Kratochwil & Edward D. Mansfield (eds.), *International Organisation: A Reader* (New York: HarperCollins College Publisher, 1994); Jim George, 'Realist "ethics", International Relations, and post-modernism: thinking beyond the egoism-anarchy thematic', *Millennium: Journal of International Studies*, Vol. 24 No. 2 (1995), pp. 195–223

foreign policy and the national interest⁵ have been critiqued;⁶ the linguistic turn, discourse, culture, gender, race, and refugees have become valid areas of research in IR.

Feminism and gender, too, have become increasingly legitimate areas of IR.⁷ IR was 'not so much gender neutral as gender blind'.⁸ Gender is not a synonym for women,⁹ and leaving masculine identity and subjectivity as the Archimedean point around which to study leaves theories of gender relations unproblematised. 'A sophisticated view of the construction of gender identity is that it is a multidimensional process, dependant neither solely on embodiment, institutional practices, or discourse/symbolism, but rather produced through the negotiation of all three.'¹⁰ While women have been ignored due to being in the background, men have been ignored due to being in the foreground.¹¹ 'This leaves men where they have always been, doing pretty much what they like, or more accurately, what some of them like.'¹² Connell suggests that gender studies should seek to re-shape *gender* by disconnecting, for example, courage from violence.¹³ Similarly, rape can be deconstructed by disconnecting the intersection between the sexual and the violent. Although my research area is IR, my research goals are feminist. I would define feminism as an interest in the processes of feminisation (and emasculation). Such a

⁴ Anderson, *Imagined Communities*

⁵ Weldes, 'Constructing national interests', pp. 275–318

⁶ Jutta Weldes, Mark Laffey, Hugh Gusterson & Raymond Duvall, 'Introduction: constructing insecurity', Weldes *et al.*, *Cultures of Insecurity*, pp. 4–5

⁷ Recent examples of such relevant texts include: Vernadette Vicuna Gonzalez, 'Review essay: gendering military landscapes', *International Feminist Journal of Politics*, Vol. 6 No. 2 (June 2004), pp. 343–359; Julie Mertus, 'Shouting from the bottom of the well: the impact of international trials for wartime rape on women's agency', *International Feminist Journal of Politics*, Vol. 6 No. 1 (March 2004), pp. 110–128; Jill Steans, 'Engaging from the margins: feminist encounters with the "mainstream" of International Relations', *British Journal of Politics and International Relations*, Vol. 5 No. 3 (2003), pp. 428–54. Despite its normally post-positivist leanings, feminist IR has continue to treat rape in war uncritically in a positivist manner: as a universal example of patriarchy.

⁸ Steve Smith, 'The self-images of a discipline', Ken Booth & Steve Smith (eds.), *International Relations Theory Today* (Cambridge: Polity, 1995), p. 25

⁹ Terrell Carver, *Gender Is Not a Synonym for Women* (Boulder: Lynne Rienner Publishers, 1996)

¹⁰ Charlotte Hooper, 'Masculinities, IR and the "Gender variable": a cost-benefit analysis for (sympathetic) gender sceptics' (University of Bristol Arts and Social Science Library: manuscript, 1997) (published in *Review of International Studies*, Vol. 25 No. 3 (1999), pp. 475–91), p. 5

¹¹ Harry Brod, 'The case for men's studies', Harry Brod (ed.), *The Making of Masculinities: The New Men's Studies* (Winchester: Allen & Unwin, 1987), pp. 40–1

¹² Terrell Carver, *The Postmodern Marx* (Manchester: Manchester University Press, 1998), p. 209

¹³ Gonzalez, 'Gendering military landscapes', pp. 346–7

definition contains a descriptive element, as I can see this at work in all feminisms; and a normative element, as I believe these processes should be deconstructed. IR first became interested in women, then feminism and now gender.¹⁴ The first half of this chapter will discuss the relationship between IR, feminism, gender and rape, and the openings provided by constructivist IR to analyse the discourses of rape in war.

The second half of this chapter will analyse rape. I will first discuss Brownmiller's *Against our Will*, the work that shaped much of feminist thought about rape since the 1970s. I will show that Brownmiller's views are too close to an essentialist view of rape, which would be better avoided. I will then analyse in more detail the move from *rape* to *sexual violence* as the defining term, and how this is emerging as the hegemonic discourse of rape from an international perspective. Finally, I will expand upon my contention that rape is best understood as a discursive construction, and why a discourse analysis, informed by Foucault, is needed to examine it. (Chapter 3 examines the critical discourse analytic approach that the thesis uses.)

International Relations, feminism and gender

Accepting that the political is personal prompts one to investigate the politics of marriage, venereal disease, and homosexuality – not as marginal issues, but as matters central to the state.¹⁵

The work of Enloe provides a bridge between IR, feminism and rape. Enloe asks a simple but important question of IR: 'where are the women?' Enloe finds that women are everywhere, and once recognised the appearance of IR changes.

One of the simplest and most disturbing feminist insights is that 'the personal is political'. Disturbing, because it means that relationships we once imagined were private or merely social are in fact infused with power, usually unequal power backed up by

¹⁴ Fred Halliday, 'Gender and IR: progress, backlash, and prospect', *Millennium: Journal of International Studies*, Vol. 27 No. 4 (1998), p. 836

¹⁵ Cynthia Enloe, 'Bananas, beaches, and bases', Linda S. Kauffman (ed.), *American Feminist Thought at Century's End* (Oxford: Blackwell Publishers, 1993), p. 457

public authority. Rape, therefore, is about power more than it is about sex, and not only the rapist but the state is culpable.¹⁶

This, however, is just a brief mention of rape as a *bad thing* within IR. Enloe makes good on this mention of rape as both a responsibility and a means of the state in *Maneuvers*, with a full chapter devoted to rape. The development of a constructionist element is also clear, with Enloe stating:

[I]f military strategists (and their civilian allies or superiors) imagine that women provide the backbone of the enemy's culture, *if they define women chiefly as breeders, if they define women as men's property and as the symbols of men's honour, if they imagine that residential communities rely on women's work – if any or all of these beliefs about society's proper gendered division of labour are held by war-waging policy makers – they will be tempted to devise an overall military operation that includes their male soldiers' sexual assault of women.*¹⁷

Enloe's use of 'if' is very important as it highlights the socially constructed nature of rape. 'Asking how something has been made implies that it has been made by someone. Suddenly there are clues to trace; there is also blame, credit, and responsibility to apportion, not just at the start but at each point along the way.'¹⁸ Enloe points out that if all men were naturally aggressive, there would be no need to train soldiers. Similarly, men must be conditioned to rape.

Enloe distinguishes between three types of rape. 'Recreational rape' as the alleged outcome of not supplying male soldiers with 'adequately accessible' militarised prostitution; 'national security rape' as an instrument for bolstering a nervous state; and 'systematic mass rape' as an instrument of open warfare.¹⁹ This is an interesting way to dissect rape; however, it could miss important distinctions between rape that occurs in different cultures and contexts. Because 'systematic mass rape' occurs in different ways – as I will examine in the case studies – we must understand these *differences* if we are to understand *rape*. Feminist authors have done much to highlight the importance of women, feminism, the feminised and gender issues in world politics and IR. I hope to add

¹⁶ Enloe, *Bananas, Beaches and Bases*, p. 195

¹⁷ Enloe, *Maneuvers*, p. 134, italics added

¹⁸ Enloe, 'Bananas, beaches, and bases', p. 443

¹⁹ Enloe, *Maneuvers*, p. 111

to this literature with my critical discourse analysis of rape in war, and will contextualise my research in this field below.

[F]eminism has revealed how few women in any country actually get to make these policies so glibly labelled 'national' policies. Throughout the world, politics is a male dominated activity.²⁰

Steans argues that the study of gender has not been part of IR because IR is about the study of the state and its power, 'which is premised on orthodox ideas about what counts as knowledge'.²¹ Sylvester's study of realist IR literatures reveals 'the recurrences of reactive autonomy and minimal obligations in ostensibly gender-free international relations'.²² For Elshtain, in rationalist IR there is a 'long tradition of women as weepers, occasions for war, and keepers of the flame of nonwarlike values';²³ to this list we might add women as rape victims. But women have been ignored within IR. Feminism sees IR's *state of nature* as 'a strange world where individuals are grown up before they are born...a world where wives, sisters and mothers do not exist'.²⁴ As well as being androgynised, the state is also homogenised. 'As God's will is singular, so must the sovereign's be...and most certainly this singularity must pertain in "foreign affairs"'.²⁵ Feminism seeks to criticise these deficiencies in IR, rather than be co-opted by IR; Weber does not want to offer 'only those aspects of feminist standpoint which share in a neo-liberal, institutionalist vision of International Relations...'²⁶

By claiming that power is exerted only in specific circumstances at specific times, the constant relationships of power in IR are hidden from analysis: this 'unacknowledged

²⁰ Jill Steans, *Gender and International Relations* (Cambridge: Polity Press, 1998), p. 63

²¹ Steans, *Gender & IR*, p. 53

²² Christine Sylvester, 'Feminists and realists view autonomy and obligation in international relations', (ed.), V. Spike Peterson (ed.), *Gendered States: Feminist (Re)Visions of International Relations Theory* (Boulder: Lynne Rienner, 1992), p. 165

²³ Jean Bethke Elshtain, 'Reflections on war and political discourse: realism, just war, and feminism in a nuclear age', Richard Little & Michael Smith (eds.), *Perspectives on World Politics: second edition* (London: Routledge, 1991), p. 462

²⁴ Steans, *Gender & IR*, p. 50

²⁵ Jean Bethke Elshtain, 'Sovereignty, identity, sacrifice', Peterson, *Gendered States*, p. 149

²⁶ Cynthia Weber, 'Good girls, little girls, and bad girls: male paranoia in Robert Keohane's critique of feminist international relations', *Millennium: Journal of International Studies*, Vol. 23 No. 2 (1994), p. 343

face of power enables the powerful to deny that politics is involved in many situations and outcomes, because no overt, public conflict has occurred'.²⁷ Hence women and anything considered to be a women's issue can be ignored. Enloe argues that sex tourism is also part of the global political system and global economy and the fact 'that it is not taken seriously says more about the ideological construction of seriousness than the politics of tourism'.²⁸ Peace camps are not taken seriously: 'Gaggles of women doing non-violent things. Nothing of substance here'.²⁹ Rationalist IR has ignored these elements of IR because they are not part of the international: 'There is no way to get at this sort of complexity unless you put the "domestic" and the "international" into a complex relationship with one another'.³⁰ Hence Enloe asks 'What sustained the Cold War? Nuclear weaponry and state secrecy, yes. But also women-produced sneakers and police rape'.³¹

To recognise and raise such issues was important given their complete absence. However, just recognising the importance of women is not enough to question the silences in IR. *Woman* is not the unified category that it is sometimes assumed to be. 'The fact that many poor peasant women depend for their livelihood on preserving trees or brushwood tells us more about the social relations within which they live than about the essential character of women.'³² A gender analysis has to understand not so much masculinity as well as femininity, but more the relationship between the two. Feminist IR quickly made that development from looking at just women to broader gender relationships: 'Might international relations discipline men as much as men shape

²⁷ Jean Bethke Elshtain, 'The power and powerlessness of women', Gisela Bock & Susan James (eds.), *Beyond Equality and Difference: Citizenship, Feminist Politics, Female Subjectivity* (London: Routledge, 1992), p. 113

²⁸ Steans, *Gender & IR*, p. 138

²⁹ Christine Sylvester, 'The contributions of feminist theory to international relations', Smith *et al.*, *International Theory*, p. 264

³⁰ Jean Bethke Elshtain, 'Feminist inquiry and international relations', Michael Doyle & John Ikenberry (eds.), *New Thinking in International Relations Theory* (Boulder: Westview, 1997), p. 83

³¹ Cynthia Enloe, 'Feminists try on the post-Cold War sneaker', Nancy Hewitt, Jean O'Barr & Nancy Rosebaugh (eds.), *Talking Gender: Public Images, Personal Journeys, and Political Critiques* (University of North Carolina Press, 1996), p. 179

³² Maxine Molyneux & Deborah Lynn Steinberg, 'Mies and Shiva's ecofeminism: a new testament?', *Feminist Review*, Vol. 49 (1995), p. 100

international relations?’³³ The idea that men make wars is too simplistic. Rather than reinforcing an essentialist understanding of women as good, studies of gender within IR aim to highlight gender processes. Both masculinity and the male body are constructed by state-centric discourses of masculinity and femininity. This ‘series of interventions and regulatory controls’ that discipline the body and regulate the population is what Foucault calls *bio-politics*.³⁴

The young man goes to war not so much to kill as to die, to forfeit his particular body for that of the larger body, the body politic, a body most often presented and re-presented as feminine...³⁵

Elshtain states that she felt a great sense of ‘relief’ in the realisation that ‘male aggressivity’ is not a simple, mono-causal explanation of war: it ‘grew less and less believable the more I read, pondered, and studied.’³⁶ Hence feminism within IR studies the processes of gender within international politics. This provides a more sophisticated position from which to analyse rape in war.

War rape has a long history, though it is not usually regarded as political.³⁷

Rape is an issue that IR should deal with, and certainly an issue that gender and IR should deal with. When IR mentions rape, it is often as a metaphor for invasion: ‘In international relations theory, intervention is defined as the violation of one state’s sovereignty by an uninvited intruder. It is rape on an international scale’.³⁸ This treats *rape* as having a unified meaning that can be applied universally. It does not help us to understand what is so wrong with rape in particular, or how rape gets its power.

³³ Hooper, ‘Masculinities, IR and the “Gender variable”’, p. 3

³⁴ Michel Foucault, ‘Right of death and power over life’, *The Foucault Reader: An Introduction to Foucault’s Thought*, ed. with introduction Paul Rabinow (London: Penguin, 1984), p. 262

³⁵ Elshtain, ‘Sovereignty, identity, sacrifice’, pp. 141–2

³⁶ *Ibid.*, p. 142.

³⁷ Pettman, ‘Gender issues’, John Baylis & Steve Smith (eds.), *The Globalisation of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 1997), p. 493

³⁸ Cynthia Weber, ‘Something’s missing: male hysteria and the U.S. invasion of Panama’, Marysia Zalewski & Jane Parpart (eds.), *The ‘Man’ Question in International Relations* (Oxford: West View, 1998), p. 158

Rape is also used in IR to highlight that, for women, war is as much about men-against-women as state-against-state. For example the violence done to women by men in the Gulf crisis: '[T]he sexual abuse and harassment of US soldiers, the rape of Filipino servants by their Kuwaiti employers, Iraqi soldiers' rape of Kuwaiti women...' ³⁹ This reference explicitly highlights rape, but it does so as part of a broader position of women's sufferance at the hands of men. It treats rape in war as always being examples of the same thing, which again leaves *rape* itself unproblematised.

Rape is also studied within IR as a symbolic attack on another community. Enloe mentions rape as an attack on men by shaming them and their women:

Many nationalists have assumed...that the significance of the community's women being raped or vulgarly photographed by foreign men is that the honour of the community's men has been assaulted. ⁴⁰

Women are typically assumed to embody symbolic values such as chastity and motherhood, with rape breaking the 'social order which it is women's responsibility to uphold'. ⁴¹

It is important to raise these points within IR, but they generate more questions than they answer. Enloe draws attention to the problems of studying and understanding rape. But there are many variables and it matters what different communities think of rape; however, Enloe commits to a universal understanding of rape (as Brownmiller will be shown to do). Enloe gives examples of rape in Ireland, Sri Lanka, Philippines, Chile, Rwanda and Bosnia; ⁴² yet rape is assumed as a constant in all these cases.

Sometimes social scientists design research in such a way that the explanatory variable that forms the basis of selection is constant. Such an approach is obviously deficient: the causal effect of an explanatory variable that does not vary cannot be assessed. ⁴³

Rape is certainly a bad thing and should not be ignored; however, rape is used within gender and IR for this very reason. It is very difficult to simply dismiss a subject as

³⁹ Jacqui True, 'Feminism', Scott Burchill & Andrew Linklater (eds.), *Theories of International Relations* (London: Macmillan Press, 1995), p. 239

⁴⁰ Enloe, *Bananas, Beaches & Bases*, p. 62

⁴¹ Steans, *Gender & IR*, p. 67

⁴² Enloe, *Manoeuvres*, pp. 111-52

emotive as rape as irrelevant, and it can perhaps make Rationalist theorists of IR uncomfortable. As such, feminists and gender theorists have a tendency to reinforce the emotive discourse of rape themselves, to lend rhetorical weight to their argument that gender matters.

Tickner states: 'The strategy of rape in the war in Bosnia has alerted the world to an atrocity that has *always existed in wartime*, although it is usually unreported.'⁴⁴ To say that rape in war has 'always' existed can be excused as a rhetorical flourish, but we do not know that rape in war has always existed, especially if it is 'usually unreported'. The assumption that rape in war is inevitable is what Benton has called 'the myth of rape'.⁴⁵ If there are no reports of rape in war, then it is claimed the women are too scared to speak out; Benton maintains this is not the case. 'But for rape to be a weapon of war it must have a mass intimidatory effect and thus must be publicised.'⁴⁶ Rape in war is often reported (truthfully or not) to further the cause of propaganda on both sides, thus making it both more difficult and more important to examine the multiple discourses of rape in war.

True states: '...rape has now been included as a Geneva war crime – *as if it did not systematically occur before...*'⁴⁷ To make the claim that international law is at fault requires us to ignore the relatively recent emergence of international law (as a human rights discourse), and the only recent adoption by feminists of rape in war as an issue to study.

Zalewski & Enloe state: 'we might discern that a large number of Bosnian Muslim women feel they have more in common with Croat and Serbian victims of mass rape...'⁴⁸ This is a possibility, but it is unlikely. Women who have been raped might find

⁴³ King, Keohane & Verba, *Designing Social Inquiry*, p. 146

⁴⁴ J. Ann Tickner, 'Re-visioning security', Booth & Smith, *IR Theory Today*, p. 191, italics added

⁴⁵ Sarah Benton, 'Women disarmed: the mobilisation of politics in Ireland 1913–23', *Feminist Review*, No. 50 (1995), p. 163

⁴⁶ *Ibid.*, p. 165

⁴⁷ True, 'Feminism', p. 222, italics added

⁴⁸ Marysia Zalewski & Cynthia Enloe, 'Questions about identity in international relations', Booth & Smith, *IR Theory Today*, p. 283

it difficult to associate with anyone from the group that has raped them. This rhetorical claim requires belief in the one-ness of *woman* as an association before any other.

By mentioning rape for rhetorical effect rape is left unproblematised. Is it really likely that men in Rwanda commit rape for the same reasons as men in Bosnia? I think it is unlikely, and one way to find out is to analyse the discourses of rape in these wars, and so consider the possibility of multiple discourses of rape in war. If a discourse analytic approach is taken to rape in war, then it becomes problematic to speak of *rape in Rwanda* and *rape in Bosnia* as multiple incidents of the same event. Rather, they are related incidents of related events. This is why I use a critical discourse analysis as my methodology, and why feminist IR is well suited to such an approach.

[T]he most vulnerable and consistently targeted population group, through time and around the world today, is non-combatant men of a 'battle age', roughly 15–55 years old.⁴⁹

It is high time, both from a normative and an analytical perspective, to break the prevailing taboo...and to expand the analysis of gender and international politics to include 'battle-age' males as *the* most vulnerable group of non-combatants in conflict situations, up to and including full-blown genocide.⁵⁰

I will conclude this section with an examination of the work of Jones to see how a positivist engagement with feminist IR can look, and why discourse analysis can offer something more. Jones's work is an attempt within IR to engage with gender issues, including rape. A gender-aware theory of IR is more useful for my thesis than a gender-blind one. Jones examines interesting issues, but could reach more interesting conclusions through discourse analysis. One view of rape in IR is that rape only happens to women, and the things that happen to men are just as important, if not more so. This is the point that Jones wishes to make: feminism (and the wider world) focuses on women at the expense of men. Jones sees his work as responding to the predominance of feminist

⁴⁹ Adam Jones, 'Gendercide and genocide', *Journal of Genocide Research* (2000), Vol. 2 No. 2, p. 191

⁵⁰ Adam Jones, 'Gendercide in Kosovo', *Centro de Investigación y Docencia Económicas*, Vol. 62, p. 23

IRs, which misapply their own theories by focussing only on women. Jones states that feminists have criticised the main schools of IR for 'their failure to integrate the gender variable into their analyses of war and international conflict',⁵¹ and claims that this 'feminist strand...may have a vested interest in overlooking gender-selective atrocities against males, since they distract from the desired focus on women's gendered suffering'.⁵² Jones concludes that he has 'literally come across *not a single sentence* devoted to the subject', whereas 'men as brutalisers and power-mongers have...received extensive notice in the literature'.⁵³

Jones claims that 'the trends isolated here speak to a longstanding pattern of *cultural biases* that act to highlight the suffering of women and children, while largely ignoring that of men'.⁵⁴ Jones believes that men are always ignored; however, the presence of men is not ignored but rather always *assumed*. Men are killed because they are considered more important, not because they are irrelevant. Jones argues that the issue of male deaths is a taboo subject in feminist IR, but this is not the case. Arguing that men (or women) are more important is to miss the point of feminism. Feminism has shown that the personal is relevant, and this extends to both men and women. Much feminist literature focuses on female issues, but this is to be expected. 'It is hardly surprising that in opposing patriarchy, feminism tended towards a position of counterposed essentialism.'⁵⁵ But feminists addressing the question 'where are the women in IR?' have highlighted women not at the expense of addressing relationships of gender, but as a precursor to it. A gendered analysis helps us understand how being male or female is related to war, and to rape in war. A critical discourse analysis can provide this understanding. A discourse analysis of rape in war does not preclude the study of men; it requires it. Treating men and women as distinct entities that should be studied

⁵¹ *Ibid.*, p. 22

⁵² *Ibid.*

⁵³ *Ibid.*, italics original

⁵⁴ *Ibid.*, p. 25: 69, italics original

⁵⁵ Rowena Chapman, 'The great pretender: variations on the new man theme', Chapman & Rutherford, *Male Order*, p. 247

separately does not allow for the relational nature of gender to be understood. But Jones's positivist methodology treats subjects as distinct objects, leading to an either-or decision.

Jones argues that violence against women (at least when done by a different group, rather than 'our own') is paid a lot more attention than the mass killing of men. 'The implicit prioritising of sexually-assaulted women, often on ambiguous or scanty evidence, reflected both age-old biases and more recent feminist activism on the issue of mass rapes in Bosnia and elsewhere.'⁵⁶ Jones cites an example from the village of Racak, Kosovo, on 16 January 1999: 23 adult males were killed, as well as one adult female, one late-teens male and one 12-year-old male. *The Washington Post* described this as a 'massacre of dozens of women and children'.⁵⁷ Jones's point that the media does not accurately report the gender imbalance in wars is important. Neither *The New York Times* nor *The Washington Post* published a story during the war in Kosovo specifically regarding the 'absence' of men, but did focus on the rape of ethnic-Albanian women.⁵⁸ Jones's evidence supports his claim that excessive focus can be put on women and children when men are dying, but such issues *have* been addressed by feminism. Brownmiller's *Against Our Will* claims that this is a standard propaganda tactic: to gain support for military action, atrocities against women and children will be emotively reported. This is primarily a cultural reaction, due to the associated abhorrence of killing women and children, which is an area that Enloe has covered with her concept of *womenandchildren*.⁵⁹ Enloe's point is not that *womenandchildren* get better treatment in war, but that they are used as cultural signifiers: they are gendered points of reference. But Jones's methodology cannot allow these differences: 'Let it be stated plainly: "Including women" excludes men.'⁶⁰

Inaccurate war reporting is not a new phenomenon. But a deeper question emerges: why should journalists believe that their readers want to hear about abhorrent

⁵⁶ Jones, 'Gendercide in Kosovo', p. 33

⁵⁷ 'Accounts of Serbian atrocities multiplying', *The Washington Post* (11 Apr 1999), cited in Jones, 'Gendercide in Kosovo', p. 10

⁵⁸ Jones 'Gendercide in Kosovo', p. 15

⁵⁹ Enloe, *The Morning After*, p. 166.

rapes, rather than the 'facts' of males fighting? Why should NATO brief that rape camps are being created in Kosovo, with little evidence at the time (although numerous rapes have since been documented)? Jones is unable to examine these questions because of his positivist methodology: 'I wanted to generate a sample of media reports that could be used to analyse the media's own performance, *rhetoric*, and behaviour during the critical first weeks of the war'.⁶¹ But it is this rhetoric – this *discourse* – that is crucial, and a discourse analysis is able to provide much more critical results. Jones implicitly recognises this: 'Males as agents of violence were visible, and gendered; as victims, *they were effaced from the discourse*'.⁶²

Men are captured and killed because they are believed to be superior to *women and children*. This is a gendered relationship, and an important one that Jones believes deserves attention: men suffer from patriarchy, too. That this is not a new point need not matter; that Jones claims feminism has never made such a point does. Jones wants to argue that gender is constructed through difference and is dependent on interpretation: men of fighting age are not women, children *or* elderly, and can be recognised as combatants by others because of their appearance. Hence, it is not gender as biological sex that Jones is really interested in, either empirically or normatively.

Jones does consider attacks on women. 'Women (and children, and the elderly) tend to be targeted, as part of "root-and-branch" exterminations that target all members of the community.'⁶³ Which is to say that women are killed if there is time once the men are dead. But this is not the case, and without a relational notion of gender Jones cannot expand his analysis to consider the reproduction of genders, such as the raping of women to produce future Serb soldiers; 'little Chetniks'. Jones's grouping of women, children and the elderly as the 'branches' of the male 'roots' implies a feminist insight – recognition of the feminised – but Jones does not explore this. Jones discusses Montenegrin 'blood-feud' institutions that 'protect' women, and he is right to expect (and

⁶⁰ Jones, 'Gendercide in Kosovo', p. 29, italics original

⁶¹ *Ibid.*, p. 25, italics added

⁶² *Ibid.*, p. 27, italics added

recognise) a correlation with patriarchal culture: 'A correlation is often evident with "patriarchal" culture, as this might be manifested in patterns of community organisation and family roles.'⁶⁴ Jones recognises this correlation but does not examine it, where a discourse analysis can.

Jones quotes Jonasshon and Björnson: 'rape was probably part of warfare throughout history; but with rare exceptions, such as the famous case of the Roman rape of the Sabines, it was not considered important enough to be mentioned. ... [Likewise] the feeding and housing of prisoners only rarely deserved recording'.⁶⁵ This quotation is part of Jones's footnotes. Jones should make more of it, but his positivist methodology does not allow him to do so. Jones's examples demonstrate that many important issues are ignored in war, rather than a specific bias to ignore men in war. Rape is one such important issue, which was ignored (in and out of warfare) until feminists addressed it.

Rape

Rape is an emotive term. What is meant by *rape* has changed considerably since the 1960s. Often taken to mean a woman forced to have vaginal sex against her will, the meaning of rape encompassed only what was conceivable within the discourse of sexual relations. Therefore a man could not rape his wife, and no consideration was given to the possibility of the penetration of anything other than the vagina. Ultimately, rape was seen as little more than sex. The sex may have been unwanted, but it was only sex. Clearly, rape was not taken seriously; or rather, *rape* was not considered. The rape of another man's wife was only taken seriously as an insult to the husband, as the theft of virtue and honour. Men could not be raped: not by a woman (implausible) and certainly not by a man (inconceivable), as both were outside the common sense.

⁶³ Jones, 'Gendercide and genocide', p. 193

⁶⁴ *Ibid.*, p. 200

⁶⁵ Kurt Jonasshon & Karen Björnson, cited in *ibid.*, p. 211

An etymology of *rape* shows how its meaning has changed, and illustrates how loose its meaning has been. Rape derives from the Latin *rapere*, meaning seize, snatch or take by force. Rape can mean: the act of taking anything by force; violent seizure (of goods), robbery; the act of carrying a person (especially a woman) by force; violation or ravishing of a woman; to take (a thing) by force; to rob, strip, plunder (a place); to carry off (a person, especially a woman) by force; to ravish, commit rape on; to transport, ravish, delight.⁶⁶ Similar is the word *rapine*, which can mean: the act or practice of seizing and taking away by force the property of others; plunder, pillage, robbery; acts of violent robbery or pillage.⁶⁷ Rape is not the only word that can mean violation of a woman. *Vitiate* derives from the Latin *vitiare*, from *vitium*, meaning vice, and can mean, 'To deflower or violate (a woman)'.⁶⁸

The earlier meanings of rape referred to a physical removal of a piece of property. It is in this respect that rape could come to apply to women, the property of men. So where do the later associations with honour fit in? It seems that the seizure could be of a woman's virginity, her chastity, her femininity, and therefore robbing the vessel (the female body) of its main worth – a reified honour – could occur. The meaning of rape is not fixed because of its socially constructed nature, and so the thesis focuses on *discourse* and *constructivism*. Without a critical discourse analysis of rape in war, it would only be possible to point to incidents of rape and comment that they are bad. This is a valuable contribution in itself (and something that feminist IR has done), but I wish to examine the multiplicity of discourses of rape in war. (*Discourse* is discussed in the next chapter.)

The problem with rape, from a feminist position, was threefold: to broaden the scope of rape, to indicate that rape was not just (forced) sex, and to get rape taken more seriously. The use of the term *sexual violence* has helped with the first two problems. Sexual violence allows for the possibility of acts other than the penetration of the vagina, and makes explicit rape's inherent violence. The thesis uses a broad interpretation of

⁶⁶ C.T. Onions, (ed.), *The Shorter Oxford English Dictionary on Historical Principles: third edition* (London: Oxford University Press, 1973), pp. 1746–7

⁶⁷ *Ibid.*, p. 1747

rape; so broad that rape as a category becomes problematised. But this is a positive result from deconstruction, and the focus throughout is on the intersection between violence and sexuality. (The thesis concludes that from a strategic point of view, to allow punishment of rape, *rape* can be constructed as violence-with-a-sexual-element rather than sexual violence. This allows rape to be conceived of as a subset of torture rather than a new and reified category in its own right.) The final goal – of getting rape to be taken more seriously – has still not adequately been achieved. I want to contribute to all three goals within IR specifically, and feminism more generally. All three problems were hugely influenced by the work of Brownmiller.

From prehistoric times to the present, I believe, rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which *all men keep all women* in a state of fear.⁶⁹

Balkan men have proved eager to fight and die for their particular subdivision of Slavic ethnicity, which they further define by religious differences. But Balkan women, whatever their ethnic and religious background, and in whatever fighting zone they happen to find themselves, have been thrust against their will into another identity. They are victims of rape in war.⁷⁰

The closing paragraph of Brownmiller's introduction to *Against Our Will* is good science, according to Popper's theory of falsification. It makes a bold claim that can be tested and falsified: it would take just one case of a man not consciously intimidating a woman with rape to disprove this theory. However, to treat Brownmiller's statement as science is to miss the rhetorical intention of her argument, which is much more interesting. Before analysing this statement further, I will first remove one word: 'conscious'. It is unhelpful – and untrue – to label all men as conscious rapists. While it is a useful rhetorical strategy, it does not help address the complexities of rape in and between different cultures.

⁶⁸ *Ibid.*, p. 2484

⁶⁹ Brownmiller, *Against Our Will*, pp. 14–15, italics original

⁷⁰ Susan Brownmiller, 'Making female bodies the battlefield', Alexander Stiglmayer (ed.), *Mass Rape: the War Against Women in Bosnia-Herzegovina* (London: University Of Nebraska Press, 1994), p 180

Brownmiller's more recent works does not moderate this stance. While it is true that many Yugoslav women were raped in conflicts in the 1990s, it is also true that many Yugoslav women perpetuated violence against other men and women. (Examples follow in the later chapters.) The radical, essentialist theory that Brownmiller subscribes to does not aid her argument, as I will demonstrate below. I will focus on the statement that rape 'is nothing more or less than a...process of intimidation by which all men keep all women in a state of fear'. This may be bad science – how could this process ever be falsified? – but it is good politics, and proved 'a landmark in feminist thinking'.⁷¹

Brownmiller successfully highlighted the possibility that rape could be a *process of intimidation*, as well as an actual event; rape was more than just sex. The earlier etymology of rape shows how rape was originally understood as a physical action of theft – an attack on a man's property – in which the woman could be complicit. 'If a man raped a [Hebrew] virgin within the walls of the city both shared the same fate of death by stoning, for the elders reasoned that if the girl had screamed she would have been rescued.'⁷² This attitude is still common, with women seen as complicit victims. For example, in Italy in 1999 the Court of Cassation ruled that a woman could not have been raped because she was wearing jeans. 'Overturning a rape conviction, the judges said it was "common experience" that jeans could not be removed "even in part, without the effective co-operation of the person wearing them".'⁷³ Rape is not sex and it is not a contained event: it can have long-term effects such as Post-Traumatic Stress Disorder. Numerous studies show that many women who suffer rape 'lose trust in their surroundings, withdraw from activities, and experience anxiety and depression'.⁷⁴

Brownmiller argues successfully that rape is a violent act, and one that must be understood in terms of men and women. 'A female definition of rape can be contained in a single sentence. If a woman chooses not to have intercourse with a specific man and the

⁷¹ Segal, *Slow Motion*, p. 234

⁷² Brownmiller, *Against Our Will*, p. 20

⁷³ John Hooper, 'Rape charge overturned as woman wore jeans' (<http://www.guardianunlimited.co.uk/Archive/Article/0,4273,3820732,00.html>, 12 Feb. 1999)

man chooses to proceed against her will, that is a criminal act of rape.’⁷⁵ Brownmiller also extends this argument to rape in war.

When a victorious army rapes, the sheer intoxication of the triumph is only part of the act. After the fact, the rape may be viewed as part of a recognisable pattern of national terror and subjugation. I say ‘after the fact’ because the original impulse to rape does not need a sophisticated political motivation beyond a general disregard for the bodily integrity of women. But rape in warfare has a military effect as well as an impulse. And the effect is indubitably one of intimidation and demoralisation for the victim’s side.⁷⁶

Brownmiller rightly points out that the intention is not relevant when it comes to the effect of rape in warfare; however, it *is* relevant when trying to understand the motivations behind rape. Where my analysis differs sharply from Brownmiller’s is over the issue of what rape in war shows. Brownmiller uses her evidence to support her claim that *all* men are in some sense rapists, where peacetime is still dangerous for women. ‘The body of a raped woman becomes a ceremonial battlefield, a parade ground for the victor’s trooping of the colours.’⁷⁷

I disagree with Brownmiller’s assumption of a *universal* link, and believe that the multiplicity of discourses must be analysed to understand the different reasons why some men rape and others do not.⁷⁸ Instead, Brownmiller draws a chain of cause and effect:

Patterns of German and Japanese aggression clearly included overt expression of contempt for women as part of an overall philosophy of the master race, as well as a most pragmatic means of terror. ... [F]or a female victim of rape in war is chosen *not* because she is a representative of the enemy, but precisely because she is a woman, and *therefore* an enemy.⁷⁹

It is incorrect to claim that women are targeted because, as women, they are enemies. It may even be the case that this overestimates the place of women in war. Women are

⁷⁴ Brant Wenegrat, *Illness and Power: Women’s Mental Disorders and the Battle between the Sexes* (London: New York University Press, 1995), p. 30

⁷⁵ Brownmiller, *Against Our Will*, p. 18

⁷⁶ *Ibid.*, p. 37

⁷⁷ *Ibid.*, p. 38

⁷⁸ Interestingly, Brownmiller does implicitly acknowledge one cultural difference: Brownmiller is pleased to discover that rape was used far more by German and Japanese armies than the Allied liberators, and ‘that the weight of evidence presented at Nuremberg and Tokyo conclusively proves it’ (p. 64). Given that the victors presented the evidence, this hardly seems surprising. This is symptomatic of the assumption that rape is something that the uncivilised peoples do.

⁷⁹ Brownmiller, *Against Our Will*, p. 64

more likely to be targeted because of the ethnic community they represent (itself formed through discursive constructions). Others share Brownmiller's views. MacKinnon states: 'Sex has also been used before to create, mobilise, and manipulate ethnic hatred, from the Third Reich to *Penthouse*.'⁸⁰ And Griffin states: 'If the professional rapist is to be separated from the average dominant heterosexual, it – may be mainly a quantitative difference.'⁸¹ This is what Marcus calls the instrumental theory of rape: men rape because their penises are able to be weapons.⁸²

Helliwell refers to this tendency in feminist writings on rape as 'potted "world histories" of rape',⁸³ attempting to trace rape in different societies against a single historical or evolutionary timeline. There are other examples of this tendency in addition to those from Brownmiller and MacKinnon: Pauline Bart and Patricia O'Brien state, 'every female from nine months to ninety years is at risk'; Anna Clark, 'It seems to be a fact of life that the fear of rape imposes a curfew on our movements'; Lee Madigan and Nancy Gamble refer to, 'the global terrorism of rape' (1991); Susan Brison claims, 'the fact that all women's lives are restricted by sexual violence is indisputable'; and Karen Dubinsky states that rape, 'illuminate[s] gendered relations of power in their rawest, most brutal forms'.⁸⁴

I believe that these claims are not only incorrect, but they also trivialise rape by simplifying it. I disagree methodologically with Brownmiller's interpretation. It is hence through the analysis of the discourses of rape in war that I offer a new understanding of rape. The methodology allows for the possibility of interpretation and difference in rape in war, and uses this methodology improve understanding of rape. Essentialist views of rape take a fixed understanding of rape, and then identify instances of it. Brownmiller's

⁸⁰ Catharine A. MacKinnon, 'Turning rape into pornography: postmodern genocide', Stiglmeier, *Mass Rape*, p. 75

⁸¹ Susan Griffin, cited in Segal, *Slow Motion*, p. 233

⁸² Sharon Marcus, 'Fighting bodies, fighting words: a theory and politics of rape prevention', Judith Butler & Joan W. Scott (eds), *Feminists Theorize the Political* (London: Routledge, 1992), p. 395

⁸³ Christine Helliwell, "'It's only a penis": rape, feminism, and difference', *Signs: Journal of Women in Culture and Society*, Vol. 25 No. 3 (2000), p. 791

⁸⁴ Helliwell, "'It's only a penis'", pp. 790–793

universal claims that rape occurs naturally and that all men are rapists leads to the problems I have outlined above, and leaves *men* and *rape* unproblematised. This is because Brownmiller's analysis assumes that all men have a natural impulse to rape. The insistence that rape is a universal, rather than an individual, phenomenon is understandable: after years of rape being dismissed as only important individually (if at all), why give up the ground made by suggesting that rape is not universal? But the position that feminism is left with regarding rape is far too close to the position of evolutionary biology, which provides an account of rape that is the opposite of what I want to promote.⁸⁵ It claims that rape 'is the result of evolutionary selection and can therefore be understood as a reproductive strategy of men who would otherwise not reproduce'.⁸⁶ These quotes demonstrate this view:

Long-term and detailed research on the biology and behaviour of scorpion flies of the genus *Panorpa* has helped clarify the way in which selection has acted in the evolution of forced copulation. We feel that a description of this research will help to clarify our hypothesis regarding human rape.⁸⁷

It is our view that human rape may be an evolved, facultative behaviour that is condition-dependent. In this view, rape may be engaged in by men who are relatively unsuccessful in competition for the resources and status necessary to attract and reproduce successfully with desirable mates.⁸⁸

Our definition of human rape incorporates components we feel to be important for an evolutionary view of rape. Rape is forced copulation of a female by a male. By forced copulation we mean copulation without the female's explicit or implicit consent; it need not involve physical force.⁸⁹

⁸⁵ Bernstein *et al.* claim that 'Evolutionary biology is a more productive analogy for social science.' ('God gave physics the easy problems', p. 43.) I claim that evolutionary biology exemplifies all that was wrong with (social) science.

⁸⁶ Ann J. Cahill, *Rethinking Rape* (London: Cornell University Press, 1991), p. 210

⁸⁷ Randy Thornhill, Nancy Thornhill, & Gerard A. Dizinno, 'The biology of rape', Tomascelli & Porter, *Rape*, p. 108; see also Randy Thornhill & Craig T. Palmer, *A Natural History of Rape: Biological Bases of Sexual Coercion* (MIT: 2001)

⁸⁸ *Ibid.*, p. 103

⁸⁹ *Ibid.*, p. 113

Evolutionary biology (or *sociobiology* or *fundamentalist Darwinism*)⁹⁰ has not served feminism well. Assumed differences are presented as facts, 'which feminists deny and which societies violate at their peril';⁹¹ 'even Richard Dawkins, most fashionable of sociobiologists, is scarcely feminism's intellectual chum'.⁹² Using *post hoc* rationalisation, sociobiology can explain any occurrence in society as the result of human evolution, where 'because such equalities are part of human nature and unavoidable, attempts at reform are bound to fail'.⁹³ (Thornhill *et al.* do admit this – 'the proper speculations of the evolutionist and other scientists are post hoc. Post hoc explanations represent an inevitable first step in any observational science'⁹⁴ – but they ignore the value-laden nature of their specific *post hoc* rationalisations.)

Asking if animals are involved in rape is problematic: how can animals enact something that requires social meaning? Dennett asks the question 'Do ducks rape?'⁹⁵ Males in some species – such as scorpion flies and ducks – have followed a 'common pattern' in which they 'violently mate with obviously unwilling females'.⁹⁶ Calling this rape has been criticised by feminist biologists such as Fausto-Sterling; 'It is impossible for one bird to *murder* another bird – "murder" is reserved for the intentional, deliberate, wrongful killing of one human being by another'.⁹⁷ Dennett believes that calling nonhuman forced copulation *rape* is 'at least insensitive',⁹⁸ but thinks there is a similar problem with benign terms applied to animals: 'Do the critics also object to "courtship ritual" and "alarm call" – or the use of the term "mother" to refer to a female but nonhuman parent?'⁹⁹ Ultimately, whether the term *rape* is helpful or not in understanding

⁹⁰ R. W. Connell, *Gender* (London: Polity, 2002), pp. 30–3

⁹¹ *Ibid.*, p. 31

⁹² Hilary Rose, 'Beyond biology', *Red Pepper* (www.redpepper.org.uk/cularch/xrose.html, Sep. 1997)

⁹³ Zulcyma Tang Halpin, 'Scientific objectivity and the concept of "the other"', *Women's Studies International Forum*, Vol. 12 (1989), p. 292

⁹⁴ Thornhill *et al.*, 'Biology of rape', p. 106

⁹⁵ Daniel C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (London: Penguin, 1996), p. 491

⁹⁶ *Ibid.*, p. 491

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, p. 492

⁹⁹ *Ibid.*

the behaviour of animals is a separate question for those understanding animals; however, what is certainly misguided is using the behaviour of animals to understand, explain or justify rape in human society.

The definition of rape as 'forced copulation of a female by a male' does not allow for the possibility of broader conceptions of rape of women or men, and is problematic in many other ways; however, the reason I have highlighted this account of rape is because Brownmiller's (and to a certain extent, Enloe's) essentialism aligns itself with biological determinist accounts of rape, when it should distance itself from them.

The binary relation between culture and nature promotes a relationship of hierarchy in which culture freely 'imposes' meaning on nature, and, hence, renders it into an 'Other' to be appropriated to its own limitless uses, safeguarding the ideality of the signifier and the structure of signification on the model of domination.¹⁰⁰

Gender stereotypes are used to identify features of the animal world, and are then used as evidence to justify gender stereotypes.¹⁰¹ This simple assignation of biological roles to rape does not allow for any possibility of rape other than of a vagina with a penis, or of any difference in intention or understanding.

As many critics have pointed out the whole problem with essentialism...is that it cannot recognise specificity. All women become subsumed into the category of Woman which then comes to stand for a mythical and other worldly space.¹⁰²

If women and men did have pre-determined identities, there would be no point examining them (we would intuitively know everything we need to know), and certainly no point trying to change them (they are natural). Enloe points out that so much ideological work and power would not need to be spent on soldiers if all men were naturally aggressive.¹⁰³

Bly's *Iron John* tells men how they can reclaim their masculinity from women:

Geneticists have discovered...the genetic difference in DNA between men and women amounts to just over three per cent...it is important to emphasise the three per cent that makes a person masculine.¹⁰⁴

¹⁰⁰ Butler, *Gender Trouble*. p. 48

¹⁰¹ Kathleen Okruhlik, 'Feminist accounts of science', Newton-Smith, *Philosophy of Science*, p. 136

¹⁰² Suzanne Moore, 'Getting a bit of the Other: the pimps of postmodernism', Chapman & Rutherford, *Male Order*, p. 168

¹⁰³ Pettman, *Worlding Women*, p. 93

¹⁰⁴ Robert Bly, cited in Harry Christian, *The Making of Anti-sexist Men* (London: Routledge, 1994), p. 193

If there was a natural connection between this biological three per cent and masculinity, there would be no need to 'emphasise' it. Such essentialist notions of gender are flawed because they allow men and women to revert to type, to tradition, to what has always been done in their name. '[S]ome kinds of feminism perpetuate this sin against otherness by absorbing the variegated worlds of women, and on occasion of all oppressed peoples and beings, into a unified field called "woman", "women", "the feminine", or "feminism".'¹⁰⁵ Feminists have always wanted to challenge the *status quo*, suggesting that identities are not as fixed as the above claims. '[I]t seems wilfully blind for feminists to...endors[e] myths of the inevitable link between sexuality and male dominance.'¹⁰⁶

Feminism restricts its liberating potential if it emphasises a natural male/female divide, which reinforces the hierarchy. 'The presumption of rape is a presumption that men, freed from the constraints of civilization, will always go on the sexual rampage.'¹⁰⁷ Linking rape with uncontrolled, male sexual urges not only misrepresents the problem, it also exacerbates it. '[R]ape begins to look like seduction with "just a little persuading" rather than a massive and brutal assault on the body and psyche.'¹⁰⁸ Treating rape as only something that men do to women reinforces the distinct, natural categories that feminism deconstructs. Griffin states that 'Men are not raped',¹⁰⁹ and this assumption is shared by evolutionary biologists:

[F]rom the standpoint of the victim's evolutionary interests, rape entails two related factors: (a) the ability of the female to choose her sexual partner is circumvented, and (b) the female's option of exchanging sexual favours for social position or material gain is denied.¹¹⁰

But these assumptions are easily overturned when examined.

¹⁰⁵ Kathy E. Ferguson, *The Man Question: Visions of Subjectivity in Feminist Theory* (Oxford: University of California Press, 1993), p. 57

¹⁰⁶ Segal, *Slow Motion*, p. 215

¹⁰⁷ Benton, 'Women disarmed', p. 163

¹⁰⁸ Catherine N. Niarchos, 'Women, war, and rape: challenges facing the international tribunal for the former Yugoslavia', *Human Rights Quarterly*, Vol. 17, 4 (1995), p. 674

¹⁰⁹ Susan Griffin, cited in Segal, *Slow Motion*, p. 235

¹¹⁰ Thornhill *et al.*, 'Biology of rape', p. 113

[W]hat...is to prevent a woman...from bugging a man with a bottle, fist or tongue, or from demanding orgasm through oral sex? These are, after all, among the most common forms of male sexual assault on women...¹¹¹

The additional assumption that these assumed differences are universal exacerbates the problem, such as: 'The same men and power structure who victimise women are engaged in the act of raping Vietnam, raping black people and the very earth we live upon'.¹¹² Butler recognises that the idea of patriarchy 'has threatened to become a universalizing concept that overrides or reduces distinct articulations of gender asymmetry in different cultural contexts'.¹¹³

Rather than rape being an expression of affirmation by masculine men, Porter suggests that rape could express a lack of masculinity.

Within Western history, I have been suggesting, rape has flourished mainly on the margins; at the frontiers, in colonies, in states at war and in states of nature; amongst marauding, invading armies (though sex among soldiers is generally institutionalised in the brothel). ... These young men [who rape] are not yet absorbed into patriarchy, with its classic roles of husband and father; they lack the permanent erections of mature patriarchy – wealth, property, office, 'standing'. ... Rapists are thus the waste of patriarchy, but they are its wayward sons not its shock troops; not its life-blood but a diseased excrescence.¹¹⁴

Porter offers a different conception of rape to the essentialist views. He suggests that rape may be a socially constructed reaction to the discursive pressures of hegemonic masculinity. Violent men are not deviants or *nonconformists*, rather they are 'overconformists, men who have responded all too fully to a particular aspect of male socialisation'.¹¹⁵ Similarly, Sanday suggests that rape can 'be understood as a form of silencing or concealing male vulnerability and maternal dependency'.¹¹⁶

¹¹¹ Segal, *Slow Motion*, pp. 235–6

¹¹² Susan Griffin, 'Rape: the all-American crime', Vetterling-Braggin, Elliston, & English, *Feminism and Philosophy*, p. 332

¹¹³ Butler, *Gender Trouble*, pp. 45–6

¹¹⁴ Roy Porter, 'Rape – does it have a historical meaning?', p. 235

¹¹⁵ Brod, 'The case for men's studies', p. 51, italics original

¹¹⁶ Peggy Reeves Sanday, 'Rape and the silencing of the feminine', Tomascelli & Porter, *Rape*, p. 85

Connell states that in 'history it is not men who have dominated women, so much as the masculine that has dominated the feminine'.¹¹⁷ Brownmiller even gives an example of this order: 'Klaus watched the Russian who had done the raping emerge from the doorway. Tears were streaming down the soldier's face as he wailed, "Ya bolshoi svinya" – "I am a big pig"'.¹¹⁸ Such instances are rarely mentioned (and could be fairly rare), but they do suggest that masculine domination is expressed more through ideology and discourse than men *per se*. Taking a universalist notion of patriarchy and an essentialist notion of gender does not provide a correct framework for theorising. The thesis uses a critical discourse analysis to avoid universalism and essentialism, which is discussed in the next chapter. Before that I will examine the term *sexual violence* and describe why it is not a suitable replacement for *rape*, and will introduce the benefits of discourse analysis to rape in war.

Sexual violence and discursive constructions

[I]t is not clear that rape is a women's issue, as it is men that do it, and some men that suffer it. ...[It is] rather that victims are not all of the problem, and that organising the problem around women leaves the real problem (the rapist, and a masculinity of rape) caricatured or marginalised.¹¹⁹

[W]e need a structural, though not structuralist theorisation of gender, which draws on the insights of discourse analysis in the specification of these structures, in order to conceptualise patterns of continuity and difference.¹²⁰

Rape is now commonly referred to as *sexual violence*. This is to draw attention to the implicitly violent nature of rape; rape is a 'sexual manifestation of aggression'.¹²¹ This has led to an emphasis on sexual violence rather than rape, to make clear that violence is

¹¹⁷ R.W. Connell, *Masculinities* (Cambridge: Polity, 1995), p. 13

¹¹⁸ Brownmiller, *Against Our Will*, p. 68

¹¹⁹ Carver, *Gender Is Not a Synonym for Women*, p. 33

¹²⁰ Sylvia Walby, *Gender Transformations* (London: Routledge, 1997), p. 5

¹²¹ Ruth Seifert, 'War and rape: A preliminary analysis', Stiglmeier, *Mass Rape*, p. 55

involved. 'People often make out rape to be less of an assault because it is sexual, as if violence in sex were more permissible than violence without sex.'¹²² Sexual violence is meant as a broader category than rape, where rape is solely the violent, unwanted penetration of the vagina (and possibly anus). Less violent, unwanted sexual acts then fall within the term sexual violence. The hierarchy of sexual body parts relies on a construction and understanding of (i) internal body (vagina, anus, mouth), (ii) external body (breasts, legs), and (iii) non-body (fear, intimidation). This understanding distinguishes between rape and broader acts of sexual violence not by the degree of violence involved, but rather by the body part involved. A similar distinction is made between whether a penis or an inanimate (that is, lesser in the same terms as the above hierarchy) object is used.

For Marcus, claiming that there is such a continuum theory of sexual violence that links rape with representations of rape (such as obscene remarks and threats) confuses the meaning of *continuum*; instead, this *substitutes* meaning or intention for action. Such a continuum 'occludes the gap between the threat and the rape – the gap in which women can try to intervene, overpower and deflect the threatened action'.¹²³ What we should be concerned with when investigating rape is not whether the vagina is more sacred than the mouth, but what degree of violence – including mental violence, or torture – is *inflicted* upon the person, and *suffered* by the person. Although *sexual violence* draws attention to the violent nature of rape, it also reifies the *sexual* element of rape.

When the IR literature focuses on rape it reinforces the mind/body dualism that feminism has propagated. Booth states 'Rape is the most personal of crimes'.¹²⁴ Rape is a personal violation, but so too is murder. Violent crimes can be very personal and distressing, but the remedy for this is not to emphasise the sexual and hence personal elements. If there is a difference to be identified, it is the expression of violence, not sexuality. According to Menchamen Amir's study, *Patterns in Forcible Rape*, 'on a

¹²² Susan Rae Peterson, 'Coercion and rape: the state as a male protection racket', Vetterling-Braggin, Elliston & English, *Feminism and Philosophy*, p. 365

¹²³ Marcus, 'Rape prevention', p. 389

statistical average the man who has been convicted of rape was found to have a normal sexual personality, tending to be different from the normal, well-adjusted male only in having a greater tendency to express violence and rage'.¹²⁵ The remedy to rape not being taken seriously enough is to get rape taken more seriously. That rape is most frequently committed by men against women does not mean that rape is essentially sexual or personal *per se*.

Marcus argues that to fight rape feminist politics needs a language of rape to understand that rape is a language.¹²⁶ We should treat rape as a linguistic fact: 'to ask how the violence of rape is enabled by narratives, complexes and institutions which derive their strength not from outright, immutable, unbeatable force but rather from their power to structure our lives as imposing cultural scripts'.¹²⁷ This recognises the *act* of rape as a *fact*, and the *meaning* of rape as a *social* fact constructed through discourse. *Rape* must, in Derrida's term, be written under erasure: crossed out because it is inaccurate, yet still visible because it is indispensable. This frees the meaning of rape from the act itself and allows us to renegotiate what can be meant by, and understood as, rape.

Rather than reifying the sexual constructions within *rape*, it would strategically be more helpful to consider a discourse of rape as torture (so as to take advantage of the already existing – and less prescriptive – laws surrounding torture). This is not to say that there are no sexual connotations to rape, but that I want to problematise the discourses of *rape*; hence I continue to use the term *rape* throughout to deconstruct it. '[W]hat is especially bad about rape is a function of its place in our society's sexual views, not in our ontological views.'¹²⁸ As well as showing that *rape* is constructed through discourse, I also show that the counter-discourses to rape reproduce the discursive formations they are intended to oppose. This occurs in relation to international legal norms and laws and feminism. This emergence of a hegemonic discourse of rape as sexual violence, where

¹²⁴ Ken Booth, 'Introduction', Booth, *The Kosovo Tragedy*, p. 12

¹²⁵ Griffin, 'Rape', p. 318

¹²⁶ Marcus, 'Rape prevention', p. 387

¹²⁷ *Ibid.*, pp. 388–9

¹²⁸ Foa, 'What's wrong with rape?', p. 351

what differentiates rape from some other forms of violence is the discursive constructions of sexuality, is leading to the development of sexual violence (and hence rape) requiring its own knowledge, laws and punishments.

The discourse of *sexual violence*, which claims that rape is a violation, a penetration, an invasion, a trespass, has raised the recognition of rape as a violent crime. But it has also created an understanding of female sexuality as 'inner space',¹²⁹ where rape is a violation of this reified inner space. 'The entire female body comes to be symbolized by the vagina...'¹³⁰ Within international law a hegemonic discourse of rape is emerging that relates strongly to the association between men with mind and women with body:

The cultural associations of mind with masculinity and body with femininity are well documented within the field of philosophy and feminism. ... [R]eason and mind are associated with masculinity and agency, while the body and nature are considered to be the mute facticity of the feminine, awaiting signification from an opposing masculine subject.¹³¹

This is why court trials involving female rape victims are considered to require additional sensitivity: the female has had her very identity – the body – violated. 'The horror of rape is not that it steals something from us but that it makes us into things to be taken. ... The most deep-rooted upheaval of rape culture would revise the idea of female sexuality as an object, as property, and as an inner space.'¹³²

This response to rape unintentionally reconstructs and re-legitimizes a sexist understanding of the female as body (where the male is equivalent to mind). The metaphor of invasion re-inscribes the very understanding that feminism has worked so hard to deconstruct. Rapists might call upon these discourses, but those attempting to deal with the consequences should not. Butler's idea of gender performativity applies here: 'gender not as an expression of what one is, but gender as something that one does'.¹³³ In

¹²⁹ *Ibid.*, p. 398

¹³⁰ *Ibid.*

¹³¹ Butler, *Gender Trouble*, pp. 17 & 48

¹³² Marcus, 'Rape prevention', p. 399

¹³³ Moya Lloyd, 'Sexual politics, performativity, parody: Judith Butler', Carver & Mottier, *Politics of Sexuality*, p. 125

the case of rape victims, this metaphor leads to gender not as an expression of what they are *or* what they do, but gender as something that has been done to them. Hence my argument (addressed in the conclusion) that a hegemonic discourse of sexual violence (in place of rape) is emerging that represents a metaphysical condition of absence, rather than any specific physical state. Furthermore, attempts can be made to deconstruct these discourses.

Concluding remarks

Benhabib defines feminist theory as ‘the theoretical articulation of the emancipatory aspirations of women’.¹³⁴ Some feminists feel that post-positivist approaches threaten the emancipatory gains made by the first and second waves of feminism, because ‘loss of the imagined community of ‘sisterhood’ has led to fragmentation and disrupted political cohesion’.¹³⁵ If the 1970s was when the unity of women was recognised, and the 1980s when diversity and differences were recognised, then the challenge now ‘is to hold on simultaneously to these two contradictory truths’.¹³⁶ As a result, the formation of simple unities between women has become more complicated. Hartsock considers it ‘highly suspicious’ that *the subject* became problematised when women as a subject were becoming unified;¹³⁷ but it remains important not to impose unity where it does not exist; to ‘grant authority to invented social statuses’.¹³⁸

A social constructionist strand is present in many feminist writings. Feminism, with its focus on contesting Enlightenment rationality, can be considered ‘an intrinsically

¹³⁴ Sylvia Benhabib, cited in John Hoffman, ‘Blind alley: defining feminism’, *Politics*, Vol. 21 No. 3 (2001), p. 195

¹³⁵ Catherine Hall *et al.*, ‘Snakes and ladders: reviewing feminisms at century’s end’, *Feminist Review*, Vol. 61 (1999), pp. 2–3

¹³⁶ Jiri Musil, cited in Harriet Bradley, *Fractured Identities: Changing Patterns of Inequality* (Cambridge, Polity, 1996), p. 210

¹³⁷ Nancy Hartsock, ‘Foucault on power: a theory for women?’, Linda Nicholson (ed.), *Feminism/Postmodernism* (London: Routledge, 1990), p. 163

¹³⁸ Christine Sylvester, ‘Empathetic cooperation: a feminist method for IR’, *Millennium: Journal of International Studies*, Vol. 23 No. 2 (1994), p. 316

postmodern discourse'.¹³⁹ Barrett suggests that feminism and post-structuralism share an interest in 'sexuality, subjectivity and textuality'.¹⁴⁰ Feminism within IR is well suited methodologically to undertake a discourse analysis of rape in war. Feminist IR must focus on 'common...discursive marginality';¹⁴¹ combinations of feminism and post-structuralism have 'exposed Feminist discourses that stereotype women and their "shared" oppressions, ignoring the particularities of race, class, history, and individual experiences'.¹⁴² A study of rape in war requires an analysis of discourse, because *rape* fixes meanings in society, and makes communication possible; it is a contingent social construction that gathers social force and in practice becomes real. Feminism is well attuned to the post-positivist nature of discourse analysis, having always drawn on it in some way. It is in this way that constructivist IR and feminist IR (which I have argued is constructivist) overlap in interesting ways.

¹³⁹ Carver *et al.*, 'Gendering Jones', p. 286

¹⁴⁰ Michèle Barrett, cited in Bradley, *Fractured Identities*, p. 105

¹⁴¹ Rosemary Pringle & Sophie Watson, "'Women's interests" and the poststructuralist state', Anne Phillips (ed.), *Feminism and Politics* (Oxford University Press, 1998), p. 218

¹⁴² Geeta Chowdhry, 'Women and the International Political Economy', Peter R. Beckman & Francine D'Amico (eds.), *Women, Gender, and World Politics: Perspectives, Policies, and Prospects* (Westport, Connecticut: Bergin and Garvey, 1994), p. 167

CHAPTER 3

LITERATURE REVIEW:

DISCOURSE METHODOLOGY AND INTERNATIONAL RELATIONS

I have established that rape in war is a commonly cited example of the importance of gender analysis in feminist IR, and that this example has assumed a unified, universal and essentialist understanding of *rape*. I have claimed that there are multiple discourses of rape, and that a positivist framework cannot adequately analyse this multiplicity. This chapter sets up the methodology: a post-positivist framework – specifically a critical discourse analysis informed by Foucault – that problematises rape in war. There is no single Foucauldian methodology, although they do share common traits. Archaeology and genealogy overlap, covering: the identification of statements as examples for analysis; the role of reverse discourses in reinforcing and re-producing the discourses being challenged; and the emergence of particular hegemonic discourses – over others – as the common sense.

Post-positivism accepts that the world is always an interpreted *thing*, where ‘understanding involves rendering the unfamiliar in terms of the familiar, [hence] there is always an ineluctable debt to interpretation such that there is nothing outside of discourse’.¹ Discourse takes hold of ideas and leads to actions. Instead of asking ‘does human nature exist?’ post-positivism asks, ‘how has the *concept* of human nature functioned in our society?’² A central claim is that ‘the self need not be a consistent, unchanging, or even coherent identity’³ and this is especially relevant when considering gender issues. Hence I can ask: can the multiple discourses of rape in war be identified?

Constructivism is relevant to this discussion because of IR’s engagement with post-structuralist methodologies within constructivist IR. Steans recently characterised

¹ David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Manchester University Press, 1992), p. 4

² Paul Rabinow, ‘Introduction’, Rabinow, *Foucault Reader*, p. 4, emphasis added

³ Honi Fern Haber, *Beyond Postmodern Politics: Lyotard, Rorty, Foucault* (London: Routledge, 1994), p. 4

mainstream IR – where it is still ‘meaningful to speak of the dominance of realism and latterly neo-realism within the field’ – as still demonstrating ‘a certain scepticism, if not hostility, towards postpositivism’, and exhibiting ‘a continual marginalisation of feminism within IR’;⁴ the ‘fourth debate’ in IR has been between rationalism/positivism and constructivism/post-positivism, with most feminist IR scholars associating themselves ‘within a post-positivist constructivist tradition’.⁵ It is within this engagement that this thesis sits. Constructivist IR provides a useful response to the problems of IR, and feminist IR’s post-positivist leanings fit closely with constructivist IR. Post-positivist methodologies generally and a critical discourse analysis specifically provide a useful framework in which to examine rape in war. I first examine the work of Foucault, and address the applicability of this methodology to the research area of rape in war. I then situate the research within discourse analysis and constructivist IR.

Foucault: archaeology, genealogy and discourse

The question posed by language analysis of some discursive fact or other is always: according to what rules has a particular statement been made, and consequently according to what rules could other similar statements be made? The description of the events of discourse poses a quite different question: how is it that one particular statement appeared rather than another?⁶

For Foucault, *discourse* structures areas of knowledge and social practice determining what can and should be said.⁷ *Statements* or *texts* hold meaning beyond what is meant by their definition, and their meanings change depending on who is using them and when, and which discourse formation they belong to. What Foucault calls ‘the associated field’ is what ‘turns a sentence or a series of signs into a statement, and which provides them with a particular context, a specific representative content, [and it] forms a complex web’.⁸ Foucault’s work provides what social scientists can refer to as a model, but it is

⁴ Steans, ‘Engaging from the margins’, p. 429

⁵ Steans, ‘Engaging from the margins’, p. 432

⁶ Michel Foucault, *The Archaeology of Knowledge* (1969), trans. A. M. Sheridan Smith (London: Routledge, 1972), p. 27

⁷ Norman Fairclough, *Discourse and Social Change* (Cambridge: Polity Press, 1992), pp. 3 & 31

⁸ Foucault, *Archaeology of Knowledge*, p. 98

quite abstract and cannot be simply applied; it is more a method than a methodology. It is difficult to label Foucault. He states that he is 'not a structuralist',⁹ but sees his work as part of the broader Enlightenment project.

Foucault refers to his earlier method as *archaeological* and his later method as *genealogical*. The archaeological works focus on types of discourse (discursive formations) as rules for constituting areas of knowledge; the genealogical works focus on relationships between knowledge and power.¹⁰ Foucault's archaeological writings focus on how both the objects and subjects of discursive formations are formed by discursive practices. *The Archaeology of Knowledge* exemplifies this archaeological method: 'One is led therefore to the project of a *pure description of discursive events* as the horizon for the search for the unities that form within it.'¹¹ This is what I referred to in the Overview as post-structuralists being keen to let the facts speak for themselves. Although this may seem too similar to positivistic approaches, Foucault is always careful to remain reflexive to what he is claiming. Foucault recognises that they must pay a debt to the positivist method that they seek to supplant. 'Let us call these domains of objects positivities, and let us say, again playing on words, that if the critical style is that of studious casualness, the genealogical mood will be that of happy positivism.'¹² That positivism is not the perfect theory does not mean that positivism is without merit. Foucault attempts 'to *open up* problems that are as *concrete* and *general* as possible'.¹³ Rather, archaeology is a radicalisation of positivism, and genealogy a radicalisation of archaeology.

There is not a clear, decisive break between archaeology and genealogy because genealogy subsumes archaeology. 'The difference between the critical and the genealogical enterprise is not so much a difference of object or domain, but of point of attack, perspective, and delimitation.'¹⁴ Foucault's insights allow the rules of formation that structure discourses to be analysed. *The Archaeology of Knowledge* makes the case that 'discourses are highly regulated groupings of utterances or statements with internal

⁹ Foucault, 'Sexuality and solitude', Michel Foucault, *Ethics: Subjectivity and Truth. Essential Works of Foucault 1954–1984, Volume 1*, ed. with introduction Paul Rabinow, trans. Robert Hurley & others (London: Penguin, 1997), p. 176

¹⁰ Fairclough, *Discourse and Social Change*, p. 39

¹¹ Foucault, *Archaeology of Knowledge*, p. 27, italics original

¹² Foucault, 'Order of discourse', Foucault, *The Foucault Reader*, p. 132

¹³ Foucault, 'Politics and ethics: an interview', Rabinow, *Foucault Reader*, p. 377, italics original

¹⁴ Foucault, 'Order of discourse', p. 132

rules which are specific to discourse itself'.¹⁵ This is why discourse analysis cannot just be the analysis of texts or statements, but also the identification of structures and rules of discourse; it is this form of analysis that Foucault terms *archaeology*. This 'does not imply the search for a beginning... It designates the general theme of a description'.¹⁶ This is not to deny the very possibility of origins. Archaeology seeks to identify the rules and structures that maintain the hegemony of certain discourses as common sense. '[T]here can be no statement that in one way or another does not reactualise others.'¹⁷ This identification and exposure of hegemonic discourses means that a Foucauldian discourse analysis provides a critique of the common sense, and this intention to create these spaces means that it is intentionally critical. This critical nature is returned to throughout this discussion, and I discuss the critical nature of my discourse analysis methodology in the next section.

Fairclough identifies two major contributions of Foucault's archaeologies. The first is a constitutive or constructive view of discourse. That is, discourse is identified as constructing objects of knowledge, social subjects, forms of self, social relationships, and conceptual frameworks. The second contribution is emphasising the interdependency of discourse practices of societies and institutions. 'Although the focus of Foucault[*'s Archaeology of Knowledge*] is upon the discursive formations of the human sciences, his insights are transferable to all types of discourse.'¹⁸ Hence Foucault's works demonstrate a method to be applied elsewhere. Despite setting out archaeology in his *Archaeology of Knowledge*, Foucault never used this specifically because of a change of emphasis in his studies. After justifying his 'pretext for developing this strange arsenal', Foucault states:

It is now of the utmost importance that I should measure the descriptive efficacy of the notions that I have tried to define. And now a suspicion occurs to me. I have behaved as if I were discovering a new domain, as if, in order to chart it, I needed new measurements and guide-lines. But, in fact, was I not all the time in that very space that has long been known as 'the history of ideas'?¹⁹

After this, Foucault's emphasis shifts to a Nietzschean-inspired genealogical approach, which still includes archaeology, but assumes a different ontology for

¹⁵ Sara Mills, *Discourse* (London: Routledge, 1997), p. 48

¹⁶ Foucault, *Archaeology of Knowledge*, p. 131

¹⁷ *Ibid.*, p. 98

¹⁸ Fairclough, *Discourse and Social Change*, p. 40

¹⁹ Foucault, *Archaeology of Knowledge*, pp. 135–6

discourse. 'For Nietzsche, it is not that we are bound by our language, but that we are in effect defined by our chains.'²⁰ Rather than treating discourse as autonomous systems, discourse is treated as the product of systems of power relations. 'Indeed, it is in discourse that power and knowledge are joined together.'²¹ Genealogy aims to problematise and de-legitimise the present by identifying radically different pasts.²² 'Foucault views the task of the historian as the construction of a "counter-memory" for the text by filling in the network of its concealed sociohistoric origins.'²³

As well as *identifying* the discourses that shape the social, Foucault additionally *critiques* these discourses and their formation. Foucault's genealogical writings consider social practices, relationships and institutions.²⁴ Genealogy adds a critique to the discourses identified by archaeology. My method is a genealogical one, in which I identify and critique the multiple discourses of rape in war. Discourse is decentred in Foucault's shift to genealogy. In *The Archaeology of Knowledge*, Foucault identifies autonomous rules of discourse, whereas in his major genealogical study, *Discipline and Punish: The Birth of the Prison*,²⁵ discourse becomes secondary to power. But power becomes, to a significant degree, discursive. Therefore, there are power struggles in and over discourse itself. This adds to my method in a number of ways: it allows me to identify the emergence of a hegemonic discourse of rape in war; and as power is discursive and relational, people can and must choose between competing discourses. I return to these points in the next section.

Foucault's works examine how certain knowledges are produced and developed, and emphasise the importance of the subjectivity of the individual. This shift from examining the subject to examining the subject's construction also marks Foucault's move from archaeology to genealogy:

One had to dispense with the constituent subject, to get rid of the subject itself, that's to

²⁰ Tracy B. Strong, 'Language and nihilism: Nietzsche's critique of epistemology', Shapiro, *Language and Politics*, p. 83

²¹ Foucault, *Will to Knowledge*, p. 100

²² Steven Best & Douglas Kellner, *Postmodern Theory: Critical Interrogations* (Hampshire: MacMillan, 1991), p. 64

²³ Lois McNay, *Foucault: A Critical Introduction* (Cambridge: Polity Press 1994), p. 36

²⁴ David Howarth, *Discourse* (Buckingham: Open University Press, 2000), p. 8

²⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1975), trans. Alan Sheridan (London: Penguin, 1977)

say, to arrive at an analysis which can account for the constitution of the subject within a historical framework. And this is what I would call genealogy, that is, a form of history which can account for the constitution of knowledges, discourses, domains of objects, etc., without having to make reference to a subject which is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history.²⁶

The move from assuming a unitary subject of study to questioning the construction of the very object of study is essential in the development of Foucault's method, and makes it very suitable for my research method. It allows me to highlight multiple discourses of rape in war that, for example, construct the rape victim's experience as worse than death, or as a violation of their very being, and so problematise these discourses and challenge the emerging hegemonic discourse of rape in war as sexual violence. Foucault questions this construction of the self through the processes of confession and interview. In *The History of Sexuality*, Foucault examines confession, a process by which people are subjectified, defining confession as a 'ritual of discourse'.

The essential point is that sex was not only a matter of sensation and pleasure, of law and taboo, but also of truth and falsehood, that the truth of sex became something fundamental, useful, or dangerous, precious or formidable: in short, that sex was constituted as a problem of truth.²⁷

Interview and confession aims to access this truth from the 'reverberations in the body *and the soul*'.²⁸ Sex is taken to affect not just the body, but also the soul. It is with reference to this that I am interested in how the discourses of rape are not only constructed, but also construct peoples' experiences of rape (whether as perpetrator, victim or other), and how they consider it to affect their person. 'The confession is a ritual of discourse in which the speaking subject is also the subject of the statement... And this discourse of truth finally takes effect, not in the one who receives it, but in the one from whom it is wrested.'²⁹ Hence there is a will to knowledge regarding sex, which can also be seen with regards to rape in war, and with the Tribunals from which a hegemonic discourse is emerging. Where *Discipline and Punish* critiques the objectification of people, *The History of Sexuality* critiques the way people subjectify

²⁶ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon, trans. Colin Gordon & others (New York: Pantheon, 1980), p. 59

²⁷ Foucault, *Will to Knowledge*, p. 56

²⁸ *Ibid.*, p. 57, italics added

²⁹ *Ibid.*, pp. 61-2

themselves to such processes.³⁰ Constructed selfhoods and subjectivities 'are maintained not through physical restraint and coercion, but through individual self-surveillance and self-correction to norms'.³¹ Genealogy seeks to interpret, explain and critique the curiosities of our own *common sense*, and the politics of such a common sense.

Foucault's shift from archaeology to genealogy is, according to Connolly, one of emphasis. Archaeology exposed 'the institutional forms and epistemological constructions of past eras',³² whereas genealogy is a radicalisation of this project for the present, aimed at 'distancing contemporaries from the unities which govern our way of life by bringing out the artificial and constructed character of these forms'.³³ This is a clear way of understanding the developments of Foucault's method, given there being no clear methodology of Foucault's. 'Methodologically, Foucault never abandons his archaeological approach to discourse when constructing his later genealogies. In fact, he endeavours to articulate the two methods in a new approach he calls "problematization".'³⁴ Because this approach is a collection of disparate works, it is very relevant to disparate fields of discourse, providing a critical approach to problematise discourses. Even the term *discourse* has multiple meanings for Foucault. The problems present in defining *discourse* are also present in the objects of discourse analysis: 'there can exist different and even contradictory discourses within the same strategy'.³⁵

[I]nstead of gradually reducing rather fluctuating meanings of the word 'discourse', I believe that I have in fact added to its meanings: treating it sometimes as the general domain of all statements, sometimes as an individualisable group of statements, and sometimes as a regulated practice that accounts for a certain number of statements; and have I not allowed this same word 'discourse', which should have served as a boundary around the term 'statement', to vary as I shifted my analysis or its point of application, as the statement itself faded from view? ...

On several occasions I have used the term 'statement', either to speak of a population of statements (as if I were dealing with individuals or isolated events), or in order to distinguish it from the groups that I called 'discourses' (as the part is distinguished from

³⁰ Howarth, *Discourse*, p. 77

³¹ Susan Bordo, 'Feminism, Foucault and the politics of the body', in, Caroline Ramazonoglu (ed.), *Up Against Foucault: Explorations of some Tensions Between Foucault and Feminism* (London: Routledge, 1993), p. 191

³² Connolly, 'Politics of discourse', p. 155

³³ *Ibid.*, p. 155

³⁴ Howarth, *Discourse*, pp. 49–50

³⁵ Foucault, *Will to Knowledge*, p. 102

the whole).³⁶

Foucault wrote this in 1969 so it cannot be claimed to be representative of all his work. Nonetheless, it does highlight the complexities involved in both using and defining discourse, and that Foucault recognised this. Foucault's later works still highlight the complexities involved in analysing discourse:

We must make allowances for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling block, a point of resistance and a starting point for an opposing strategy.³⁷

Howarth considers these multiple meanings to be something of a problem: 'Foucault never formalizes his conception of discourse in a satisfactory fashion'.³⁸ But Foucault never claims – or intends – to formalise his conception, and refers to 'the equivocal meaning of the term *discourse*, which I [Foucault] have used and abused in many different senses'.³⁹ Furthermore, this ambiguity can be seen as a strength, as Foucault's method(ology) refuses to be reduced to a simple theory that imposes its views on the world. Foucault does not intend to replace the systems he deconstructs. Hartsock states that 'Foucault appears to endorse a one-sided wholesale rejection of modernity and to do so without a conception of what is to replace it',⁴⁰ but this misses the point of what Foucault wishes to achieve. Foucault is not arguing *against* the (re)constructions that replace the deconstructed, because they are inevitable; instead Foucault is arguing for a permanent critique of these (re)constructions. The idea of *liberation* serves as a distraction to this critique, 'falsely constructing autonomous self-determining subjects'.⁴¹ The spaces opened should be left open. That these spaces will invariably be filled with a new hegemonic discourse means that the process of genealogy must continue indefinitely. Language is not transparent, and must be analysed critically. Discourse can include a general domain of all statements, an individualisable group of statements, and a

³⁶ Foucault, *Archaeology of Knowledge*, p. 80

³⁷ Foucault, *Will to Knowledge*, p. 101

³⁸ Howarth, *Discourse*, p. 82

³⁹ Foucault, *Archaeology of Knowledge*, p. 107

⁴⁰ Nancy C. M. Hartsock, 'Community/sexuality/gender: rethinking power', Nancy J Hirschmann & Christine Di Stefano (eds.), *Revisioning the Political: Feminist Reconstructions of Traditional Concepts in Western Political Theory* (Boulder: Westview, 1997), p. 41

⁴¹ David T. Evans, *Sexual Citizenship: The Material Construction of Sexualities* (London: Routledge, 1993), p. 16

regulated practice that accounts for a number of statements.⁴² For Foucault, the discursive is 'the said as much as the unsaid', and 'it doesn't much matter for my notion of the apparatus to be able to say that this is discursive and that isn't'.⁴³

Causality in the subject, the unconscious of the subject, the truth of the subject in the other who knows, the knowledge he holds unbeknown to him, all this found an opportunity to deploy itself in the discourse of sex. Not, however, by reason of some natural property inherent in sex itself, *but by virtue of the tactics of power immanent in this discourse*.⁴⁴

We are dealing less with *a* discourse on sex than with a multiplicity of discourses produced by a whole series of mechanisms operating in different institutions.⁴⁵

I draw specifically on the work of Foucault not just because of the relevance of his genealogical method of critique through problematisation, but also because of his insights into the discourses of sexuality. I mention sex and sexuality specifically here to consider possible objections to the use of sex and sexuality, and to deconstructing the intersection between *the sexual* and *violence*, in studying *rape*; the next section then considers issues more specific to a discourse analysis of rape in war.

Using texts such as Foucault's *History of Sexuality* to study rape in war may seem a crude method; however, I am applying the insights of Foucault to another area of research. The insights are derived from numerous sources of Foucault, not just *The History of Sexuality*. The methods of archaeology and genealogy are developed throughout Foucault's *oeuvre*. I have taken a *bricolage* approach to Foucauldian themes that allows me to analyse the discourses of rape in war. Where Foucault does mention rape it is as a 'sexual act...which should not be permitted' because of the absence of 'freedom of sexual *choice*'.⁴⁶ Here Foucault draws on the discourse of rape as sex-through-violent-means. Despite Foucault mentioning rape as a *sexual* act, a Foucauldian method can still be used to deconstruct the intersection between *the sexual* and *violence* in discourses of rape. In a similar vein, Foucault made 'few references to feminist authors

⁴² Mills, *Discourse*, p. 7

⁴³ Foucault, *Power/Knowledge* pp. 194 & 198

⁴⁴ Foucault, *Will to Knowledge*, p. 70, italics added

⁴⁵ *Ibid.*, p. 33, italics original

⁴⁶ Foucault, 'Sexual choice, sexual act', Foucault, *Ethics*, p. 143, italics original

or activities',⁴⁷ but his work has still proved useful to feminists and feminism.

There are interesting discursively constructed links between rape and sex and sexuality, which can be critiqued. A sexualised discourse of rape is emerging where *the sexual* is privileged over *the violent*; this discourse then constructs *the sexual* as the defining element of rape in war. By identifying the existence of sexualised discourses related to *rape*, I am identifying an object of study⁴⁸ and demonstrating its formation. In accounting for the confessional and its production of 'the truth of sex', the aim is not to identify *the truth*: 'Why...proceed to such dubious regroupings at the very moment when one is challenging those that once seemed the most obvious?'⁴⁹ Instead, I wish to identify the groups of statements that belong to the discursive formations of rape in war. (The next section deals with the use of strategic essentialisms, which aim to create effects without assuming that these claims are derived from some extra-discursive reality.)

As well as not trying to identify a unified truth, I am not identifying an origin for these discourses; 'There is no statement that does not presuppose others'.⁵⁰ Furthermore, I am not imposing coherence upon the multiple discourses of rape in war. I am identifying discursive formations so that the common sense can be problematised. 'The history of ideas usually credits the discourse that it analyses with coherence.'⁵¹ In line with Foucault's genealogies, I identify and critique the incoherencies of rape in war.

The importance of these points comes full circle when we realise that when we speak of rape, we reinforce the discourses that are in effect; 'to speak is to do something – something other than to express what one thinks'.⁵² This is similar to Giddens' 'double hermeneutic',⁵³ where to describe human behaviour is also to participate in human behaviour: 'the "findings" of the social sciences can be taken up by those to whose behaviour they refer'.⁵⁴ Fairclough tackles this double hermeneutic by insisting that there is a mutually constituting, intersubjective relationship between discourses and the social

⁴⁷ Maureen McNeil, 'Dancing with Foucault: feminism and power-knowledge', Ramazonoglu, *Up Against Foucault*, p. 151

⁴⁸ Foucault, *Archaeology of Knowledge*, pp. 40–9

⁴⁹ *Ibid.*, p. 71

⁵⁰ *Ibid.*, p. 99

⁵¹ *Ibid.*, p. 149

⁵² *Ibid.*, p. 209

⁵³ Giddens, *Profiles and Critiques in Social Theory*, p. 7

⁵⁴ *Ibid.*, p. 14

systems in which they function. 'Making sense in this way through coherence of meaning and action, the meanings of action and situation, cannot but move in a hermeneutical circle.'⁵⁵ The task of critical discourse analysis is to expose and critique these relationships.

Finally, the discourses I identify are not the totality of discourses of rape in war. They are some amongst many possible statements and discursive formations. Although I try to identify as many discourses as possible, others could identify different discourses. The narrative I construct around these discourses is only one amongst many possible interpretations: 'One "fictions" history on the basis of a political reality that makes it true, one "fictions" a politics not yet in existence on the basis of a historical truth.'⁵⁶ But this does not mean that the 'fictions' are arbitrary, or even fictional; rather, it means that we must be aware of the contingency of any (strategic) narrative that we construct ourselves to be able to make any truth claims. Sexuality is a 'historical artefact defined as a private "essence" which transcends history and culture',⁵⁷ and has been able to function as a reference point within and between cultures. But this does not mean that this reference point is fixed or true.

As well as having useful insights into sex and sexuality, Foucault also has important insights into war and genocide. For Foucault there is a development in the use of genocide in response to the need to destroy both the body and the soul of a different ethno-national grouping: 'One had the right to kill those who represented a kind of biological danger to others.'⁵⁸ Foucault identifies the need to exist biologically, in line with modern conceptions of biological existence. And once reproduction is recognised as the key to biological reproduction of a group, it is not a great leap to rape in war becoming a means to that end. '[A]t the juncture of the "body" and the "population", sex became a crucial target of a power organized around the management of life rather than the menace of death.'⁵⁹ It is only possible to enforce differences if such differences are recognised (be they constructed or otherwise) and then enforced.

⁵⁵ Charles Taylor, 'Interpretation and the sciences of man', Michael Martin & Lee C. McIntyre (eds.), *Readings in the Philosophy of Social Science* (London: MIT, 1994), p. 187

⁵⁶ Foucault, *Power/Knowledge*, p. 193

⁵⁷ Evans, *Sexual Citizenship*, p. 12

⁵⁸ Foucault, *Will to Knowledge*, pp. 137-8

⁵⁹ *Ibid.*, p. 147

This thesis uses the works of Foucault to inform a critical discourse analysis of rape in war within a framework of constructivist and feminist IR. The next section highlights the value of such an approach, and addresses concerns with such an approach; the final section situates the thesis within constructivist and feminist IR.

A discourse analysis of rape in war

[W]e must not imagine that the world turns towards us a legible face which we would have only to decipher; the world is not the accomplice of our knowledge; there is no prediscursive providence which disposes the world in our favour.⁶⁰

The thesis examines discourses of rape in war, and argues for the value of a post-positivist – specifically Foucauldian – critical discourse analytic approach to the subject: rape is constituted discursively and should not be seen as having some universal or extra-discursive essence; the thesis identifies discourses of rape in war, and analyses them as statements and discursive formations; there are multiple local discourses of rape in war, and a hegemonic discourse of rape as a particularly sexualised violence that targets a reified femininity is emerging internationally; these instances of testimony are discourses that have social effects (that is, are onto-formative), and if these effects can be worsened, they might also be able to be lessened; the thesis concludes that as a strategic move rape could be considered within the already existing framework of international law concerning torture, and that this should provide a less prescriptive discursive framework in which victims of rape can describe the events. The methodology set out here is applied in the subsequent chapters.

A general definition of *discourse* (and *text*) can ‘include *all* language units with a definable communicative function, whether spoken or written’.⁶¹ Within the field of *discourse analysis*, there are many specific definitions of discourse. *Discourse* is sometimes used to signify extended samples of spoken dialogue, as opposed to written

⁶⁰ Foucault, ‘Order of discourse’, p. 127

⁶¹ David Crystal, *The Cambridge Encyclopedia of Language* (Cambridge University Press, 1987), p. 116, italics original

texts.⁶² Such definitions are very specific about what does and does not count as *discourse*; however, I will employ a broader meaning of *discourse*. This fits more closely with my commitments to discourse analysis, where *discourse* and *text* both refer to 'extended samples of either spoken or written language'.⁶³ *Discourse* applies to the whole universe of observations; the whole process of social interaction. *Text* refers to specific observations, being 'a product rather than a process',⁶⁴ and is what Foucault refers to as a *statement*.⁶⁵ The processes of social interaction include the multiple discourses of rape in war, and the emerging hegemonic discourse of rape in war as a specifically sexualised violence.

There are both critical and non-critical approaches to discourse.⁶⁶ Discourse analyses (critical or not) focus on language use and how it is socially determined. In non-critical approaches discourses are examined, but only at face value. However, this is too similar to analyses that ignore language all together, because it is still assumed that what the language says goes. Discourses are only described, with little attention paid to interpretation or problematisation. Differences in language are not the result of individual choice, but the product of social difference – 'language varies according to the social identities of people in interactions, their socially defined purposes, social setting, and so on'.⁶⁷ Non-critical discourse analysis identifies a problem but does not tackle it radically enough, remaining heavily influenced by positivist social science methodologies. 'There is a positivist...tendency to regard language texts as "objects" whose formal properties can be mechanically described without interpretation',⁶⁸ and 'described using methods analogous to those of natural science'.⁶⁹

The thesis takes a critical approach to discourse analysis, and critical discourse analysis refines the above position: claiming that social systems determine social meaning creates an essentialist system that leaves little room for historical developments

⁶² Mills, *Discourse*, p. 4; Malcolm Coulthard, *An Introduction to Discourse Analysis: new edition* (London: Longman, 1985), p. 3

⁶³ Fairclough, *Discourse and Social Change*, p. 3

⁶⁴ Norman Fairclough, *Language and Power* (London: Longman, 1989), p. 24

⁶⁵ Foucault, *Archaeology of Knowledge*, p. 80

⁶⁶ Fairclough, *Discourse and Social Change*, pp. 12–36

⁶⁷ Fairclough, *Language and Power*, p. 21

⁶⁸ *Ibid.*, p. 27

⁶⁹ *Ibid.*, pp. 7–8

and agency. 'A structure of relations does not mechanically determine how people or groups act. ... But a structure of relations certainly defines possibilities and consequences.'⁷⁰ There might be no natural relationship, but this does not mean that the relationship is arbitrary. Rather, the relationship can be political, *hegemonic*, but still be two-way. Critical theories are more reflexive and should be more apparent in their political intent, recognising their interpretative engagement with the discourses they analyse and the strategic intention of the discourses they construct. '[W]hen language invaded the universal problematic...everything became discourse.'⁷¹ Critical discourse analysis allows me to identify and analyse the interaction between multiple discourses of rape in war, and the boundaries of a hegemonic discourse. 'Rather than defining the boundaries of meaning *prior* to analysis, the boundaries of meaning are identified *in the context of interaction*.'⁷² This allows not only a description of what is happening, but also a critique.

Foucault considers truth as a product of discourse, and so an un-ideological, pre-existing extra-discursive truth does not exist:

[T]he problem does not consist in drawing the line between that in a discourse which falls under the category of scientificity or truth, and that which comes under some other category, but in seeing historically how effects of truth are produced within discourses which in themselves are neither true nor false.⁷³

This Foucauldian approach adopted is therefore a critical one as it examines and problematises the social construction of things whose meanings we take for granted. Discourse analysis is critical in that it deconstructs the dominant frames of reference, the common sense, constructed truths and their effects. 'It would be quite wrong to see discourse as a place where previously established objects are laid one after another like words on a page.'⁷⁴ By using discourse analysis the thesis provides a critical account of discourses of rape that are assumed to be homogeneous, and of how a hegemonic discourse is emerging. In this process *the sexual* is frequently privileged over *the violent*,

⁷⁰ Connell, *Gender*, p. 55

⁷¹ Jacques Derrida, cited in Howarth, *Discourse*, p. 2

⁷² K. M. Fierke, 'Links across the abyss: language and logic in international relations', *International Studies Quarterly*, Vol. 46 (2002), p. 343, italics original

⁷³ Foucault, *Power/Knowledge*, p. 118

⁷⁴ Foucault, *Archaeology of Knowledge*, pp. 42-3

with rape referring to (*generic*) sexual violence against women that is specifically sexual rather than (*specific*) violence conducted in a sexual way. The thesis argues that although rapists, rape-victims, human rights activists and international lawyers all have different interests in rape, many are beginning to share an intersubjectively constructed ontology of rape. I challenge this shared ontology, because if rape can be shown to be intersubjectively constructed, rather than objectively identified – and if some discourses can make rape worse – then it may be possible to lessen the effects of rape. This does not mean that the thesis takes an apolitical relativist stance.

Concerns are often raised with post-positivist approaches, such as Foucault's, that they lean on idealism over realism and can lead to relativism.

I count Michel Foucault as a relativist because his insistence on the determination of beliefs by language is so over-whelming that it is an incoherence on his part not to apply his doctrine to his *own* language and thought.⁷⁵

But despite Foucault's claims about the constitutive nature of discourse, this does not mean that anything goes. The constitutive process is still constrained by material reality, with pre-constituted objects and social subjects. 'The very historicity of discourse theory assumes the existence of a real, material world that influences the variations of discourse.'⁷⁶ Discourse analysis circumvents 'scepticism and idealism by arguing that we are always internal to a world of signifying practices and objects. It thus views as logically self-contradictory all attempts to escape and conceptualise this world from an extra-discursive perspective'.⁷⁷ As we are always within discourse, we cannot describe – or even understand – a world outside discourse. The discourse analyst cannot provide an objective view of 'the thing in itself'; the discourse analyst must always recognise that they are putting something of themselves into their analysis of a discourse. The intention of these critiques is to problematise the common sense; to disrupt and unsettle the dominant constructed discourses and the intersection between the sexual and the violent. Where claims are made in the spaces probelmatished, these are recognised as strategic rather than true. This impossibility of an escape from the discursive means that *objective*

⁷⁵ Hilary Putnam, 'Why reason can't be naturalized', Ernest Sosa & Jaegwon Kim (eds.), *Epistemology: An Anthology* (Oxford: Blackwell, 2000), p. 317, italics original

⁷⁶ Jacob Torfing, *New Theories of Discourse: Laclau, Mouffe and Zizek* (Oxford: Blackwell, 1999), p. 48

⁷⁷ Howarth & Stavrakakis, 'Introducing discourse theory', David Howarth, Aletta J. Norval & Yannis Stavrakakis (eds.), *Discourse Theory and Political Analysis: Identities, Hegemonies and Social Change* (Manchester University Press, 2000), p. 3

critique is impossible, and that choice is not only a possibility but also a *necessity*. That both subjects and objects are discursively constituted does not mean people cannot choose between discourses, or between descriptions within discourses.

In addition to being a critical approach, a Foucauldian discourse analysis can also be a strategic approach as it is possible to identify alternative frames that are more likely to fit with the political commitment of those carrying out the analysis; such frames are consciously deployed in pursuit of particular interests. The space created by rejected essentialist claims can be replaced by strategic essentialisms: a self-conscious, provisional, ironic deployment of arguments (which must always ultimately be essentialist) for strategic purposes in specific contexts.⁷⁸

In this way it is possible to extend Foucault's study of what is said to an analysis of what can and should be said. This does not mean that one way of describing an act is more truthful or correct than another; what this resort to strategic essentialisms or frames offers is a way of allowing political action within a critiqued space. But the lack of a criterion of truth that dictates the answer means that people must choose between competing discourses. In this way, the thesis makes the strategic argument that torture offers a politically more suitable method to punish rape because it imposes less discursive rigidity upon the victim's description of what happened to them. Foucault's later work develops an ethical position that attempts to resolve this tension and create room for action:

Through the formation of a 'critical ontology of the self' it is possible to formulate an alternative ethical standpoint from which individuals can begin to resist the normalising force of the 'government of individualisation'. ... From his reinterpretation, Foucault is able to deploy the concepts of autonomy, reflexivity and critique and, thereby, overcome some of what have been regarded as the nihilistic implications of his earlier work on discipline.⁷⁹

The above points do not refute accusations of scepticism or idealism, but this is because they are not refutable. Firstly, hard scepticism is not refutable, which is of course the problem, whereas 'Relativism certainly is self-refuting'.⁸⁰ That we are logically within a world of practices and objects does not refute the sceptic's position; it is entirely

⁷⁸ Bob Jessop, 'The Gender Selectivities of the State' (<http://www.comp.lancs.ac.uk/sociology/papers/Jessop-Gender-Selectivities.pdf>, 2003), p. 16

⁷⁹ McNay, *Foucault*, p. 133

⁸⁰ Richard Rorty, 'Postmodernist bourgeois liberalism', *The Journal of Philosophy*, Vol. 80 (1983), p. 589

consistent with it because everything *could* still be an illusion. No Archimedean point is provided, which is what the sceptic demands. The charge of idealism needs answering for those who are unconvinced by the constructivist accounts that discourse theory leads to, but it does not for those who agree with it. Idealism does not require that nothing exists, only that what exists is the result of our conceptual understanding, which is precisely what is being argued. A defence of discourse theory against scepticism is impossible, and a defence against idealism is unnecessary. The need for such defences is what Foucault refers to as the “blackmail” of the Enlightenment’,⁸¹ where people are forced to provide foundations, or else be foundation-less.

An often-cited example from Laclau and Mouffe regarding natural disasters helps explain the point:

An earthquake or the falling of a brick is an event that certainly exists, in the sense that it occurs here and now, independently of my will. But whether their specificity as objects is construed in terms of ‘natural phenomena’ or ‘expressions of the wrath of God’, depends upon the structuring of a discursive field. What is denied is not that such objects exist externally to thought, but the rather different assertion that they could not constitute themselves as objects outside any discursive conditions of emergence.⁸²

Nonetheless, there is a rejection of ‘the *rigid* separation of facts and values’.⁸³ To claim that the world is constructed does not mean that without such constructions there would be no world. Rather, the claim is that there is no world that is more real waiting to be discovered; no metaphysicalities waiting to be discovered; no extra-discursive position from which to judge.

Discourse analysis does not deny the independent existence of the world, or the existence of matter. The example of Chantal and Mouffe’s highlights how objects exist despite what is thought about them. But it also shows that the existence of form *without social construction* is not possible.⁸⁴ Therefore objects that exist have room to be embroidered, and the ‘room for embroidering results in discourses constructing nodal points around objects’.⁸⁵ The unmediated nature of objects in realism requires that they are interpreted, but ‘nothing could be more wrong than to turn the assertion that

⁸¹ Michel Foucault, ‘What is Enlightenment?’, Foucault, *Foucault Reader*, p. 42

⁸² Ernesto Laclau & Chantal Mouffe, cited in Howarth & Stavrakakis, ‘Introducing discourse theory’, p. 3

⁸³ *Ibid.*, p. 7, italics added

⁸⁴ Torfing, *New Theories of Discourse*, p. 46

⁸⁵ *Ibid.*, italics added

everything is discursively constructed into the proposition that everything can be discursively constructed in any possible way'.⁸⁶ In critical discourse theories the relationship between the signifier and the signified is not arbitrary. The relationship is influenced by the societies and discourses in which it exists. There are natural boundaries to meaning, but these are not as influential as the social boundaries.

[M]ere acknowledgement of the symbolic character of political processes is clearly not sufficient to overcome the empiricist naturalism that blights much political analysis. Moreover, such superficial acknowledgement often leads to an extreme form of voluntarism: if political identities are 'constructed', they must be infinitely malleable, and we must be able to pick and choose amongst a range of available identities.⁸⁷

We cannot give *any* meaning we wish because meaning is constrained; 'meaning is *intersubjective and social*'.⁸⁸ This is a continuation of the Enlightenment project, where the modernist epistemology and ontology is critiqued, but the political project of problematisation is not abandoned. 'It is not the individual who imparts meaning to discourse, rather it is the discursive formation that provides an array of "subject positions" which individuals may occupy.'⁸⁹ Subjects may also choose from within these positions, and critiques may strategically choose an appropriate response to the space created.

Using genealogy does not stop us from making claims or judgements, but rather 'claims of worthiness must themselves be scrutinized for their tendency to echo that which they oppose'.⁹⁰ And so this applies to the emerging hegemonic discourse of rape in war that is constructed by the Tribunals, analysed in the latter half of each of the case studies. I consider the extent to which they are affecting that which they seek to punish, and as acting as a reverse, rather than a counter, discourse. Foucault calls this the 'rule of the tactical polyvalence of discourses', which speaks of how there are usually not so much counter discourses, but rather 'reverse' discourses.⁹¹ These discourses can 'circulate without changing their form from one strategy to another, opposing strategy'.⁹²

⁸⁶ *Ibid.*, pp. 152–3

⁸⁷ Norval, 'Future research in discourse theory', Howarth, Norval & Stavrakais, *Discourse Theory and Political Analysis*, p. 232: 6

⁸⁸ Fierke, 'Links across the abyss', p. 346, italics original

⁸⁹ McNay, *Foucault*, p. 68

⁹⁰ Ferguson, *Man Question*, p. 28

⁹¹ Foucault, *Will to Knowledge*, pp. 100–2, italics original

⁹² *Ibid.*, p. 102

By identifying these discourses and increasing the number of perspectives of the world and its phenomena we can get 'richer and deeper' interpretations and knowledge.⁹³ This can provide interesting analyses of different cultures, and of the same types of event in different cultures. It also provides a useful method for analysing international legal discourses in different cultures, as applying a universal framework to different examples is a component of legal practice.

Foucault's claim of the blackmail of the Enlightenment also applies to the charge of relativism. 'This [charge of relativism]...is only a valid argument if its already-given foundationalist assumption is a valid argument, that ethical decisions are made in relation to some essential, non-relativist realm of truth, rationality, and logic.'⁹⁴ Such a charge of relativism comes from Hawkesworth:

Rape, domestic violence, and sexual harassment...are not figurations that admit of the free play of signification. The victim's account of these experiences is not simply an arbitrary imposition of a purely fictive meaning on an otherwise meaningless reality. ...it would be premature to conclude from the incompleteness of the victim's account that all other accounts...are equally valid or that there are no objective grounds on which to distinguish between truth and falsity in divergent interpretations.⁹⁵

This is an understandable concern: a post-positivist account should not prevent criticism, or justice. But this is to miss the point of what is being claimed. Discourse analysis puts a very high value on what is claimed by victims of rape; they should be allowed to choose the discourses that describe what has happened to them and what it has done, and the move to treat rape within the discourses of torture is a strategic move to allow this. Discourse analysis does not claim that accounts are arbitrary, as it is interested in how particular meanings came to hold the status they do, and is therefore far from arbitrary. If by 'equally valid' Hawkesworth means that we should pay no more attention to the victim's concerns than anyone else's then the claims are clearly not equally valid; more attention is paid to the victim's. However, if by 'equally valid' we mean 'the lack of an objective criterion by which to judge the truth of what rape is' then there can be no such criterion. If we want to understand the motivations of rapists then we need to understand the discourses of the rapists as much as the victims' discourses, if not more. This is not

⁹³ Best & Kellner, *Postmodern Theory*, p. 39

⁹⁴ George, 'Realist "ethics"', p. 208

⁹⁵ Mary E. Hawkesworth, cited in Marcus, 'Rape prevention', p. 385

because the discourses are equally valid in their moral claims, but because they are equally valid in the fact of their socially constructed existence. We can still blame the rapist and not the rape-victim. Discourse analysis does not descend into relativism, but instead critiques (and recognises the difficulties of) claims of objectivity regarding beliefs and actions.

The concepts of *rape*, *sexual violence*, *sexual* and *violence* are socially constituted through discursive practices, and as such are problematic terms. Following the above example from Laclau and Mouffe, the issue is not the physical existence of these things, but their social meaning.⁹⁶ Foucault recognises this problem:

[T]hese divisions – whether our own, or those contemporary with the discourse under examination – are always themselves reflexive categories, principles of classification, normative rules, institutionalized types: they, in turn, are facts of discourse that deserve to be analyzed beside others...⁹⁷

We may consider the *act* of rape as a *fact*, but the *meaning* of rape is a *social* fact that is constructed through discourse, and must be critiqued as such. The thesis recognises that *rape*, *sexual violence*, *sexual* and *violence* are discursively constituted, but must also identify some meaning prior to analysis to be able to offer a critique and expose certain practices. The thesis takes a working definition of rape as the violent use of *any* means that could be or have been considered sexual, or have been described as such. Wittgenstein's idea of 'family resemblances' allows us to group things without imposing the same order on them. As such, the thesis seeks to capture any statement where there is an intersection between the violent and the sexual so that this construction can be problematised.

This identification of discourses for analysis is achieved without the need to make any claims about their truth. Hence I can identify a discourse of rape in war that states that rape is a natural, biological urge without claiming that this discourse is also true: 'the truth value of a claim has no necessary connection to its effects; it may sustain domination or reinforce resistance, depending on the play of forces within a specific

⁹⁶ These problematic, discursively constructed terms are not written as 'rape' or ~~rape~~ throughout the thesis, as this would litter the text; where it is particularly important to draw attention to the fact that it is the discourse of rape that is being referred to, rape is italicised to direct the reader.

⁹⁷ Foucault, *Archaeology of Knowledge*, p. 22

context.⁹⁸ We can make sense of contradictory and irrational actions when we interpret and understand why they were engaged in,⁹⁹ and by empathising through discourse analysis, meaning and interpretation become more readily accessible.

Meaning and interpretation also play an important part in understanding *violence*. There are numerous types of violence that, however discursively constituted, are not primarily considered inherently humiliating; strategically it is possible to construct rape as a type of violence without having to add that it must be the most humiliating form of violence. This is not to claim that rape has a specific or extra-discursive essence, but rather that these claims are socially constructed and that this should be recognised. For example, when a Tribunal prosecutor claims that rape is a case of sexual humiliation they are reproducing a socially constructed discourse of rape in the way that Foucault speaks of counter discourses that act as the reverse discourse and so reproduce the original form of the discourse. Furthermore, seeing rape as sexual is itself the result of social construction, and re-emphasising this runs counter to the strategic goals of those who wish to reduce and punish its occurrence and effects.

In addition to considering how *rape* and *the sexual* are constructed in discourse, it would be interesting and useful to consider how *violence* is constructed as a social fact through discursive formations; however, the construction of violence is too great an additional topic to also be tackled within the scope of this thesis. What is possible and realistic within the scope of the thesis is the discursive constructions of *rape* and *sexual violence* and how they are treated. There is not room to additionally analyse the discourses of *sexual* and *violent* separately (which I would suggest would each have multiple discourses, which themselves would vary by their cultural context); but it is possible to accept that they are discursively constituted.

Although violence itself is also socially constructed, some levels of continuity must be accepted: to allow a critical discourse analysis to be performed some words must be written under erasure. This recognises that there is no extra-discursive position from which fixed points of reference can be identified, but also recognises that not all words,

⁹⁸ Kimberly Hutchins; 'Feminism, universalism, and the ethics of international politics', Vivienne Jabri & Eleanor O'Gorman (eds.), *Women, Culture and International Relations* (London: Lynne Rienner, 1999), p. 31

⁹⁹ Taylor, 'Interpretation', p. 147

statements and discursive formations can be critiqued at the same time. Wittgenstein claims that his arguments are like a ladder that must be pulled up after you have climbed them.¹⁰⁰ Foucault makes a similar point when he states, 'Which means that one cannot speak of anything at any time...'.¹⁰¹

Suffice to say that this thesis requires accepting that there are some acts that can be considered as violent, that these acts can be identified, and that these can be more violent (such as being raped to death with burning sticks) or less violent (such as being forced to dance naked). The point for the argument is that there are numerous types of violence that, however discursively constituted, are not primarily or necessarily considered humiliating; strategically it can be accepted that rape is a type of violence, without concluding that it must be the most humiliating form of violence. Feminism has constructed rape as *violence* as a political move (and this thesis accepts this strategic move, especially with relevance to rape in war); what the thesis shows is that there is an emerging hegemonic discourse of rape in war as a highly *sexualised* violence that that is associated with the sexual, the personal and the female. This has discursive implications that run counter to its intent as it simultaneously recreates the discourses that it sets out to counter.

The experience of trauma, the fact of latency, would thus seem to consist, not in the forgetting of a reality that can hence never be fully known, but in an inherent latency within the experience itself. The historical power of the trauma is not just that the experience is repeated after its forgetting, but that it is only in and through its inherent forgetting that it is first experienced at all.¹⁰²

Cathy Caruth draws on Freud to argue that trauma is not experienced by the subject, but rather reconstructed through recollection. The statements selected for analysis are examples of how *rape* is socially constituted in and through discourse. Rape cannot simply be observed, but must be imposed through language. For Foucault, discourses should be treated as 'practices that systematically form the objects of which they speak',¹⁰³ where unity is imposed through this 'retrospective regrouping',¹⁰⁴ and

¹⁰⁰ Ludwig Wittgenstein, *Tractatus Logico-Philosophicus* (1921), trans. C. K. Ogden (London: Routledge, 1995), p. 189

¹⁰¹ Foucault, *Archaeology of Knowledge*, p. 44

¹⁰² Cathy Caruth, cited in Cahill, *Rethinking Rape*, p. 215

¹⁰³ Foucault, *Archaeology of Knowledge*, p. 49

categorisation applied through 'retrospective hypothesis'.¹⁰⁵ Both those providing and recording testimonies must rely on earlier understandings of rape to reproduce it. In this way, the objects that are selected for analysis are constituted retroactively in discourse: the statements of rape that this thesis analyses are those statements that are constructed as *rape* by sources such as rape victims, Tribunals, human rights groups, and news sources.

The case studies focus on statements of rape that are constructed as both violent and sexualised, demonstrating that they are socially constructed and can differ depending on the culture in which they are constructed. That these discursive formations can differ within and between cultures means that there are multiple discourses of rape. By multiple discourses, Foucault means that we are not dealing with just one discourse (of, for example, *sex*) but rather 'a multiplicity of discourses produced by a whole series of mechanisms operating in different institutions'.¹⁰⁶ This multiplicity is not a 'continual extension' but a 'dispersion of centres from which discourses emanated, a diversification of their forms...'.¹⁰⁷ In this way, the instances of rape that are selected in this thesis are identified by the claims of some form of intersection between violence, the sexual, or rape.

The statements analysed in the thesis have been selected from a number of different sources. Discourse analysis is 'based on a variety of different sources containing discourse including written documents, speeches, media reports, interviews and conversation'.¹⁰⁸ A potential problem with this approach is that a number of the statements come from interviews conducted by Tribunals, human rights groups, and news sources, and hence the statements will not just reflect the discourses of the culture within which the events occurred but also the discourses of those doing the interviewing and recording. Foucault's work on the clinical codification of the inducement to speak is instructive here. Foucault identifies two stages in how truths are revealed from a subject:

¹⁰⁴ *Ibid.*, p. 31

¹⁰⁵ *Ibid.*, p. 22

¹⁰⁶ Foucault, *Will to Knowledge*, p. 33

¹⁰⁷ *Ibid.*, p. 34

¹⁰⁸ Jane Ritchie, 'The applications of qualitative methods to social research', Jane Ritchie & Jane Lewis (eds.), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (London: Sage, 2003), p. 35

first confessed by the subject, and second deciphered by the interviewer.¹⁰⁹ The strength of a critical discourse analysis approach is that it can critique multiple discourses at work in a statement. In addition to identifying the discursive formations of rape involved in the confession, I also identify the discursive formations of the deciphering by the Tribunals, human rights groups, and news sources. The assumption that there is a universal understanding of rape affects IR, international law, Tribunals, human rights groups and news sources. This assumption is in turn leading to the emergence of a hegemonic discourse of rape (which privileges the sexual over the violent). Therefore the potential problems of sourcing interviews in this manner is recognised, but also forms a crucial part of the analysis and argument of the thesis.

The discourses of the rape of men are not considered in the Bosnian case example, but not the other case studies because statements are not available in the same way that the discourses of the rape of women are. Identifying examples of rape for study requires identifying statements that are constructed as in some way violent and in some way sexualised. This predominantly confines the analysis to the discourses of the rape of women, as the research purpose of this thesis is to examine the multiplicity of discourses that are in existence and the emerging hegemonic discourse. The absence of a multiplicity of discourses of the rape of men is an interesting project in itself, but is not additionally considered here.

The statements (or objects of discourse) selected for analysis are grouped according to their discursive formations:

Whenever one can describe, between a number of statements, such a system of dispersion, whenever, between objects, types of statement, concepts, or thematic choices, one can define a regularity..., we will say, for the sake of convenience, that we are dealing with a discursive formation...¹¹⁰

This multiplicity of discourses of rape is not simply different meanings, descriptions, or ways of understandings; a critical discourse analysis identifies the broader sets of rules that allow the meanings, descriptions or ways of understandings to exist and to be understood. Each group of statements forms an autonomous (but not independent) domain, governed by rules. This domain of things said is what Foucault calls the archive:

¹⁰⁹ Foucault, *Will to Knowledge*, p. 65

¹¹⁰ Foucault, *Archaeology of Knowledge*, p. 38, italics original

‘a practice that causes a multiplicity of statements to emerge as so many regular events, as so many things to be dealt with and manipulated’.¹¹¹ These socially constructed rules create effects, as discussed above in relation to Laclau and Mouffe’s example, and my critique of these is situated within IR.

International Relations, discourse analysis and constructivism

There is a productive tension between IR, constructivism, feminism and discourse analysis: IR provides the worldview in which to theorise about international issues; constructivism provides a reflexive framework with which to analyse feminist issues *within IR*; and discourse analysis provides a specific methodology with which to analyse the issues identified. Where (Neo-)Realists consider the world structure to be ‘made only of a distribution of material capabilities’, constructivists claim it is ‘also made of social relationships’.¹¹² Constructivism makes two basic claims: ‘that the fundamental structures of international politics are social rather than strictly material..., and that these structures shape actors’ identities and interests, rather than just their behaviour...’¹¹³ Constructivists stress the importance of knowledge, with intersubjective understandings, expectations and perceptions giving meaning to material structures. Constructivism can broadly be seen as reacting to the rationalist schools of (Neo-)Realism and Institutionalism.

Constructivism states that there are social facts that cannot be accounted for by Rationalist IR. Rationalism has required a positivist conception of the world: a clearly knowable world where fact can be separated from value, object from subject, and knowledge from opinion. Constructivism does not believe that these dichotomies are as clearly defined. Wendt describes constructivism core claims as follows:

- (1) [S]tates are the principal units of analysis for international political theory;
- (2) the key structures in the state system are intersubjective, rather than material;
- and (3) state identities and interests are an important part constructed by these social structures, rather

¹¹¹ Foucault, *Archaeology of Knowledge*, p. 130

¹¹² Alexander Wendt, ‘Constructing international politics’, *International Security*, Vol. 20 No. 1, (1995), p. 73

¹¹³ *Ibid.*, pp. 71–2

than given exogenously to the system by human nature or domestic politics.¹¹⁴ Instead of believing that the material existence of states structurally causes the anarchic, self-help system, constructivists believe that it is the way states' identities are constituted (and the way they perceive others) that creates it. For the constructivist, the identities of these states are endogenous to the processes that they are a part of, not exogenous as in rationalist frameworks. Anarchy is what states make of it.¹¹⁵

Constructivism adds an intersubjective analysis to rationalism: identities are themselves part of the structure. 'Self-interest is not an intrinsic property of actors...but a contingent belief about how to meet needs that gets activated in relation to specific situations and Others, and as such it is culturally constituted.'¹¹⁶ Rather than interdependence, where states rely on each other to obey norms and rules, a constructivist world-view believes that states and norms are mutually constitutive. There *are* norms there to be analysed, and this requires a subtler analytic framework with a less rigid positivist epistemology. Positivism looks for cause and effect; norms cannot be understood so simply. This more open methodology offered by constructivist IR and critical discourse analysis can understand and make claims about interactions between people and language. The effects of local discourses can be appreciated at an international level. When rape in war occurs at what have traditionally been local levels, constructivist IR can situate the discourses involved and attempt to understand them within international contexts.

In addition, norms are counterfactually valid, as no one false occurrence can disprove the norm. That people can speak about norms being violated or disobeyed reflects that there is an understandable, *social fact* quality to norms. Wendt proposes a more relaxed positivism that focuses on structures *and* processes, rather than units and events. Constructivism argues that this is *implicitly* the case with Rationalist theories, as without this intersubjective quality all state units would be treated the same. For constructivism, the identities of states are endogenous to the processes they are part of, and can only be considered to exist within the actor's ideas about them and the world

¹¹⁴ Alexander Wendt, 'Collective identity formation and the international state', *American Political Science Review*, Vol. 88 No. 2 (1994), p. 385

¹¹⁵ Wendt, 'Anarchy is what states make of it', p. 78

¹¹⁶ Wendt, *Social Theory of International Politics* (Cambridge: CUP, 1999), p. 240

context that is perceived.¹¹⁷ This thesis argues that this is also the case with rape in war. Its intersubjective nature leads to the production of discourses about what has been done. That is, discourses are endogenous to the communities that the rape occurs within, at a local, national and international level.

Constructivism should not attempt to replicate a positivistic methodology (of simplified, unitary actors with simplified chains of cause and effect and unverifiable predictions) that it has successfully critiqued. It could offer more than IR theories have offered before. Wendt's constructivism retains the state-centric analysis of rationalist theories, remaining within the structuralist framework of IR where states are the dominant actors: 'I want to show that states are ontologically prior to the states system'.¹¹⁸ But this continued emphasis on fixing categories for hypothesis testing is contradictory to the constructivist interest in transformation.¹¹⁹ It prevents constructivism from creating the openings in IR that it implies it can. Indeed, Wendt's 'weak or essentialist social constructionism'¹²⁰ specifically marginalises an investigation of rape within IR:

States are specialists in the legitimate use of organized violence. ... 'Organized violence' refers to the coordinated use of deadly force by a group. *There are many kinds of violence that do not fit this description.* Some refer to non-deadly force... Others refer to violence that is not literally force... *Still others refer to violence by individuals which is not generally done by groups (murder, rape), or which is done by groups but not organized (riots, mob violence).*¹²¹

The problem with the constructivist literature I have discussed so far is that it is not constructivist (or Foucauldian) enough.

Wendt is keen to emphasise 'the fact that constructivists are structuralists',¹²² and continues to treat states 'in typical realist fashion, as unitary actors with a single identity and a single set of interests.'¹²³ Wendt is too uncritical of the (Neo-)Realist school when he states: 'War no more disproves critical theory than peace disproves realism'.¹²⁴ (Neo-

¹¹⁷ Wendt, 'Anarchy is what states make of it', pp. 78–80

¹¹⁸ Wendt, *Social Theory of International Politics*, p. 198

¹¹⁹ Fierke, 'Links across the abyss', p. 343

¹²⁰ Wendt, 'Collective identity formation', p. 385

¹²¹ Wendt, *Social Theory*, p. 204, italics added

¹²² Wendt, *Social Theory*, p. 204

¹²³ Jutta Weldes, 'Constructing national interests', *European Journal of International Relations*, Vol. 2 No. 3 (1996), p. 280

¹²⁴ Wendt, 'Constructing international politics', p. 76

)Realism prides itself on its ability to both explain and predict the world, but it failed to explain or predict the end of the Cold War and the resulting peace between the bi-polar powers. Constructivism should offer possibilities instead of predicting them, which is what a *strong* constructivism does.

Focusing on the social significance of language moves the theoretical basis of social constructivism away from a positivist sociology of norms and roles. It also brings IR social constructivism more into line with major developments in social theory in the last couple of decades.¹²⁵

The changing nature of the themes of IR – such as sovereignty, anarchy and violence – has not changed the study of IR enough, ‘largely because analysis of “international conflict” rests on a Weberian conception of the state as the monopolizer of force’.¹²⁶ A more radical, post-positivist development of constructivism questions the distinction of object and subject that is relied on by weak constructivism and (Neo-)Realism. Weak constructivism wishes to bridge a gap between itself and rationalist IR; strong constructivism is in favour of a clean break. Constructivism must go further than ‘Wendt and others to investigate the substantive content of social structures and marry constructivism with substantive theory’.¹²⁷ It must break from state-centric discourses and consider intersubjective creations in a more post-positivist framework.

Post-positivist writers within IR take a more radical stance on the coherence of the state, seeing it as performatively constituted, and so emphasise the role of discourse. The politics of identity is far more influential in the creation of enemies than the rationalist anarchic self-help system.¹²⁸ I therefore favour a *strong* constructivism that takes a ‘sociological turn’¹²⁹ from state-centric discourses to consider intersubjective creations within a post-positivist framework.

Strong constructivism puts more emphasis on the need to understand and interpret these *interpreted* institutions, norms and regimes. Intersubjective-creations construct reality to such an extent that they are social facts capable of investigation. This is not to

¹²⁵ *Ibid.*, p. 44

¹²⁶ Bernstein *et al.*, ‘God gave physics’, p. 67

¹²⁷ Martha Finnemore, *National Interests in International Society* (London: Cornell University Press, 1996). p. 27

¹²⁸ Barnett, ‘Identity and alliances in the Middle East’, pp. 400–47

¹²⁹ Finnemore, *National Interests in International Society*, p. 149

claim that they are as real as states, but rather that states are less real than is claimed by rationalism. Assuming that states can be rational presupposes international institutions that allow them to be rational;¹³⁰ it is such presuppositions that strong constructivism can uncover, expose and understand. States are not 'stable, internally coherent' units, nor do they have timeless preferences.¹³¹ The state-as-actor is problematised, and other actors become relevant. Strong constructivism and post-positivism share the same methodological commitments, and share the belief that intersubjective knowledge can become objective reality through practices and behaviours. Feminism too – as an inherently post-positivist theory – is well-placed to deconstruct intersubjective knowledge. Hence an IR that is informed by both feminism and strong constructivism can offer a critical analysis of the discourses of rape in war.

Concluding remarks

Discontinuity was the stigma of temporal dislocation that it was the historian's task to remove from history.¹³²

Selecting examples of rape to study requires identifying statements that in some way make a claim of *rape* or *sexual(ised) violence*. Because discourse theory does not allow for the existence of objects without interpretation, there can be no objective judgement of what is sexual. Interpretation and explanation remain essential elements of critical discourse analysis; 'there is no "natural" word, no final resting place, that could finally put an end to the search for its ultimate meaning, its essence'.¹³³ Without an objective judgement of the sexual, discourse analysis must rely on intersubjective understandings of *rape* or *sexual(ised) violence* that are discursively constituted and useful to exposing and problematising the practices associated with these discourses.

Discourse analysis can identify what is in a statement or text, but critical discourse analysis must also identify the absences in (or out of) a text. 'Analysis of

¹³⁰ Hasenclever *et al.*, *International Regimes*, pp. 138–9

¹³¹ Finnemore, *National Interests in International Society*, p. 8: 9

¹³² Foucault, *Archaeology of Knowledge*, p. 8

¹³³ Jason Glynos, 'Sex and the limits of discourse', Howarth, *et al.*, *Discourse Theory*, p. 206

implicit content can provide valuable insights into what is taken as given, as common sense.¹³⁴ So as well as offering examples of statements of rape in war, I will also consider interpretations of what else can be meant and understood by these statements, and so group these statements together within discursive formations. Identifying such structures does not pre-determine social action; these structures provide options that must be chosen between. The multiple discourses of rape in war do not determine that such rapes must occur, but they do create the conditions of possibility for these acts. This interpretation is not a by-product of critical discourse analysis; it is a crucial part of it.

Discourse theorists seek to describe, understand and explain, but this does not mean ironing-out inconsistencies. Rather than establishing empirical generalizations or testing universal hypotheses, these inconsistencies are examined and form part of the critique. The thesis identifies discursive formations that emerge from the case studies, by taking the universe of statements, texts and discourses. Such identification must be reflexive, and recognise its circular processes:

[F]rom interpretation of the discourse practice (processes of text production and consumption), to description of the text, to interpretation of both of these in the light of the social practice in which the discourse is embedded.¹³⁵

Discourse analysis itself is involved in the construction and production of discourse. This fluid method is a necessary part of critical discourse analysis to allow productive interpretation; 'by confining archaeology to a purely formal style of analysis, an understanding of discourse as a culturally specific formation is precluded'.¹³⁶ A strong constructivism must also be a critical constructivism that 'problematizes the conditions of its own claims; that is, a critical constructivism is also reflexive'.¹³⁷

Within discourse theory there is a less clear focus on the subject, but because of the changes in feminist theorising since the second wave of feminism this is a good thing for feminist theories.¹³⁸ Despite an emphasis on the difference of women in radical feminisms, and an emphasis on the sameness of women in liberal feminisms, both shared an essentialist understanding of a coherent self-identity regardless of their female

¹³⁴ Fairclough, *Critical Discourse Analysis*, pp. 5–6

¹³⁵ Fairclough, *Discourse and Social Change*, p. 231

¹³⁶ McNay, *Foucault*, p. 49

¹³⁷ Weldes *et al.*, 'Introduction', p. 13

¹³⁸ Mills, *Discourse*, p. 102

subjectivity. More recent works in feminism have shown how the production of a female self must necessarily suppress other selves. For example, Judith Butler's *Gender Trouble* demonstrates how feminism itself has played a part in producing the modern female self: 'the feminist subject turns out to be discursively constituted by the very political system that is supposed to facilitate its emancipation'.¹³⁹

Butler argues this position using the concept of *gender performativity* (discussed in the previous chapter). Constructivism has played an important part in feminism itself: 'By "socially constructed", I mean that men and women are the stories that have been told about 'men' and 'women' and the *constraints* and opportunities that have thereby arisen as we take to our proper places.'¹⁴⁰ Butler highlights Foucault's claim that 'juridical systems of power *produce* the subjects they subsequently come to represent'.¹⁴¹ The thesis concludes that where the Tribunals recognise a sexualised specificity to rape, they also reify that discourse of rape in war as a specifically sexual violence. By following this logic, I am not arguing that the act of rape has more to do with speech than the activity; it could be claimed that this trivialises the act of rape by removing its meaning, but I believe the reverse is true. '[O]ne could say that relying on some extra-discursive referent for *meaning* is a way to avoid the somewhat troubling idea that sex has more to do with speech and its *limits* than with, for example, some sort of activity.'¹⁴² The sexual specificity, and what is so terrible about this, is constructed through discourse.

I emphasise this hegemonic emergence to also construct the strategic argument in the conclusion that rape should be reconstructed. A decentred or destabilised self does not mean that the self has to be abandoned, or that the self can no longer be a subject:

[P]erformativity implies a kind of compulsory reiteration of those norms through which a subject is constituted... Agency is then located in the possibility for variation on that reiteration through resignification. ...i.e. the reworking of the discourse through which subject effects are produced.¹⁴³

Foucault is able to speak of the 'death of man' because of his project of examining the

¹³⁹ Butler, *Gender Trouble*, p. 4

¹⁴⁰ Christine Sylvester, *Feminist Theory and International Relations in a Postmodern Era* (Cambridge University Press, 1994), p. 4, italics added

¹⁴¹ Butler, *Gender Trouble*, p. 4

¹⁴² Glynos, 'Sex and the limits of discourse', p. 206, italics original

¹⁴³ Mark Laffey, 'Locating identity: performativity, foreign policy and state action', *Review of International Studies*, Vol. 26 (2000), p. 432

effects of discourses on people. I am also able to analyse the multiple discourses of rape in war without also reifying the identities that they produce. This does not suddenly result in an incoherent self, but instead recognises that the self has always been incoherent. In the same way, rape in war can be understood as stories that are reconstructed after the event has taken place. This means that the stories must depend on the discourses of rape in war that are already in existence. Therefore the event that is labelled *rape* exists and is communicated through multiple discursive formations. 'The object only *appears* within a discursive formation; in other words, a discursive formation is constitutive for the social emergence of an object.'¹⁴⁴ The multiple discourses of rape in war provide the conditions for certain concepts to be (re-)articulated, and require choices to be made between discourses. However, a hegemonic discourse of rape in war is emerging that privileges the sexualised. This hegemonic discourse produces rape victims as a particular type of object for treatment under an emerging specific set of rules. This is argued by following Foucault's rule of the tactical polyvalence of discourses.

Rather than reifying the emerging hegemonic discourse of rape as sexual violence, it would be strategically more helpful to move to considering a discourse of rape as torture, so as to take advantage of the already existing – and less discursively constrained – laws surrounding torture (although this itself must be constructed within discourse). A Foucauldian discourse analysis approach does not consider there to be an extra-discursive position from which judgements can be made. Due to the socially constructed nature of reality and the multiplicity of discourses, people must choose between these discourses (or invent their own). There is potential to make the experiences of rape in war less humiliating by allowing victims to describe what happened with their own discourses, which – strategically and politically – is better than imposing the emerging hegemonic discourse of rape as sexual, personal and humiliating. The emergence of this hegemonic discourse is identified, and its emergence is demonstrated at the end of each case study, and drawn together in the conclusion.

¹⁴⁴ Jef Huysmans, 'Defining social constructivism in security studies: the normative dilemma of writing security', *Alternatives*, Vol. 27 (2002), p. 48, italics original

CHAPTER 4

RWANDA: THE DEFENCE

Rape was used to shatter the social bonds that hold the Tutsi community together. Its effects will be felt for years, if not decades.¹

On 21 April, the killing of Tutsis began [in our area]. At first they went for the men and little boys. Then it was the turn of educated Tutsi women. They were also looting and burning homes, and slaughtering the cows of Tutsis. Then the raping began.²

This is an anecdotal but instructive example: rape might shatter social bonds, but the cows were slaughtered before the women were targeted for rape. There appears to be a tension between the raping of supposedly unimportant women, and the destruction that rape can achieve because of the immense social importance of women. But women are only considered unimportant as potential warriors. As cultural signifiers, women are very important. Women, and what has been done to them, can remain as a constant reminder to a community. Estimates of the number of women raped in the Rwandan genocide vary from 15,700³ to 500,000.⁴ Dr Catherine Bonnet states that 'the scope of rape in Rwanda defies imagination... It appears that every adult woman and every adolescent girl spared a massacre by militias was then raped'.⁵

The Republic of Rwanda was the most densely populated country of the African continent, with a population of 7,100,000 inhabitants for 26,338 square kilometres. In the genocide of 1994 between 800,000 and 1,000,000 Rwandans were killed, including over

¹ African Rights, *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995), p. xxiv

² Thérèse & Christine, cited in African Rights, *Rwanda*, p. 777

³ World Health Organisation, cited in Tétreault, 'In search of justice: wartime rape and human rights', Tétreault & Teske, *Partial Truths and the Politics of Community*, p. 310

⁴ Women for Women International, *Rwanda Project* (www.womenforwomen.org/rwanda1.htm, 24 May 2001)

⁵ Catherine Bonnet, cited in Enloe, *Maneuvers*, p. 132

500,000 Tutsis. This was over half the Tutsis living there.⁶ The rate of killing in the genocide was nearly three times that of the Jewish during the Holocaust, and also the most efficient mass killing since Hiroshima and Nagasaki, with approximately five and a half deaths a minute.⁷ It is estimated that 100,000 people were killed by the end of April; 200,000 by mid-May; 500,000 by the end of May.⁸ Some claim that up to 75 per cent of the Tutsis had been killed by early May.⁹ A quarter of the country's population had become homeless.¹⁰ During this period, an estimated 200,000 to 500,000 women were raped.¹¹ The above figures are all estimates – the exact figures may never be known (nor, for the purposes of this analysis, do they need to be known). The devastation of Rwanda is not in question. What is in question is the relevance of rape in the genocide.

The trial of Mayor Jean Paul Akayesu was the first international genocide trial in history, and on 2 September 1998 the International Criminal Tribunal for Rwanda made international legal history. The conviction of Akayesu was the first conviction for genocide by an international court, the first time an international court has punished sexual violence in a civil war, and the first time that rape was found to be an act of genocide to destroy a group.¹²

The trial of Akayesu: the Defence

The Tribunal has established that a widespread and systematic attack against the civilian ethnic population of Tutsis took place in Taba, and more generally in Rwanda, between April 7 and the end of June, 1994. The Tribunal finds that the rape and other inhumane

⁶ Alain Destexhe, *Rwanda and Genocide in the Twentieth Century* (Trans. by Alison Marschner; London: Pluto Press, 1995), p. 68

⁷ Philip Gourevitch, *We Wish to Inform You that Tomorrow We Will be Killed With Our Families: Stories from Rwanda* (London: Picador, 1999), p. 3

⁸ Destexhe, *Rwanda and Genocide*, p. 49

⁹ Gourevitch, *We Wish to Inform You*, p. 21

¹⁰ Michael N. Barnett, 'Peacekeeping, indifference, and genocide in Rwanda', *Weldes et al., Cultures of Insecurity*, p. 183

¹¹ Women for Women International, *Rwanda Project*, p. 1

¹² Human Rights Watch, 'Human Rights Watch applauds Rwanda rape verdict' (<http://www.hrw.org/hrw/press98/sept/rrape902.htm>, 1998), p. 1

acts which took place on or near the bureau communal premises of Taba were committed as part of this attack.¹³

On the basis of the evidence set forth herein, the Chamber finds beyond a reasonable doubt that the Accused had reason to know and in fact knew that sexual violence was taking place on or near the premises of the bureau communal, and that women were being taken away from the bureau communal and sexually violated. ... In fact there is evidence that the Accused ordered, instigated and otherwise aided and abetted sexual violence.¹⁴

On 8 November 1994, eighteen months after the international tribunal for the former Yugoslavia had been established (Security Council resolution 827 (1993)), the UN Security Council adopted resolution 955, creating the *International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994* (ICTR). The ICTR sits in Arusha, United Republic of Tanzania. In this resolution, it was decided to establish an international tribunal 'for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of States'.¹⁵

Jean Paul Akayesu was the bourgmestre for the Taba commune, prefecture of Gitarama, Rwanda, from April 1993 to June 1994. According to the indictment, at least 2,000 Tutsis were killed in Taba between 7 April and the end of June 1994. On 13 February 1996, his indictment was issued by the Prosecutor, and confirmed on 16 February 1996. This original indictment made no mention of rape, or of sexual violence. Reports from Rwanda more generally made no mention of rape. For example, Barstow criticises Gourevitch, a reporter, for not reporting the issue of rape:

¹³ International Criminal Tribunal for Rwanda, *The Prosecutor versus Jean-Paul Akayesu* (<http://www.ictor.org/english/judgements/akayesu.html>, 1998), p. 101

¹⁴ ICTR, *Prosecutor v. Akayesu*, p. 70

¹⁵ United Nations High Commissioner for Human Rights, *International Criminal Tribunal for Rwanda* (<http://www.unhchr.ch/html/menu2/2/rwatrib.htm>)

The American public had first heard about the Rwandan genocide from reporters who missed the fact of sexual assault almost completely; women were simply invisible in their accounts. Not until March 1995 in the *Christian Science Monitor* were the mass rapes revealed.¹⁶

It is certainly true that many interesting and important studies of the genocide in Rwanda do not mention rape, and those that do only in passing. The UN's fact-finding mission in Rwanda in 1994 did not discover the prevalence of rape until several months after the genocide when women were giving birth in 'unprecedented numbers'.¹⁷

One of the judges hearing the case was Navanethem Pillay, the only female judge on the ICTR. She followed up the testimonies of rape that emerged, and the prosecutor later applied to amend the indictment to include charges of rape. In July 1996, the ICTR established a Sexual Assault Committee to aid investigation of rape.¹⁸ (It has been claimed that it was pressure from feminist groups that resulted in the Office of the Prosecutor amending the charges in June 1997 to include rape, a point I will return to.) It was not until 17 June 1997 that the indictment was amended to include three counts (13 to 15) and three paragraphs (10A, 12A and 12B): allegations of rape, as well as additional charges of humiliation and degrading behaviour (including sexual violence):

12A. Between April 7 and the end of June, 1994, hundreds of civilians (hereinafter 'displaced civilians') sought refuge at the bureau communal. The majority of these displaced civilians were Tutsi. While seeking refuge at the bureau communal, female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten on or near the bureau communal premises. Displaced civilians were also murdered frequently on or near the bureau communal premises. Many women were forced to endure multiple acts of sexual violence which were at times committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The female displaced civilians lived in constant fear and their physical and psychological health deteriorated as a result of the sexual violence and beatings and killings.

(Note that it is specifically *females* that lived in 'constant fear'. I argue that such statements by the Prosecution reinforce a discourse of rape as a specifically sexualised violence, and something that only happens to women, that violates their honour, and is

¹⁶ Barstow, 'Introduction', p. 5

¹⁷ Charlesworth & Chinkin, *Boundaries of International Law*, p. 219

¹⁸ Human Rights Watch, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (<http://www.hrw.org/hrw/summaries/s.rwanda969.html>, 1996), p. 5

worse than death. As such, rape is being considered a crime against humanity and existence, rather than a violent assault on a person.)

12B. Jean Paul Akayesu knew that the acts of sexual violence, beatings and murders were being committed and was at times present during their commission. Jean Paul Akayesu facilitated the commission of the sexual violence, beatings and murders by allowing the sexual violence and beatings and murders to occur on or near the bureau communal premises. By virtue of his presence during the commission of the sexual violence, beatings and murders and by failing to prevent the sexual violence, beatings and murders, Jean Paul Akayesu encouraged these activities.¹⁹

The resulting additional counts 13 and 14 invoked *Crimes Against Humanity, Rape and Other Inhumane Acts* from Article 3 (g) and (i) respectively of the Statute of the Tribunal. Count 15 invoked 'Violations of Article 3 common to the Geneva Conventions and of Article 4(2)(e) of additional Protocol 2, as incorporated by Article 4(e)(outraged upon personal dignity, in particular rape, degrading and humiliating treatment and indecent assault) of the Statute of the Tribunal'. The conviction of Akayesu and its findings have been relied upon extensively by subsequent ICTR decisions.²⁰ Rape and sexual violence were defined explicitly for the first time in international law by the ICTR. Rape was found to constitute 'a physical invasion of a sexual nature committed on a person under circumstances which are coercive'; sexual violence, which includes and is broader than rape, was defined as 'any act of a sexual nature which is committed on a person under circumstances which are coercive'.²¹

To identify the multiple discourses of rape in Rwanda, and the emerging hegemonic discourse of rape, I will focus on the trial of Akayesu. I will use the trial to situate the statements and discursive formations that I wish to analyse, because the issues that the Akayesu trial raises are relevant to multiple discourses of rape. I will first consider the case made by the Defence in the trial, and then the Prosecution.

¹⁹ ICTR, *Prosecutor v. Akayesu*, para. 12A and 12B

²⁰ Kelly Askin, *Legal Precedents in Rwanda Court* (http://www.crimesofwar.org/tribun-mag/mag_rwanda2.html, 2001)

²¹ Askin, *Legal Precedents in Rwanda*

The Defence of Akayesu with respect to rape was fairly meagre, but no less interesting for it. The Defence claimed that any rapes that did take place were the result of the physical need of men. This used to be one of the most common discourses of rape (but is now less common following the work of Brownmiller). I will show how this discourse of rape relied upon much more specific and colonial constructions about physical difference, which created the conditions to allow men to 'need' supposedly superior women. These supposed differences created the possibility for the genocide. Throughout this section, I will demonstrate that *rape* can never be simply understood. The Defence's claims rely upon discursive (and colonial) constructions, which are all problematic. In the Prosecution of Akayesu, a similarly common, although diametrically opposed, discourse was present: rape as *sexual violence*. I will demonstrate that although this discourse is intended to emphasise the atrocity of rape, it also acts to reinforce the stigmatisation associated with rape, by reinforcing the discourse of rape as a violation of honour, and as a fate worse than death. That is, such attempts to punish rape can re-create the discourses of rape; this is argued following Foucault's rule of the tactical polyvalence of discourses.

Finally, I will highlight additional discourses of rape that were present and the results of the rapes. This shows that there is no one, correct interpretation or understanding of rape, and that rape can have many effects. In fact, effects of rape in war are partly derived from this multifarious and contradictory nature. To take rape seriously we have to recognise *rape*, but we must not *reinforce* the associated stigmas. The multiplicity of discourses of rape in war means that there cannot be a correct discourse of rape as argued by the Tribunal. We should not consider rape to be its own separate crime, with its own rules; rape should instead be prosecuted as a form of torture.

Physical need and incentive

The Accused simply stated that there was very little to say about the allegations of sexual violence, that unlike the killings this was impossible and not even for discussion.²²

[T]he '*crime passionel*' – an involuntary, unpremeditated crime, bound up with extraordinary circumstances, which, while not offering the same excuse as madness, nevertheless prevented it from being regarded as an ordinary crime.²³

The main defence for Akayesu regarding rape was that the rapes did not occur:

[T]he Defence case is somewhat different from that for killings and beatings, in that, whereas for the latter the Defence does not contest that there were killings and beatings, it does deny that there were acts of sexual violence committed, at least at the Bureau Communal. During his testimony the Accused emphatically denied that any rapes had taken place at the Bureau Communal, even when he was not there.²⁴

The Defence also argued that if any rapes *did* occur, then this would have been the result of natural urges. The discourse of rape as physical need, a *natural* response, is a commonly assumed discourse of rape. This discourse of rape as a physical need was used by Matata, an 'expert witness' called by the Defence of Akayesu. Matata testified that any rapes that took place were to satisfy physical needs and were not part of genocide, as spontaneous acts of desire can occur even in the context of killing. Matata also stated that Tutsi women are quite beautiful, which would also lead to them being raped.²⁵ (Within colonial constructions of ethnic difference, Tutsi women were considered to be more beautiful than Hutu women, a point I will return to.)

I do not know on what grounds Matata was considered an 'expert witness'. But what this shows is that those involved in committing and defending the acts of rape used as justification one of the oldest discourses of rape: physical need. I argue that rather than proving that rape is a natural response to a physical need, these acts of rape instead point to the enforcement of *beauty* as an *ethnic difference*. For example, Witness PP testified that she saw three women forced to undress, walk, run, and exercise 'so that they could

²² ICTR, *Prosecutor v. Akayesu*, p. 72

²³ Foucault, *Discipline and Punish*, p. 100, italics original

²⁴ ICTR, *Prosecutor v. Akayesu*, para. 51

²⁵ *Ibid.*, pp. 68–9

display the thighs of Tutsi women'.²⁶ The three women were then raped in front of approximately 200 people. This case demonstrates that the Defence's attempted construction of rape, as a natural response to a physical need, does not hold. The Defence's case is similar to the essentialist evolutionary biologist view discussed in the literature review, and my refutation of it applies here. (It also confirms my view that it is counterproductive for feminists to argue that rape is the result of natural male urges.) This view is less common since the work of Brownmiller, and attempts are now made to define rape in terms of sexual violence. That is, rape is a form of violence that uses sexuality as its means, rather than sex that is conducted violently. This argument is also problematic, and I will consider it in relation to the Prosecution.

This discourse of rape as the result of male physical needs is also developed further, extended in war to the degree where the satisfaction of physical needs by rape can provide an *incentive*.

As an added incentive to the killers, Tutsis' belongings were parcelled out in advance – the radio, the couch, the goat, the opportunity to rape a young girl.²⁷

Similarly, and perversely, on the arrival of French armed forces as *Opération Turquoise* on 23 June 1994, *Radio-Télévision Libre des Mill Collines* (RTL) told Hutu women to look their best for the French: 'Now that the Tutsi girls are all dead, it's your chance'.²⁸ This logic rests on a conflation of sexual relations and sexual violence, and is apparent in the definitions of sex in *Kinyarwanda* (which will be discussed later). If Hutu men are willing to offer *their* women in place of the raped and murdered Tutsi women, how is it possible to tell what Hutu men feel they are achieving through rape? It is not possible to completely know, and discourse analysis does not attempt to know this on an individual, psychological level. The discourses of rape in war are social constructions, and do not have to be coherent. But this does not mean that the discourses cannot be identified, interpreted, exposed and deconstructed. Such confusions are apparent in women who have been raped. They draw on the same or similar discourses as their rapists, and

²⁶ *Ibid.*, p. 67

²⁷ Gourevitch, *We Wish to Inform You*, p. 115

²⁸ *Ibid.*, p. 155

sometimes even say that their rapists were not really rapists. These points will emerge as further discourses are analysed.

Emmanuel Sagahutu, a Hutu punished for helping Tutsis, said the rape of Tutsi girls was widespread in Kigali, and it was the *interahamwe* militias,²⁹ rather than the military, that were responsible:

Initially, the emphasis was on killing. But then the young *interahamwe* had looted so much that they felt well-off. These uneducated young thugs had moved into villas surrounded by televisions, videos and nice furniture. Now, they wanted a beautiful woman to complete their victory. It was easy for them to threaten to kill the woman. If she wanted to live, and most people do, what choice did she have? But it is terrible to see the highly educated girls, some of them university graduates or at university, being forced to go with such specimens of the human race.³⁰

Women in this context have been objectified to the point where they can be claimed as possessions. Gendered language plays an important part in the Kinyarwandan language: *umugabo* refers to a 'real man', someone embodying the *ubugabo* virile quality: strength of body and character, and sexual potency.³¹

In Kinyarwandan, rape is linked very closely with sexual relationships. The most generic term for sexual intercourse in the *Kinyarwanda* dictionary is *kurungora* - 'to have sexual intercourse with a woman', whether married or not, and with *or without* consent.³² One example of usage for *kurungora* in the *Kinyarwanda* dictionary is: 'Mukantwali met three young men who robbed her of her belongings and raped her'.³³ The interesting point here is that the generic term for sexual intercourse *includes* sexual violence. The use of marriage by Hutu men to Tutsi women during the genocide (examined later) follows a similar logic, where women would be married off to save their lives. This euphemistic

²⁹ The *interahamwe* – meaning 'those who work together' – was the first civilian militia, officially created for tasks of social interest having to do with *umuganda* (recruiters of the royal army in pre-colonial times). *Interahamwe* started to take part in killings as early as 1992, and were later the main perpetrators of the genocide (Prunier, *Rwanda Crisis*, pp. 401–2).

³⁰ Emmanuel Sagahutu, cited in African Rights, *Rwanda*, p. 750

³¹ 'President Habyarimana was often described as "a true umugabo", not without a subtle note of irony because in modern times the umugabo image has taken on, in educated circles at least, a slightly ridiculous macho element.' (Prunier, *Rwanda Crisis*, p. 405)

³² ICTR, *Prosecutor v. Akayesu*, p. 27

³³ *Ibid.*

way in which *rape* is referred to highlights the fluidity of the term. The following were all used in the ICTR testimonies of women who had been raped:

- *kurungora* – ‘to have sexual intercourse with a woman’, whether married or not, and with or without consent
- *gusabanya* – ‘to bring (a person) to commit adultery or fornication’
- *kuryamana* – ‘to share a bed’ or ‘to have sexual intercourse’, similar to ‘to sleep with’
- *gufata ku ngufu* – ‘to take (anything) by force’ and ‘to rape’, most closely connected to use of force³⁴

Rape and *sex* are clearly closely linked in the Rwandan language. The discourse of rape as an incentive of physical need – a commodity, even – was pushed to its logical conclusion. If men did not possess a beautiful woman, they were now able to take or buy one. Rape was not enacted as part of an animalistic physical need, but as part of a social construction of what should be desired. Violeta testified to being ‘bought’:

[T]he interahamwe took us, and shared us out among themselves. Some were raped, some were killed. They separated the people. They separated out the girls, and put them on one side and told them, ‘You, we are not going to kill you’.

The one who took me... His name was Bugimulunje. First, there was another one who chose me. But Bugimulunje wanted me, and he paid 1000 francs [approximately £1.50 or US\$2.20] to the other man so that he could have me instead. ... Bugimulunje kept me for one week and a half. I was raped every night.³⁵

Similarly, Odette was ‘bought’ by Sylvère for 5000 francs:

He took me to his house in Nyakanyiya and married me. When he went to the places of massacres, in other words when he went to kill people, he left me locked in his house.³⁶

This discourse of rape in war as a physical need was understood not just by the men who committed the rapes, but also by the women who were raped. Odette refers to two men who raped her: ‘Since the first two [men] had satisfied their own needs, they granted me to this guy, Sylvère’.³⁷ The euphemism for rape chosen – satisfied their needs – is one that derives from the discourses that the rapists also draw on. In a similar way,

³⁴ *Ibid.*

³⁵ African Rights, *Rwanda*, p. 775

³⁶ Odette, cited in *ibid.*, p. 781

some victims of rape also impose and maintain a distinction between rape and (sexual) violence. Chantal stated:

I was driven towards the lake and raped by three men who had seen me hiding. These men were neighbours, people I knew personally. *All three of them were married.* They did not beat me. But all three of them raped me. After that, they left me and went to find people to kill.³⁸

Chantal is referencing the discourse of rape in war as a physical need, by stating that the men raped her *despite* being married, which should be irrelevant to rape.

By differentiating rape from violence, Chantal is at odds with the discourse of rape-as-sexual-violence used by the Prosecution (discussed later). Maintaining a distinction between rape and the fulfilment of physical need can even extend to women identifying their rapists as *victims*. Juliana was abducted by Marcel:

Along the way, he tried to rape me. I cried, cried and pleaded with him. He left me alone. He seemed *genuinely* upset at seeing me so distraught. He told me that in future I should regard him as a brother. He took me to hide at the home of his elder brother...³⁹

Similarly, Jane remembered that, 'Others of them refused to rape us'.⁴⁰ Some women were able to stop men from killing them by becoming known as the 'wife' of a particular man. Thérèse and Christine were captured by two brothers:

The two brothers proposed to save us by hiding us in their home. That is where they raped us, saying that they would marry us when the fighting finished. We remained in that house, which was near the parish, until the arrival of the RPF two days ago.⁴¹

Vestine's son was killed by *interahamwe*, and she was taken to the local leader:

Birindabagabo had made himself a small king in the area. Women who had been abducted were brought to him; he decided whether to keep them for himself or give them back. He had many women he was keeping in his house. In the evening, they had a meeting to decide my destiny. My old abductors attended the meeting. I was also there. One of them bribed Birindabagabo so that he could officially declare me his wife at the meeting. The buyer was a man called Karinjabo. Birindabagabo told the gathering: 'You have killed her son; there is no further reason to pursue her. From now on, she is Karinjabo's wife'. The men who felt they had other claims on me left. Birindabagabo

³⁷ Odette, cited in *ibid.*, pp. 780–1

³⁸ Chantal, cited in *ibid.*, p. 760, italics added

³⁹ Juliana, cited in *ibid.*, p. 753, italics added

⁴⁰ 'Women speak: Human Rights Watch', Barstow, *War's Dirty Secret*, p. 93

⁴¹ Thérèse & Christine, cited in African Rights, *Rwanda*, p. 775

said that I should not leave because the other men who had wanted me and did not get me might kill me.

So he provided a house for us and Karinjabo and I began living as man and wife. ... I would like to add that he did not mistreat me.⁴²

Josianne was allocated as a wife to an *interahamwe*, who obtained her a fake Hutu ID card so that he could ensure keeping her.⁴³ Even whole groups of men would take a woman to be their 'wife'. Several women testified to African Rights that 'a group of interahamwe came to the church on 14th April and took a woman who had children at secondary school to be their "wife"'.⁴⁴ In such circumstances, the decision to be made was between marriage or death; this stark choice has been well testified to, and is discussed later.

The Tutsi men, or more specifically the Rwandan Patriotic Front (RPF), were referenced by various Hutu in the discourses of rape. For example, Beata was accused of 'saving herself' for Tutsi soldiers:

Initially, women and children at the primary school [camp] were not sought after very much. Things became worse after there was a sharp increase in the number of wounded soldiers who were brought to the nearby hospital. When they started bothering the women, they first concentrated on the women they considered better dressed and more sophisticated city women, especially those from Kigali.

... They [*interahamwe*] heaped insults on us, hitting us and saying that 'You will be forced to accept us'. ... I lied to them, saying I was sick. I told them that if they forced me to have sex, it would stop me from breathing. After that, one of them went berserk and hit me very hard, saying 'You want to avoid government soldiers so you can sleep with RPF soldiers'.⁴⁵

The raping of women who were ill in a hospital shows that rape was not just the result of constructed desires. Rape was also part of an attack against the Tutsi population, with the removal of Tutsis the goal of the rapes, rather than a by-product of them. Rape was also used as a mechanism by which an *other* was identified, maintained and persecuted, and it was the colonial constructions that were targeted.

⁴² Vestine, cited in *ibid.*, p. 787

⁴³ *Ibid.*, p. 783

⁴⁴ *Ibid.*, p. 794

⁴⁵ Beata, cited in *ibid.*, pp. 790-1

Rape is being constructed as the result of a physical need, by a pervasive discourse that says it is. Although rape as a physical need is a *common* explanation for rape, it did in fact depend on very *specific* understandings of Hutu and Tutsi sexuality and differences, and specifically a discourse of the different sexuality of Tutsi women.

Enforced differences and colonial constructions

Anarchy, rape, arson and murder were all carried out according to plan and under the supervision of authority.⁴⁶

In this section, I will examine the discourses that enforced difference by creating an *other* and fuelling the discourse of rape as physical need. The propaganda from sources such as Radio Rwanda and RTLM specifically identified the sexuality of Tutsi women as a means of dehumanising all Tutsis.⁴⁷ The logic of this discourse also targeted Hutu women who were connected with political opposition, married to Tutsi men, or who protected Tutsi. This stemmed in part from the propaganda of Hassan Ngeze, a Hutu. His article, 'The Hutu Ten Commandments' (published December 1990), reinforced the discourse that the beauty of Tutsi women was greater than that of Hutu women.⁴⁸ (It is an interesting twist on propaganda to claim that the enemy is *better*-looking than you or 'your' women.) Hutu men and women were told to guard against sexual feelings for this more attractive race. Any Hutu who married, employed or even befriended a Tutsi woman become a traitor.⁴⁹ Perversely, this logic fuelled the desire and justification to rape Tutsi women once the genocide began.

Rather than proving that rape is a natural response to a physical need, the acts of rape demonstrated the enforcement of beauty as an ethnic difference. That is, a discourse of differences in beauty between Hutu and Tutsi was constructed, performed and

⁴⁶ Prunier, *Rwanda Crisis*, p. 349: 72

⁴⁷ HRW, *Shattered Lives*, p. 2

⁴⁸ Gourevitch, *We Wish to Inform You*, pp. 87–8

⁴⁹ Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (London: Pimlico, 2001), p. 121

reinforced, and the rapes reinforced these differences. I argue that rape is a discourse, and as such is communicable. This explains, to some extent, why many rapes took place in front of large numbers of people, 'and that all of it was directed against Tutsi women'.⁵⁰ This also helps explain why some women were gang-raped next to their dead husbands.⁵¹ This discourse of difference of Tutsi women created the conditions of possibility for a more common rape-related discourse, that of physical need and incentive.

It is debatable whether *any* ethnic divisions are actual differences, and the divisions are certainly tenuous between Hutu and Tutsi. Before colonisation, the terms Hutu and Tutsi were social categories rather than ethnic or racial.⁵² What is undeniable (with over 800,000 dead) is that the people of Rwanda came to believe in these ethnic distinctions. Chrétien describes such a phenomenon as 'tribalism without tribes'.⁵³ The perceived tribalism of the genocide did not require actual tribes to exist, only that the discourses of these tribes were accepted as common sense.

Before colonialism, Rwandans were known as Banyarwandans.⁵⁴ Kinyarwanda is the language spoken by the Banyarwanda tribe, and is spoken the same by Hutu and Tutsi.⁵⁵ The social distinctions of Hutu and Tutsi related to division of labour: the Tutsi were predominantly cattle raisers, and the Hutu worked the land as farmers.⁵⁶ '[P]eople with ten or more cows were Tutsi (in perpetuity); those with fewer were Hutu.'⁵⁷ Furthermore, the Hutu, Tutsi and Twa all spoke the same language, shared the same territory, traditions and taboos, and acknowledged the same Tutsi king (the *Mwami*) of divine origin and responsible for fertility.⁵⁸ Such observations have recently led some ethnographers and historians to decide that they are not properly distinct ethnic groups,⁵⁹

⁵⁰ ICTR, *Prosecutor v. Akayesu*, p. 70

⁵¹ Laura Flanders, 'Rwanda's living casualties', Barstow, *War's Dirty Secret*, p. 98

⁵² Destexhe, *Rwanda and Genocide*, p. 36

⁵³ Jean-Pierre Chrétien, cited in *ibid.*, p. 36

⁵⁴ Flanders, 'Rwanda's living casualties', p. 96

⁵⁵ Prunier, *Rwanda Crisis*, p. 402

⁵⁶ Destexhe, *Rwanda and Genocide*, p. 37

⁵⁷ Alex de Waal & Rakiva Omaar, cited in Flanders, 'Rwanda's living casualties', p. 96

⁵⁸ Destexhe, *Rwanda and Genocide*, pp. 36-7

⁵⁹ Gourevitch, *We Wish to Inform You*, p. 48

and I argue that this is always the case, as claims to inherent identities are not only false, but also politically dangerous. It is possible to identify the myths that constructed the discourses of division.

Cave-dwelling pygmies, today called the Twa, are considered the first to settle Rwanda, and the only endogamous group. The Twa are regarded as inferiors by both Hutu and Tutsi as they are a small minority of pygmies who live off hunting and foraging in the forests. The colonisers denigrated them: Count Von Götzen, the first European on Rwandan soil, declared them 'a caste of dwarfs',⁶⁰ and they are 'treated with contempt by the rest of the population'.⁶¹ Rwanda became part of German East Africa in 1885, and by the beginning of the twentieth century the groups had become akin to castes, maintained through endogamy. The line of descent for children was patrilineal, with children of mixed marriages considered to be the ethnic group of the father.⁶² Intermarriage was disproved of, but not forbidden. Caste movement was possible, such as if a less well-off Tutsi cattle owner agreed to marry his daughter to a richer Hutu farmer. Therefore, Tutsi was synonymous with a rise in social position.⁶³ By the time Rwanda was given to Belgium by the League of Nations after World War I, it had been decided that Tutsis were lighter-skinned (and therefore superior) to Hutu.

In 1948 Belgian doctor J. Sasserath described the Tutsis (or *Hamites*, to mean from a superior race) as follows: 'The Hamites are 1.90 metres tall. They are slim. They have straight noses, high foreheads, thin lips. The Hamites seem distant, reserved, polite and refined'.⁶⁴ Sasserath considered the Hutus much lower: 'The rest of the population is Bantu. ...possessing all the characteristics of the negro: flat noses, thick lips, low foreheads, brachycephalic skulls. They are like children, shy and lazy and usually dirty'.⁶⁵ John Hanning Speke, an Englishman, had offered his *Hamitic* hypothesis in 1863, which

⁶⁰ Count Von Götzen, cited in Destexhe, *Rwanda and Genocide*, p. 39

⁶¹ *Ibid.*, p. 39

⁶² *Ibid.*, p. 37

⁶³ *Ibid.*, p. 40

⁶⁴ J. Sasserath, cited in *ibid.*, p. 39

⁶⁵ J. Sasserath, cited in *ibid.*, p. 39

claimed that all culture had been introduced to Africa by a Caucasoid tribe of Ethiopian origin, descended from the biblical King David, and superior to the native Negroids.⁶⁶

The Germans had only five civil servants to cover the whole of Rwanda, and allowed Tutsis to rule the remaining independent kingdoms.⁶⁷ However, in the 1930s the Belgians introduced organisational reforms: the chiefdoms and sub-chiefdoms were for Tutsi lords, and any Hutu chiefs were deposed. By 1959, 43 of 45 chiefdoms and 549 of 559 sub-chiefdoms were Tutsi controlled. Between 1933 and 1934, a census was conducted and ethnic identity cards issued to Hutu (85 per cent), Tutsi (14 per cent) and Twa (one per cent).⁶⁸ Destexhe concludes that the German and Belgian colonisers 'played an essential role in creating an ethnic split and ensured that the important feeling of belonging to a social group was fuelled by ethnic, indeed racial, hatred'.⁶⁹ It was the 'cow-counting ID cards'⁷⁰ that could prescribe death-sentences for their carriers in 1994.

Rwanda gained independence in 1962, but the above Hamitic myth was an idea by which Rwandans continued to identify themselves. In November 1992 Leon Mugesera of Hutu Power called for the Tutsis to be sent back to Ethiopia via the Nyabarongo River.⁷¹ During the genocide tens of thousands of corpses polluted the river and Lake Victoria. Such events led to news reports of *ancient* ethnic or tribal hatreds in Rwanda, yet before 1 November 1959 – when a Hutu was attacked by a group of Tutsi – there had not been any systematic political violence recorded between the groups.⁷² There are other cases of killings of Tutsis in Rwanda between 1959 and 1963, in 1973 and since 1990; and killings of Hutus by Tutsis and *vice versa* in Burundi in 1972 and 1998.⁷³ But, these are not ancient hatreds.

The main medium by which anti-Tutsi discourses were spread was radio. In 1990, only 50 per cent of the population over fifteen years old was literate: 64 per cent male,

⁶⁶ Gourevitch, *We Wish to Inform You*, pp. 50–1

⁶⁷ Destexhe, *Rwanda and Genocide*, p. 40

⁶⁸ Gourevitch, *We Wish to Inform You*, pp. 56–7

⁶⁹ Destexhe, *Rwanda and Genocide*, p. 41

⁷⁰ Flanders, 'Rwanda's living casualties', p. 96

⁷¹ Gourevitch, *We Wish to Inform You*, p. 53

⁷² *Ibid.*, pp. 58–9

and 37 per cent female.⁷⁴ Radio was commonly available, and illiteracy increased its potency.⁷⁵

Despite the large number of Rwandese hate publications, the written press had only limited circulation. The newspapers rarely printed more than 3,000 copies of an issue and they circulated mainly in Kigali, where their high prices further limited their readership. With 400,000 to 500,000 AM/FM/short-wave radio receivers in homes and offices, and seven FM radio relay transmitters providing regular radio service to most of the country, it was radio that reached a broad public audience, especially the 90 percent of the population which lived in rural areas.⁷⁶

By African standards, Rwandans had good access to RTLM and Radio Rwanda broadcasts. The BBC estimated that the median saturation of radios in sub-Saharan Africa in 1992 was about 13.5 per 100 people, while radio ownership in Rwanda was 25 per 100 people.⁷⁷ Radio Rwanda was the official government-owned station, and was complicit in broadcasting anti-Tutsi propaganda. These broadcasts were reinforced by the privately owned *Radio-Télévision Libre des Mill Collines* (RTLM), which started its own radio transmissions of anti-Tutsi propaganda aided by the staff and facilities of Radio Rwanda.⁷⁸

In a typical broadcast attack, an RTLM announcer followed the song 'Monique' by declaring: 'Monique should be crucified in her front yard and eaten by dogs.' The reference was to Monique Mujawamariya, one of Rwanda's leading and most courageous human rights activists.⁷⁹ *The Washington Post* quoted a radio broadcast warning Tutsi in Rwanda: 'You cockroaches must know you are made of flesh! We won't let you kill. We will kill you!'⁸⁰ On 12 April 1994, public authorities announced over Radio Rwanda: 'we need to unite against the enemy, the only enemy and this is the enemy that we have always known...it's the enemy who wants to reinstate the former

⁷³ Destexhe, *Rwanda and Genocide*, p. 21

⁷⁴ Frank Chalk, 'Hate radio in Rwanda', Howard Adelman & Astri Suhrke (eds.), *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire* (London: Transaction Publishers, 1999), p. 94

⁷⁵ Will Woodward, 'Learning, united', *Guardian: Education* (19 Dec. 2000), p. 1

⁷⁶ Chalk, 'Hate radio in Rwanda', p. 95

⁷⁷ *Ibid.*, p. 97

⁷⁸ *Ibid.*, p. 96

⁷⁹ *Ibid.*, p. 97

⁸⁰ *Ibid.*, p. 98

feudal monarchy'.⁸¹ Tutsi were clearly the primary targets, but Tutsi-sympathising Hutu were also included. At the end of April 1994, RTLM stated 'By 5 May, the country must be cleansed of Tutsis'; 'We will not repeat the mistake of 1959. The children must be killed too'.⁸²

According to this European racialised mythology, Rwandan Tutsi women were meant to be more beautiful than Hutu women, on the grounds that they were more European-looking.⁸³ Hutu propaganda played on these constructed differences. Hutu men were warned to 'beware of Tutsi seductress spies'.⁸⁴ The labelling of Tutsi as *cockroaches* was common, as was the labelling of Tutsi women as *serpents*.⁸⁵ Hutu propaganda reinforced the stereotype of Tutsi women as arrogant and deceptive, as well as sexually different (and better).

The colonial constructs of perceived difference between Tutsi and Hutu women not only created the conditions of possibility for rape during the genocide; the perceived ethnic differences also affected the way that violence was inflicted during rape. The European elements of Tutsi women's bodies were mutilated, such as their noses, necks, fingers and genitals.⁸⁶ Survivors of rape often mention that the rapists wanted to 'see what Tutsis look like inside'.⁸⁷ Akayesu was present while many women were gang-raped and murdered at his commune.⁸⁸ Witness PP (a Tutsi woman married to a Hutu man) recalled seeing Alexia being raped by Pierre (one of several *interahamwe* who raped her). Pierre said to Alexia 'let's see what the vagina of a Tutsi woman feels like'.⁸⁹ Witness JJ could not count the total number of times she had been raped: 'Each time you encountered the [*interahamawe*] attackers they would rape you'.⁹⁰ She further testified that Akayesu said

⁸¹ Destexhe, *Rwanda and Genocide*

⁸² *Ibid.*

⁸³ Flanders, 'Rwanda's living casualties', pp. 96–7

⁸⁴ *Ibid.*, p. 97

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ HRW, 'HRW applauds Rwanda rape verdict', p. 1

⁸⁹ ICTR, *Prosecutor v. Akayesu*, p. 68

⁹⁰ *Ibid.*, p. 65

to *interahamwe* at the bureau communal, 'Never ask me again what a Tutsi woman tastes like'.⁹¹ This reinforcing of ethnic difference draws on the discourse that Tutsi women are taller and more slender than Hutu women, and so supposedly believe themselves to be too good for Hutu men. When Juliana told a Hutu who was demanding money that she had none, he replied, 'That kind of response reflects typical Tutsi female arrogance'.⁹²

Concluding remarks

Despite the (mis)use of colonial categorisation, the Hutu/Tutsi dichotomy was not all encompassing. For example, Paul Rusesabagina turned his five star hotel into a sanctuary and saved the lives of over a thousand Rwandans. For Rusesabagina, the divisions were not relevant:

I never understood. Because at home I didn't even realize that my mother was Tutsi and my father was a Hutu. My father never talked about that. And my mother, never. I first realized there were Hutus and Tutsis in 1973 when the Tutsis were running away to Uganda, Burundi and Zaire. By that time I was grown up, I was 19.⁹³

This rejection of an imposed identity is positive, but also rare: *The Face of Africa 2001* beauty contest selectors avoided Rwanda. Jan Malan, one of the selectors, stated that 'One tribe is short and well rounded and the other tall and slim'.⁹⁴ Although this stance was no doubt intended to avoid inflaming the sensitivities of the genocide, it also reinscribes the discourses behind the genocide.⁹⁵ These supposedly natural differences are difficult to identify. When *interahamwe* went to a school in Gisenyi to slaughter Tutsis they could not tell who was Tutsi and had to ask the children to identify the Tutsis for

⁹¹ *Ibid.*

⁹² Juliana, cited in African Rights, *Rwanda*, p. 752

⁹³ Steve Bradshaw, 'It's my story: defying Rwanda's killers', *BBC Radio 4* (http://www.bbc.co.uk/radio4/allabout/gettoair/allabout4_getto_diary3.shtml, 30 Apr 2001, 8:30 p.m.)

⁹⁴ Alex Duval Smith, 'Ugandans too big to enter beauty contest', *Independent* (26 May 2001), p. 14

⁹⁵ Brownmiller identifies similar categorisations: 'Punjabi Pakistanis are taller, lighter-skinned and "raw-boned" compared to dark, small-boned Bengalis. This racial difference would provide added anguish to those Bengali women who found themselves pregnant after their physical ordeal.' This 'racial' difference parallels the perceived Hutu-Tutsi racial differences. Mulk Raj Anand (an Indian novelist) claimed the rapes were 'planned by the West Pakistanis in a deliberate effort to create a new race', or dilute Bengali nationalism. There were approximately 25,000 pregnancies, resulting in children with 'fair Punjabi features'. Brownmiller, *Against Our Will*, pp. 84-5

them. (The children refused to identify them and they were all slaughtered.)⁹⁶ Similarly, Witness PP said that no one tried to rape her because they did not know which ethnic group she belonged to.⁹⁷

What this context of colonial discursive constructions demonstrates is not only an additional layer of incomprehension to the genocide, but also the existence of additional discursive formations that surround and affect the multiple discourses of rape in war. The discourse of difference in appearances allowed the more common discourse of rape as physical need and incentive to function in the genocide.

The demonstrated socially constructed nature of rape in war demonstrates that it is not a *necessary* tool of war, is not a necessary physical need, and does not have to be used as an incentive. The RPF constructed a different discourse around rape to the predominant discourses of rape in the Rwandan genocide. From 1990 to 1994, marriage and courtship were forbidden to RPF cadres; thievery was punished with the lash; murder and rape were usually punished by death.⁹⁸ This competing discourse challenges the approach dominant throughout the Hutu militias of rape as a physical need, and as an incentive. General Kagame of the RPF, now PM of Rwanda, has said:

I don't see the good in preserving you after you have so offended others... And people respected it. It brought sanity and discipline. You don't allow armed people freedom to do what they want. If you are equipped to use force, you must use it rationally. If you are given a chance to use it irrationally you can be a very big danger to society. There's no question about it. Your objective is to protect society.⁹⁹

⁹⁶ Gourevitch, *We Wish to Inform You*, p. 353

⁹⁷ ICTR, *Prosecutor v. Akayesu*, p. 68

⁹⁸ Gourevitch, *We Wish to Inform You*, p. 218

⁹⁹ *Ibid.*, pp. 218–9

CHAPTER 5

RWANDA: THE PROSECUTION

This section examines the trial of Akayesu at the ICTR from the position of the Prosecution, and the discourses involved. In its treatment of rape, the Prosecution and broader international perspectives have reinforced a discourse of rape as *sexual* violence. This has led to the emergence of sexual violence as the hegemonic discourse of rape. But in identifying rape as specifically *sexual* violence there is an underlying assumption of sexual equals female and that the body *is* the female. Testimonies from rape victims (in this section and the last) show how *the sexual* must be constructed through discourse, and as such can be deconstructed and need not necessarily be defined as sexual by victims or others. I will end the chapter with an examination of violent aspects of rape that are neglected as a result of the emphasis on the sexual, specifically the changed population of Rwanda. I will first examine the Prosecution's attempts to define rape, and how it is related to sexual violence.

The trial of Akayesu: the Prosecution – what is rape?

In its desire to punish rape (or as I will later suggest, use rape to convict Akayesu) the Prosecution required a definition of *rape*. The Prosecution offers a definition of *sexual violence* (not rape) in the amended Indictment (paragraph 10A):

In this indictment, acts of sexual violence include forcible sexual penetration of the vagina or anus by some other object, and sexual abuse, such as forced nudity.¹

The Prosecution does not mention the relationship between sexual violence and rape, which is surprising given that it is rape that is mentioned in previous international legal conventions. This inconsistency also applies to the definitions of the ICTR (which is a separate body to the Prosecution). The ICTR and the Prosecution have a degree of difference over their treatment of rape and sexual violence, and provide their own

different definitions. The ICTR's summary states: 'Paragraph 10A [the Prosecution's definition] was added to the indictment when it was amended to include charges of sexual violence, set forth in Paragraphs 12A and 12B of the indictment. It is not an allegation of fact, rather *it appears to be a definition of sexual violence proposed by the Prosecutor*'.² The use of 'appears' alludes to a claim of poor attention to detail. This might be related to the ICTR's insouciant attitude towards rape, which may be the result of rape being added late to the Indictment. (I will return to this point later.)

In its *Legal Findings*, the ICTR recognises that there is no commonly accepted definition of rape in international law, and attempts to define rape itself:

The Tribunal notes that while rape has been historically defined in national jurisdictions as non-consensual sexual intercourse, variations on the form of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual. An act such as that described by Witness KK in her testimony – the interahamwes thrusting a piece of wood into the sexual organs of a woman as she lay dying – constitutes rape in the Tribunal's view.³

The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.⁴

Throughout the Akayesu trial, there is a tendency to use *rape* and *sexual violence* interchangeably (as demonstrated above). This is not *necessarily* a bad thing: the connections between rape and violence need to be highlighted, as the emphasis is too frequently on the sexual aspects. What is problematic about this approach is that the different bodies attempt to make different distinctions, and for different purposes. That the Defence uses the discourse of rape as a natural, physical need is not surprising. What is more surprising is that the Prosecution and the ICTR are at odds over their treatment of the issues of rape.

The imprecision with which the terms *rape* and *sexual violence* are used synonymously belies more serious issues. The 1949 Geneva Conventions and their two

¹ ICTR, *Prosecutor v. Akayesu*, p. 5

² *Ibid.*, p. 31, italics added

³ *Ibid.*, p. 100

Protocols (also known as the laws of war) prohibit 'outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution, rape, and any other form of indecent assault'.⁵ *Rape* is specifically mentioned (rather than *sexual violence*), and as such must be enforced as *rape*. By limiting the definition of rape to physical invasion (as the ICTR does), the ICTR should preclude the cases it defines as *sexual violence* from being included as evidence of *rape*. But this is not what occurs: although the cases of sexual violence could easily be part of 'any other form of assault', the ICTR still includes and allows them as evidence of *rape*, despite the evidence not fitting the definition. This is further complicated by the Prosecution believing it *can* include rape because of its broad definition of *sexual violence*. Such confusions demonstrate the troubles that surround the emerging hegemonic discourse of rape in war as sexual violence. Although rape has been a war crime since 1949, it has only been paid lip service until now.

The recent emergence of rape being prosecuted as a war crime means that the ICTR and the ICTY are relying upon each other's precedents as soon as they are being set. For example, when rape is punished within a domestic legal context, the issue of consent is paramount. When a woman has been raped, a central issue is frequently one of consent: was she wearing a short skirt? had she had too much to drink? The ICTR decided this was less of an issue. The principle of *unus testis, nullus testis* (one witness is no witness) was deemed to not be relevant:

The provisions of this Rule [96(i)], which apply only to cases of testimony by victims of sexual assault, stipulate that no corroboration shall be required. In the Tadic judgement rendered by the ICTY, the Trial Chamber ruled that this 'Sub-rule accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something which had long been denied to victims of sexual assault in common law [which] certainly does not [...] justify any inference that the in cases of crimes other than sexual assault, corroboration is required. The proper inference is, in fact, directly related to the contrary'.⁶

I will discuss this with regards to the ICTY; however, there may be a more pragmatic reason for its inclusion in the trial of Akayesu. By showing him to have known of the

⁴ *Ibid.*, p. 100

⁵ Human Rights Watch, *Getting Away with Murder, Mutilation, Rape: New Testimony from Sierra Leone* (<http://www.hrw.org/hrw/reports/1999/sierra/SIERLE99.htm>, 1999), p. 5

beatings and rapes on his premises, he bears *individual criminal responsibility* for genocide, rather than *complicity* in genocide. The personal nature of rape links the personal involvement of the Accused as direct involvement with genocide, rather than complicity in genocide. Furthermore, the reduced corroboration required in rape testimony as a result of Rule 96 meant that these crimes could be proved more easily, and made their inclusion more attractive to the Prosecution.

The charges of offences of sexual violence, the Defence argued, were added under the pressure of public opinion and were not credibly supported by the evidence.⁷

There is a tension regarding why sexual violence was included in the indictment. Human rights groups may have had an influence on the addition of sexual violence to the list of charges against Akayesu. Some claim that this was the result of a submission in June 1997 of an *amicus curiae* brief coordinated by the Montreal-based International Centre for Human Rights and Democratic Development.⁸ This contrasts markedly with the fact that the ICTR explicitly states in its judgement against Akayesu that the later inclusion was *not* the result of pressure from human and women's rights groups. The ICTR recognises that the lack of investigation into rape may not just be the shame accompanying rape, but also 'insensitivity in the investigation of rape'.⁹

Allegations of sexual violence first came to the attention of the Chamber through the testimony of Witness J, a Tutsi woman, who stated that her six year old daughter had been raped by three *interahamwe* when they came to kill her father. On examination by the Chamber, Witness J also testified that she had heard that young girls were raped at the bureau communal. Subsequently, Witness H, a Tutsi woman, testified that she herself was raped in a sorghum field and that, just outside the compound of the bureau communal, she personally saw other Tutsi women being raped and knew of at least three such cases of rape by *interahamwe*.¹⁰ Akayesu pointed to the fact that Witness J and Witness H did not mention rape in their pre-trial statements – but Witness H claimed that

⁶ ICTR, *Prosecutor v. Akayesu*, p. 25

⁷ *Ibid.*, para. 73

⁸ Flanders, 'Rwanda's living casualties', p. 100; Anne Llewellyn Barstow, 'The United Nations' role in defining war crimes against women', Barstow, *War's Dirty Secret*, p. 242

⁹ ICTR, *Prosecutor v. Akayesu*, p. 64

¹⁰ *Ibid.*

she *did* mention rape to investigators¹¹ – it just was not acted upon. These claims were later acted on to include allegations of sexual violence in the indictment.

On 17 June 1997, the indictment was amended to include allegations of sexual violence and additional charges against the Accused under Article 3(g), Article 3(i) and Article 4(2)(e) of the ICTR Statute. In introducing this amendment, the Prosecution stated that the testimony of Witness H motivated them to renew their investigation of sexual violence in connection with events which took place in Taba at the bureau communal. The Prosecution stated that evidence previously available was not sufficient to link the Accused to acts of sexual violence and acknowledged that factors to explain this lack of evidence might include the shame that accompanies acts of sexual violence as well as insensitivity in the investigation of sexual violence. The Chamber understands that the amendment of the Indictment resulted from the spontaneous testimony of sexual violence by Witness J and Witness H during the course of this trial and the subsequent investigation of the Prosecution, *rather than from public pressure*. Nevertheless, the Chamber takes note of the interest shown in this issue by non-governmental organizations, which it considers as indicative of public concern over the historical exclusion of rape and other forms of sexual violence from the investigation and prosecution of war crimes. The investigation and presentation of evidence relating to sexual violence is in the interest of justice.¹²

Akayesu suggested that his Indictment was amended because of pressure from the women's movement and women in Rwanda, who he described as 'Worked up to agree that they have been raped.'¹³

This stance, although not likely in itself, does point to a more serious issue within international discourses: the number of people who were raped. Estimates range from 200,000 to 500,000 women. These figures, however, are not taken from surveys of the actual number of women raped. Instead, the figures are extrapolated from the number of women who became pregnant as a result of rape. The Rwanda National Population Office estimated that there were between 2,000 and 5,000 of these pregnancies. If it is then assumed that unprotected intercourse will result in pregnancy one to four per cent of the time, several thousand rape victims can be claimed.¹⁴

There will then be no figures for men raped, despite the extremely broad definition of *rape* (as any form of violence involving a sexual aspect) that different bodies are using. This is partly the result of rape figures being extrapolated from

¹¹ *Ibid.*, p. 69

¹² *Ibid.*, p 64, italics added

¹³ *Ibid.*, p. 69

¹⁴ Frederick & AWARE, *Rape*, p. 41

pregnancies. But this additionally points to the problematic way that these bodies conceive of rape. By focusing upon *gender-based violence*, where gender is a synonymous with women, rape is any form of violence with a sexual aspect and women are equated with *the sexual*; it then becomes inevitable that it is women rather than men who considered to have been raped. International discourses have a tendency to reinforce the sexualised and personal nature of rape when their intention is to punish it. By presenting estimates of the number of rapes that occurred in the genocide as hard facts, the prevalence and importance of rape may (*may*) be over-estimated.

Torture, mutilation and (sexual?) violence

The examples of sexual violence used as part of the Prosecution's case demonstrate how *the sexual* must be constructed through discourse. In this section I highlight the types of torture, mutilation and violence that are presented – and constructed – as evidence or sexual violence. I argue that it would strategically be more useful for these acts to be considered and punished as acts of torture rather than as a specifically sexualised type of violence that requires its own set of rules; this would allow victims of rape to construct and choose their own sets of discourses in response to what has happened to them. It might also allow the violence that has occurred to be highlighted by the victims without also calling upon the associated stigmas that are re-constructed by the Tribunals and others. For example, I have discussed the discursive construction of Tutsi women as sexually better, and how specific body parts were mutilated. Since the genocide, acts identified as rape have included the mutilation of the vagina and pelvic areas with machetes, knives, sticks, boiling water and, in one case, acid.¹⁵ Chantal described some of the acts that women suffered after they were raped, which were frequently fatal.¹⁶ Some of the raped women must now live with 'ripped-out uteri, perforated placentas, dislodged intestines, savaged labia, and bleeding that will not stop'.¹⁷ Peace Bikunda is a nurse who co-founded The Clinic of Hope in Kigali, offering medical treatment and counselling to

¹⁵ HRW, *Shattered Lives*, p. 1

¹⁶ African Rights, *Rwanda*, p. 758

¹⁷ Flanders, 'Rwanda's living casualties', p. 98

women who survived the genocide. Bikunda states: 'When they were raping these women, what drove it was deep hate'.¹⁸ Such actions and injuries do not necessarily have to be described as sexual, and it is possible to deconstruct this intersection between *the sexual and the violent*.

Women who were raped were frequently beaten before or after the rapes, and were sometimes killed. Marie was beaten before she was raped:

They beat me until they had really pounded me. They left me naked. At the end, one of them told the other that instead of finishing me off, they should 'liberate' me – meaning they should rape me. They took me into the bush; the two of them took turns during the night. Then they left me.¹⁹

Jane witnessed the rape, mutilation and killing of women who were speared through their vaginas:

I was caught by a group of interahamwe on 1 April 1994, along with about 20 other women, and we were held by them in Gutare sector. Some of them decided to rape us before killing us. Others of them refused to rape us. The ones that wanted to rape us began to rape the women one by one. About ten of them would gang-rape a woman, and when they had finished, they would kill her by pushing a sharpened stick the size of a broomstick into her vagina until she was bleeding and almost dead. I saw them do this to several women. All the time, they were saying things like, 'We want to have a taste of Tutsi women'. One of them told us that were going to chop the Tutsi women into pieces over days – one leg today, another arm tomorrow – until we died slowly. I managed to escape from them while they were raping and hid in the bushes until 2 May when the RPF saved us.²⁰

Alexia was held and repeatedly raped by *interahamwe*:

In my sector of Winteko, a lot of women were not killed. About 10 women, mainly old women, were killed. Younger women and girls were packed into a hut. It was very crowded, including 25 very young girls and children. We led what I really can call a life of complete misery.²¹

Hutu militiamen would visit private residences in search of Tutsi men, but would also encourage any other Hutus to leave, so that they could return and rape the women. The threat of the other Hutus returning to rape was used if women did not do as ordered.²²

¹⁸ *Ibid.*

¹⁹ Marie, cited in African Rights, *Rwanda*, p. 768

²⁰ Jane, cited in 'Women speak: Human Rights Watch', Barstow, *War's Dirty Secret*, p. 93

²¹ Alexia, cited in African Rights, *Rwanda*, p. 794

²² *Ibid.*, p. 795

Rape was also used as a threat of torture against others. Beata had a younger sister who was also being held by *interahamwe*:

...I saw that my younger sister had been brought out into the courtyard. She is only 13. When I went inside, I did not tell my mother what had happened. She already had enough worries. Immediately afterwards, an *interahamwe* called me outside. He pointed to my younger sister and asked me to confirm that she was my sister. I confirmed. He then told me, 'You will have to do whatever you are asked if you want your sister's liberation'. I became distraught at the idea of my younger sister being raped.²³

Injured women and refugees were even taken from the Central Hospital of Kigali and raped.²⁴ Actions such as these further disprove the Defence's claim that rape was a spontaneous physical need. That injured women were taken from a hospital so they could be raped shows how rape can fit within the discourse and laws of torture. Furthermore, the idea of *injured* women as some sort of reward or incentive makes the defence even less convincing.

Witness JJ (a Tutsi woman) testified that she was raped by three men at the bureau communal, and described herself as 'feeling near dead'.²⁵ Witness KK (a Hutu woman married to a Tutsi man) testified to seeing a Tutsi woman (married to a Hutu) 'not exactly dead' into whose sexual organs the *interahamwe* were forcing a piece of wood. What such comments show is that rape need not necessarily be considered as *sexual* violence, and that the intersection between the sexual and the violent can be deconstructed. The types of events cited in the above testimonies point heavily towards violence (which itself must be constructed). The re-enforcement of sexual discourses within some types of violence is counter-productive when studying rape.

The Chamber is of the view that the inconsistencies between pre-trial statements and witness testimony can be explained by the difficulties of recollecting precise details several years after the occurrence of the events, the trauma experienced by the witnesses to these events, the difficulties of translation, and the fact that several witnesses were illiterate and stated that they had not read their written statements.²⁶

²³ Beata, cited in *ibid.*, p. 793

²⁴ African Rights, *Rwanda*, p. 794

²⁵ ICTR, *Prosecutor v. Akayesu*, p. 65

²⁶ *Ibid.*, p. 71

Those who provide and record testimonies must rely on earlier understandings of rape to (re)produce it. These processes are what Foucault calls *confession*: the 'clinical codification of the inducement to speak'.²⁷ The multiple discourses that surround rape are not simply produced through testimony, but are re-produced from other cultural discourses: how and why are certain means and meanings considered sexual? If it can be argued that rape affects people in more than just physical ways, then it should be possible to minimise these effects. The first step is to recognise that rape is a language.²⁸ How victims come to terms with the violence after-the-fact depends upon the discourses that they draw on, which in part depends upon their local discourses of rape, but also upon the discourses that are introduced by international actors in interviewing victims and punishing the acts.

Rape has become an increasingly relevant discourse in work by the Tribunals, and human and women's rights organisations. African Rights reproduce the discourse of rape as physical need and incentive as 'booty and beauty'.²⁹ When introducing their interviewees, they describe Louise as 'a beautiful 17-year-old'.³⁰ Similarly, they describe Pélégie as 'a soft-spoken and exceptionally attractive 16-year-old'.³¹ This is uncomfortable because of the inter-connecting discourses of rape. It is as if they are saying, 'she is *still* beautiful, despite her rape', when really they do not wish to connect rape with sexuality, beauty or honour. Human Rights Watch (HRW) reinforces a universalising tendency by stating: 'The rape of one person is translated into an assault upon the community through the emphasis placed in every culture on women's sexual virtue: the shame of the rape humiliates the family and all those associated with the survivor'.³² By stating that all cultures share and understand that women should be sexually virtuous and that a rape survivor carries a social stigma, HRW reifies the discourses of rape as a universal phenomenon and as a dishonourable occurrence. African

²⁷ Foucault, *Will to Knowledge*, p. 65

²⁸ Sharon Marcus, 'Fighting bodies, fighting words: a theory and politics of rape prevention?', Judith Butler and Joan W. Scott (eds.), *Feminists Theorize the Political* (London: Routledge, 1992), p. 387

²⁹ This is how General Andrew Jackson supposedly referred to the English attitude to rape in New Orleans during the War of 1812 (Brownmiller, *Against Our Will*, p. 35-6).

³⁰ African Rights, *Rwanda*, p. 764

³¹ *Ibid.*, p. 776

³² HRW, *Shattered Lives*, p. 2

Rights recommends: 'women who have been raped should not have a reduced social status on account of their experience'.³³ African Rights and HRW (among others) fall victim to the common action of trying to recognise the rape victim's humanity, as if their humanity *has* been adversely affected because women are defined by their bodies.³⁴ Rather than being the counter-discourses to rape in war, these are reverse discourses,³⁵ and are contributing to the emerging discourse of rape in war that recognises women as their bodies.

International discourses now share with rapists and rape-victims an ontology of the rape victim as being a woman whose body contains her existence, and links rape too closely with sex. For example, in a different case at the ICTR a judge trying 14 men for rape expressed horror at the fact that grown men could have *sex* with girls who had not yet even reached puberty.³⁶ But would the rapes have been acceptable – or any different – if the women had all been sixteen or over? This imposes and constructs the sexual aspects of the act. To describe what has happened to people who have been raped, space is needed to allow them to choose the discourses that they consider relevant. This is why the laws relating to torture are strategically relevant.

In recording the trial, the testimony of the rape victims provides the only case where emotions in the dock are described: 'At the request of the Prosecutor *and with great embarrassment*, she explicitly specified that the rapist, a young man armed with an axe and a long knife, penetrated her vagina with his penis'.³⁷ In Evidentiary Matters, 'the impact of trauma on witnesses'³⁸ is mentioned as a factor to be considered at all times, but is only specifically brought up in relation to rape and sexual violence. The Tribunals

³³ African Rights, *Rwanda*, p. 797

³⁴ Butler, *Gender Trouble*, p. 17

³⁵ Foucault, *Will to Knowledge*, pp. 100–2

³⁶ BBC News, 'Rape trials shock Rwanda', *BBC News* (http://news2.ths.bbc.co.uk/hi/english/world/africa/newsid_703000/703210.stm, 5 Apr. 2000), p. 1

³⁷ ICTR, *Prosecutor Versus Akayesu*, p. 65, italics added. In a certain way, the mentioning of rape 'with great embarrassment' can be seen as a development. In the International Military Tribunal at Nuremberg the French Prosecutor stated: 'The Tribunal will forgive me if I avoid citing the atrocious details... A medical certificate from Doctor Nicolaidis who examined the women who were raped in this region – I will pass on'. Brownmiller believes this is 'the standard censoring mechanism that men employ when dealing with the rape of women' (Brownmiller, *Against Our Will*, p. 56).

³⁸ ICTR, *Prosecutor v. Akayesu*, p. 24

are increasing awareness of rape in war, but it is the *type* of awareness that is interesting. Rape, like torture, is considered by the Tribunal to be 'a violation of personal dignity'.³⁹ But instead of including rape and sexual violence in count 11, Crimes Against Humanity (torture), counts 13, 14 and 15 are added, which treat the issue of rape *separately*.

This desire for a separate status for rape is because rape is believed to be a violation of a person's being, and so is deserving of its own set of rules. Rape is considered the most *personal* violent act, and this is further exacerbated by the fact that it is women (who are associated with the personal) who will suffer it. This view is implicit in such statements as 'The killing of Tutsi which henceforth *spared neither women nor children*, continued up to 18 July 1994, when the RPF triumphantly entered Kigali';⁴⁰ and 'In any case, the Tutsi children and pregnant women would, *naturally*, not have been among the fighters'.⁴¹

The Geneva Conventions of 1949 include rape as an act against a woman's honour, not as torture.⁴² By defining rape as a violation of (a woman's) honour, the violence is defined from the community's point of view; rape is defined universally, but in a contextualised (and personal) setting. As well as reducing the severity of the crime (as compared to 'proper' violence), rape is universalised from its localised nature. This need not be as contradictory as it may first seem: it is possible to argue that rape will always depend upon the setting in which it is performed. However, international perspectives take the logic of this argument further by claiming that rape will be performed and understood in the same way, which is not necessarily the case. The treatment of rape is not universal or localised enough. Rape, as sexual violence, is conceived of as a crime that affects the person, but the person is assumed to be a woman, and the woman is associated with the body, which can be violated and spoiled.

It has been reported that the Tutsi women who had been raped at first spoke openly of the rapes when the RPF arrived. However, 'after receiving little or no

³⁹ *Ibid.*, p. 100

⁴⁰ *Ibid.*, p. 21, italics added

⁴¹ *Ibid.*, p. 23, italics added

⁴² Frederick & AWARE, *Rape*, p. 6

sympathy, the women then became very reluctant to talk'.⁴³ As such, subsequent testimony had to be obtained very carefully, with the need to show sympathy in intention. Mukaruziga was 14 in June 1994. Although raped, she would only admit to African Rights that she had been *threatened* with rape. The truth, according to her mother, Maria, was much worse:

My daughter, my sister-in-law and I were not only raped. We were raped and beaten every day for a month. They put about thirty women and girls in a house. They beat up the other women so badly that they all died. Since the men doing this were people we knew, I suppose they spared my family so as to embarrass us.⁴⁴

Similarly, Maria said:

They [the rapists] knew us and they knew our husbands. Why did they do it? I don't know. Perhaps it was their chance to embarrass us.⁴⁵

This idea of embarrassing someone through rape plays very heavily on the sexual – rather than violent – nature of rape. It is for such reasons that the emphasising of the sexual as rape is problematic. Nevertheless, the discourse of rape in war as a humiliation was a theme during the genocide.

In the pre-colonial monarchy, the Twa were court jesters, and Rwanda's kings were Tutsis. This returned during the genocide, with some Twas were killed because of their connection with this monarchy. Other Twas were enlisted by *interahamwe* as rapists 'to add an extra dash of tribal mockery to the violation of Tutsi women'.⁴⁶ Maria recalls one woman who was repeatedly raped by different *interahamwe* until she was weak, at which point 'she was "given" to a Twa to keep – *intended as a humiliation in the social context of Rwanda*'.⁴⁷ Christine and Thérèse (two young Rwandan women) claimed that, in the Gitarama area, the peasants who had become *interahamwe* were responsible for most of the rapes; however, the Twa also had a part to play:

[T]hey also used Twa to scandalise Tutsi women. They gave Tutsi women to Twa men to be raped in the street, especially near roadblocks. The *interahamwe* would watch while some of them were raping others.⁴⁸

⁴³ African Rights, *Rwanda*, p. 749

⁴⁴ *Ibid.*, p. 762

⁴⁵ *Ibid.*, p. 763

⁴⁶ Gourevitch, *We Wish to Inform You*, p. 8

⁴⁷ African Rights, *Rwanda*, p. 763, italics added

⁴⁸ *Ibid.*, p. 764

As well as giving women to the Twa, women were also given to Hutu who were unwashed, and/or dressed in rags, and this would be justified euphemistically as *marriage*. There is a complicated relationship between the violation of a woman's honour and the giving of her body. As well as humiliating the Tutsi women and men, rape was presented as marriage and offered as an alternative to death (discussed earlier). This choice is further complicated by the belief that rape is worse than death.

Rape as worse than death

Everything for me is tragedy. Some days I say maybe it is better for me to have died, because I have nothing in this world.⁴⁹

Some women in the Rwandan genocide were told by the Hutu rapists that they were being allowed to live so that they would 'die of sadness'.⁵⁰

The relationship between rape and death is an important one. In certain cases, rape can *lead* to death, depending on the degree of violence involved. When people do survive rape they might suffer long-term effects: mental, such as Post-Traumatic Stress Disorder, and physical, such as continual discharge and pregnancy. The onset and prospect of such problems led to Witness PP reporting that Vestine (who had been repeatedly raped) saying: 'I think it would be better to go Kinihira to be killed'.⁵¹ Rape can be considered a worse option than death. According to Destexhe: 'husbands killed wives in order to save them from a more horrible death'.⁵² Pacifique Kabarisa, of African Rights, believes that many survivors 'regret that they weren't killed'.⁵³ Witness PP said that some women had to 'sacrifice themselves' to survive, by which she meant submit to rape.⁵⁴ (This is the option of 'marriage' discussed earlier.) This sacrifice is worsened as many questioned those women who survived the genocide; the suspicion was that these women must have

⁴⁹ Loenille, cited in Women for Women International, *Rwanda Project*, p. 1

⁵⁰ HRW, *Shattered Lives*, p. 1

⁵¹ ICTR, *Prosecutor v. Akayesu*, p. 68

⁵² Destexhe, *Rwanda and Genocide*, p. 31

⁵³ Pacifique Kabarisa, cited in Gourevitch, *We Wish to Inform You*, p. 316

⁵⁴ ICTR, *Prosecutor v. Akayesu*, p. 68

been complicit in the genocide to have survived it, and that by *only* being raped they have got off lightly.

Annunciata Nyiratamba of the Association of the Widows of the Genocide of April (AVEGA: *Association des veuves du genocide d'avril*) has noted that there is always a question mark over those that survived the genocide, especially the women, with the implication being that they used their sexuality to survive: 'There is always the unspoken question that is asked of survivors [by the returnees] ... "What did you do to survive? Who was a killer? Who was not?" Those questions are always there and it creates its own dynamic between the survivors and the returnees'.⁵⁵ Of the raped-survivors of the Rwandan genocide, some suffer 'extreme guilt' for having survived through being held for rape.⁵⁶ One Tutsi said that people 'would say, "If they killed everyone and you survived, maybe you collaborated". To a woman who was raped twenty times a day, day after day, and now has a baby from that, they would say this'.⁵⁷

Juliana was forced into 'marriage' by Marcel:

He threatened me by saying, 'Drop your Tutsi arrogance'. He added: 'In any case, you will not find a Tutsi man afterwards as they have all been killed'. I said it was nothing against him but that I just was not ready for marriage. ... He laughed. 'Well, right now you have a choice to make. And that choice is between marriage and death.' I told him that I preferred death.⁵⁸

The claim that rape is worse than death is common, but when faced with such a choice, death is less common. Juliana continues:

The young interahamwe came to take me, that is to rape me. ... Just to make sure I got the message, he displayed a lot of grenades and bullets. He told me: 'Make your choice'. This time I had no choice but to submit. I explained everything that I had gone through. But he was not moved. He kept me for five days. When I reflected on everything, the only consolation I could find was to tell myself that if I had submitted to Marcel, I would have been raped for a much longer period.⁵⁹

Similarly, Pélagie testified, using the euphemism of being a wife to mean rape:

He [the Hutu younger brother of Pélagie's brother-in-law] then told me that he wanted to make me his wife. My sister advised me to submit, saying, 'Our parents have been killed,

⁵⁵ HRW, *Shattered Lives*, p. 3

⁵⁶ *Ibid.*, p. 3

⁵⁷ Gourevitch, *We Wish to Inform You*, p. 233

⁵⁸ Juliana, cited in African Rights, *Rwanda*, p. 754

⁵⁹ Juliana, cited in African Rights, *Rwanda*, p. 757

all our uncles have been killed. If you refuse, where will you go? It might be your only chance of survival'. My brother-in-law tried to talk to his brother, pointing out my serious injuries. But when the younger man insisted, he felt there was nothing he could do.

He was about 25; he lived in a room at my sister's house. That is where he took me even though I was so ill. It was extremely painful; afterwards, I could not get out of bed. He used to buy medicines for my wounds. But he continued to take me as a wife even though this sharpened the general pain I felt. ...

There was nothing I could do about getting pregnant. He didn't mind making me pregnant and I could not do or say anything. I knew he could kill me. ...

I can't say what he thought, but I don't think he saw what he was doing to me as rape.⁶⁰

There is a tension between the constant threat of death being the only alternative to rape, and yet Pélagie believing that the rapist did not necessarily think of what he was doing to her as rape. This demonstrates the common sense view that the discourse of rape as physical need can have in relation to the discourses of rape in war.

Odette was 'married' to Sylvère on 14 April:

I cannot count the number of times that they forced me to sleep with them before our arrival at the primary school. Every place where there was a bush or a forest, they forced me to sleep with them. The choice was clear: between death and this. ...

If I slept with Sylvère, it was because it was impossible for me to do otherwise. This is how I accustomed myself to *this kind of torture* and to becoming the wife of an assassin. ... I don't believe anyone on this earth has suffered as much grief as me.⁶¹

Rose fled from her home in Kigali to a building that she thought housed the Belgian Red Cross, and during the time she was there (10 to 26 April 1994), she was repeatedly raped:

Small boys would come with grenades. They had no shame in taking a grown woman like me to sleep with them. I could be their mother. ... I cannot estimate the number or the identity of the boys and men that I slept with during my stay at the Red Cross. In one night alone, you could be had by as many as 10 men. They came in succession. No girl or woman could refuse since whoever hesitated was cut in two pieces. We submitted to see if we could benefit from another day of survival.⁶²

Juliana testified that women would chose marriage rather than death:

They said he told them 'You Tutsi women, you have no respect for Hutu men. So now, choose between death and marriage to a Hutu interahamwe'. He promised them that their death would be more cruel than the one they just witnessed.

⁶⁰ Pélagie, cited in African Rights, *Rwanda*, p. 776

⁶¹ Odette, cited in African Rights, *Rwanda*, pp. 780-1, italics added

⁶² Rose, cited in African Rights, *Rwanda*, p. 789

Then they went looking for the most filthy-looking vagabonds, jigger-infested and God knows what else. They looked for the kind of man who was least likely to get a woman under normal conditions. There were so many women that they could not find enough of these dirty men. But so intense was the fear of being killed that the women would plead and ask these men to take them.⁶³

There are examples where people have requested death instead of rape. Witness NN (a Tutsi woman) said one of the men who had killed her father and brother told her that she (and her older sister, Witness JJ) had been spared so that they could be raped. Furthermore, her mother begged the men to kill her daughters rather than rape them in front of her. One of the men replied it was the 'principle to make them suffer'. Afterwards, Witness NN begged for death. Neighbours later also raped Witness NN and Witness JJ, and the mother told her daughters to leave rather than continue to be 'tortured' in front of her.⁶⁴

All of this testimony has (necessarily) been from survivors of rape. I cannot make any claims about Rwandans who chose death before rape (despite the above example). I am not imposing a hierarchy of suffering; articles are available that attempt to hierarchise relative sufferings and our responses to them,⁶⁵ but that is not my concern. Whatever the individual accounts of the desire (or otherwise) for death, it is clear that rape can be intensely destructive, and a wish for death could occur instead (or as well as). The complicated nature of these discourses is clear, and the contradictory testimonies show that treating *rape* as *sexual violence* is still not a broad enough term (while also being too broad in other cases). In emphasising *the sexual* in the above testimonies, *the social* is overlooked. *Rape* could be subsumed within *torture*, rather than be an entity in its own right. This would allow for *the sexual* to be subsumed within *the social*, and allow survivors to choose the discourses that they want to describe the acts with.

Some people are able to overcome these lasting reminders. Odette fled from her *interahamwe* 'husband' at the beginning of September 1994:

⁶³ Juliana, cited in African Rights, *Rwanda*, p. 754

⁶⁴ ICTR, *Prosecutor v. Akayesu*, p. 66

⁶⁵ Ross Harrison, 'Rape – a case study in political philosophy', Tomascelli & Porter, *Rape*

I fled to a family in Katana in Zaire. It was there that I was able to recover my peace of mind. In mid-December, this family helped me to Rwanda.⁶⁶

Nonetheless, negative feelings can still return:

After the genocide, I was ashamed to be with others. I felt responsible for what the interahamwe had done to me. I felt as if everyone was making fun of me since my story, that I was the wife of an interahamwe, was well known. It will be very difficult for me to find a husband. At least, it will be very difficult for me to find the kind of husband that I want.⁶⁷

One woman claimed that Rwandan's cherish every life after the genocide, yet at the same time 'admitted she'd required months of help before she could introduce anyone to the child she'd borne after being raped during the war'.⁶⁸

Changed populations

The Tutsis are originally bad. They are murderers. The Tutsis have given the white people their daughters.⁶⁹

Rwanda's traditional law forbids women from inheriting property or engaging in business without their husband's consent; legal discrimination often prevents them from inheriting their husband's property; they are barely educated and mostly illiterate; one widow told HRW, 'We are not protected against anything... We are the living dead'.⁷⁰ In this sense, women are turning to any possible marriage or to husband hiring or sharing to avoid being disadvantaged in what is a very patriarchal culture. These discourses are in addition to those dealt with by the Akayesu trial. I have included these in the thesis to highlight the multiplicity of discourses of rape in war, and how important issues are being paid less attention than the emerging hegemonic discourse of rape as sexual violence.

⁶⁶ Odette, cited in African Rights, *Rwanda*, p. 781

⁶⁷ Odette, cited in African Rights, *Rwanda*, p. 782

⁶⁸ Flanders, 'Rwanda's living casualties', p. 99

⁶⁹ François Karera (a former mayor of Kigali), cited in Destexhe, *Rwanda and Genocide*, p. 70

⁷⁰ Flanders, 'Rwanda's living casualties', pp. 97-9

In 1996, 70 per cent of the population of Rwanda was female and 50 per cent of households were headed by women.⁷¹ Destexhe argues that Rwanda constitutes the first case of genocide since the holocaust.⁷² In 1944, Raphael Lemkin coined the word *genocide* from the Greek *genos* (race or tribe) and the Latin suffix *cide* (to kill), to mean ‘the destruction of a nation or an ethnic group’.⁷³ This requires the presence of an ethnic grouping or race, and I have discussed the Rwandan context of colonial ethnic constructions. The children of mixed marriages in Rwanda were considered to be of the ethnic group of the father.⁷⁴ This discursive colonial construct is important in understanding part of the logic of rape. Tutsi boys were targeted along with Tutsi men. Tutsi girls were left, as they were perceived to pose less of an immediate threat. Although this seems to be in line with Jones’s argument (that it is always men who are targeted), this is not the case: women were also killed, but in a less hurried way. This reinforces patriarchal stereotypes, rather than undermining them. Tutsi boys were killed because they were believed to be Tutsis who would fight as Tutsis. They would also produce Tutsi children, because their identity, not the mother’s, would be passed to the child.

Tutsi women were less relevant, as they would not be fighters and it was not their identity that would produce Tutsi children. But once many Tutsi men and boys had been killed, the pressure increased for Tutsi women to be killed. Witnesses KK, PP and OO stated that Akayesu expressed this opinion in the form of a Rwandan proverb:

If a snake wraps itself round a calabash, there is nothing that can be done, except to brake the calabash.⁷⁵

Juliana cited the same saying:

If a snake wraps itself round a milk calabash, you don’t let the snake survive just for the sake of saving the calabash.⁷⁶

In Rwandan culture, breaking the *gisabo* – a big calabash used as a churn – is considered taboo. However, the point of the proverb is that it is permissible to do the unthinkable in

⁷¹ HRW, *Shattered Lives*, p. 2

⁷² Destexhe, *Rwanda and Genocide*

⁷³ *Ibid.*, p. 3

⁷⁴ *Ibid.*, p. 37

⁷⁵ ICTR, *Prosecutor v. Akayesu*, pp. 23 & 65

⁷⁶ Juliana, cited in African Rights, *Rwanda*, p. 756

extraordinary circumstances: if the child will be Tutsi, the mother must be killed, and the foetus hence aborted. Similarly, Akayesu told Witness KK that ‘when rats are killed you don’t spare the rats that are still in the form of foetus’.⁷⁷ When women were raped it was frequently to injure them so badly that they could not have children or to kill them, rather than to specifically make them pregnant. RTLM announcers urged Hutus not to take pity on women and children.⁷⁸ But where women were made pregnant, discourses of lineage are crucial: ‘enemy children’ are produced if the male semen carries the full identity of the child.

Witness K, whose husband was a friend of Akayesu, said she was not killed because Tutsi women married to Hutu men were to be spared,⁷⁹ and witness KK testified that Tutsi women married to Hutu men ‘were left alone because it was said that these women deliver Hutu children’.⁸⁰ These actions rely on a belief in patrilineal descent, and a discourse of rape that claims the children of rape will be the father’s ethnicity. This discourse was rare in Rwanda, but very common in the Yugoslav case study where women were held and raped so that they would produce Serbs. Conversely, pregnant women, including those of Hutu origin, were killed if their foetus was believed to be fathered by a Tutsi. Hutu extremists did not spare newborn babies. Alexia recalls what happened in such instances:

...one woman started her labour pains. The interahamwe waited to see if she had a baby boy. Luckily for her, she had a baby girl. They forced her to go with the other woman as soon as she had given birth.⁸¹

Forced impregnation was not just an act of Hutu against Tutsi: after the genocide, Hutu Power remained in the refugee camps that were created around Rwanda’s borders. ‘The birth rate in the camps was close to the limit of human possibility; breeding more Hutus was Hutu Power policy, and the coerced impregnation of any female of

⁷⁷ ICTR, *Prosecutor v. Akayesu*, p. 65

⁷⁸ Gourevitch, *We Wish to Inform You*, p. 115

⁷⁹ ICTR, *Prosecutor v. Akayesu*, p. 59

⁸⁰ *Ibid.*, p. 66

⁸¹ Alexia, cited in *African Rights, Rwanda*, p. 794

reproductive age was regarded as a sort of ethnic public service among the resident interahamwe.⁸²

The murder of up to a million Rwandans and the torture and mutilation – including rape – experienced by many who survived have led to severe changes in the demographics of Rwanda. ‘The main people who survived in our area are young women like me who were kept by the interahamwe.’⁸³ In 1996, the Rwandan Ministry of Gender, Family and Social Affairs confirmed this: 68 per cent of the Rwandan population are female; 50 per cent of these women are widows; 50 per cent of all households are headed by women or children.⁸⁴ ‘Pregnancies of war’, ‘children of hate’, ‘unwanted children’, ‘children of bad memories’, or ‘refugees of their mothers’ bad memories’ are estimated by the Rwandan National Population Office to be between 2,000 and 5,000.⁸⁵ (It is these estimates that in turn allow the number of women raped to be estimated.)

After the genocide, with a disproportionately low number of men, one woman stated: ‘Husbands are very scarce these days but at least I can still have children’.⁸⁶ The practice of *kwinjira* – sharing men, or husband-hiring – has added another dimension to the spread of HIV/AIDS (discussed later). According to Sam Abbenyi, who works for international aid agency CARE, ‘*Kwinjira* is something like male prostitution... [The women’s] sexual needs are satisfied and they hope that they’ll be able to have children to replace those killed during the genocide’.⁸⁷ In some parts of Rwanda, such as the Gitarama district, adult males constitute just 20 per cent of the population.⁸⁸

The importance of having children even extends to avoiding abortion, no matter how extreme the case. Maria was worried about her daughter Chantal:

⁸² Gourevitch, *We Wish to Inform You*, p. 269

⁸³ Josianne, cited in African Rights, *Rwanda*, p. 782

⁸⁴ Rwandan Ministry of Gender, Family and Social Affairs, cited in Women for Women International, *Rwanda Project*, p. 1; Human Rights Watch, *Shattered Lives*, p. 2

⁸⁵ HRW, *Shattered Lives*, p. 3; Flanders, ‘Rwanda’s living casualties’, p. 99

⁸⁶ David Gough, ‘Husband-hiring hastens the spread of AIDS in Rwanda’, *Guardian* (8 Feb. 2000), p. 17

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

You can see for yourself that she is even too shy to say she has been raped. So she is unlikely to tell me, at least at this early stage, if she might be pregnant. If she is pregnant, I would not recommend an abortion. My religious feelings are too strong for such a step.⁸⁹

With so many victims of rape in Rwanda, there would inevitably be pregnancies. The post-genocide, Tutsi-led government in Rwanda has refused to legalize abortions, despite the fact that many women were hospitalised as a result of illegal, incompetent abortions.⁹⁰ There are only five gynaecologists in the whole of Rwanda.⁹¹ Some women did have abortions, but Rwanda is predominantly Roman Catholic and few women would take advantage of abortions even if they were widely available.

The children born of such situations are not only born out of wedlock – a stigma in itself – but are also born of men responsible for the genocide. African Rights claims: ‘Some of these children, if not most, will not be welcomed – neither by the Tutsi community, nor by their mothers’.⁹² As a result of such factors, many of these children have been abandoned. However, it is not clear that this was the *intention* behind the raping of Tutsi women. Rather, the intention seems to be to destroy the ability of women to have Tutsi children. No Tutsi man would marry a woman stigmatised by being raped by a Hutu,⁹³ some women would be so badly injured they would be unable to have children, and some women would die as a result of their injuries. Alphonsine bore children as the result of rape:

He [an *interahamwe*] told me that he knew that even though I was Hutu that my grandparents were Tutsi (my mother is Tutsi) and that he would kill them if I did not submit to him. He took me to the sorghum field and raped me on the ground there. Before he left, he asked me to tell him where we kept all our money. After they left, I escaped to my parents’ house. I never saw a doctor after the rape, but a few months later, I realised I was pregnant. I was angry about the pregnancy and even thought about getting an abortion, but I had no money and no way to do it. I gave birth to twins in January 1995. At the time, I accepted them. I could not think about killing them. They survived for 11 months, but died. When I took them to the hospital, they couldn’t find anything wrong.... My family knew that I had children of an *interahamwe*. They all accepted it, but sometimes my mother would complain about the children and say that they were not

⁸⁹ Maria, cited in African Rights, *Rwanda*, p. 762

⁹⁰ Flanders, ‘Rwanda’s living casualties’, p. 99

⁹¹ Frederick & AWARE, *Rape*, p. 43

⁹² African Rights, *Rwanda*, p. 796

⁹³ Anne Llewellyn Barstow, ‘The United Nations’ role in defining war crimes against women’, Barstow, *War’s Dirty Secret*, p. 238

children of this family. Sometimes when they cried, my mother would tell me to stop the noise or to give these children back to their father. I still think a lot about the rape. I wonder if I have AIDS.⁹⁴

The above testimony shows the complicated nature of the ethnic groupings in Rwanda. Alphonsine has a Tutsi mother, but is herself Hutu; this does not point immediately to 'ancient ethnic hatreds'. Alphonsine was raped by a Hutu, and the children would then, by patrilineal descent, be Hutu. Although Alphonsine is accepted as a Hutu by her mother, the children clearly are not. But this is not because they are Hutu *per se*. The social grouping of *being* Hutu (or Tutsi) does not carry a stigma in the family. Rather, it is the stigma of being the children of *interahamwe* that tars the children. This supports the view that Hutus did not rape to create Hutu. Rather, they raped to prevent the creation of Tutsi.

According to Rwandan doctors, the most common problem encountered amongst women seeking help has been Sexually Transmitted Diseases, including HIV/AIDS. Eleven per cent of the population of Rwanda are now estimated to be HIV-positive.⁹⁵ Dr Ildephonse Kamali has called this Rwanda's 'new genocide'.⁹⁶ AIDS patients take 60 per cent of hospital beds, and more than 200,000 Rwandans – including 50,000 children – have died of HIV/AIDS.⁹⁷ An AIDS awareness centre in Kigali claims that as many as 25 per cent of Rwandans are HIV-positive.⁹⁸ Many women were raped by men who had HIV, sometimes knowingly, sometimes not. There are some reports of rapists telling their victims that they wanted them and their children to infect other Tutsis, especially Tutsi males that returned.⁹⁹ It has been claimed that following the genocide HIV is now approximately twice as common in Tutsi women who were raped than in the general population.¹⁰⁰

⁹⁴ Alphonsine, cited in 'Women speak: Human Rights Watch', p. 95

⁹⁵ Gough, 'Husband-hiring hastens the spread of AIDS', p. 17

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Flanders, 'Rwanda's living casualties', p. 99

⁹⁹ Frederick & AWARE, *Rape*, p. 41

¹⁰⁰ *Ibid.*

In Rwanda, some men believe the myth that sex with a virgin provides an instant cure for HIV.¹⁰¹ There is also the additional problem of the belief that sex with a younger (and younger...) partner minimises the risk of catching HIV. These beliefs help explain the high levels of rape in the Rwandan genocide, and the particular targeting of virgins. It also helps explain why the problem of rape has not ended with the genocide; the problem of rape is escalating.¹⁰²

Positivist IR has been interested in the study of biological and chemical warfare; a form of warfare that is incredibly complicated to implement and as such is not as devastating as its name implies. This is contrasted to a simpler form of biological warfare: the spread of HIV/AIDS, which positivist IR has been much less interested in. According to Kofi Annan, in 1999 more people died in Africa from AIDS than in the entire continent's wars.¹⁰³ It is important to link AIDS with war. Dr Innocent Ntaganira – director of Rwanda's National AIDS Control Programme – recognises this: '[W]ar and AIDS are well known allies. Huge displacement of people away from their homes meant that rural communities came into contact with urban communities where the incidence of HIV infection was much higher'.¹⁰⁴

HIV/AIDS continues to play a serious part in the conflict that continues between Rwanda, Uganda and the Democratic Republic of Congo (DRC). A report transmitted by *Radio-Television Nationale Congolaise* in Kinshasa claimed that 2,000 HIV-positive Rwandan and Ugandan soldiers were in the east of the DRC:

Dumping thousands of soldiers with the AIDS virus in the territory of eastern DRC, with a mission to violate any girl or woman they come across, [it] is a diabolic plan with incalculable demographic and socio-economic effects for the DRC. It is well known that AIDS has an incubation period of five to 10 years for the most robust of people. Kinshasa can smoke the peace pipe with Kampala and Kigali today, but the infected persons will continue to spread the sickness for many years. Kigali's and Kampala's action demonstrates their inhuman determination to carry out the plan of establishing a Hima-Tutsi empire by infecting the soil of the DRC. Exterminating indigenous people of the

¹⁰¹ BBC News, 'Rape trials shock Rwanda', p. 2

¹⁰² BBC News, 'Rwandan rapists jailed', *BBC News* (http://news2.thls.bbc.co.uk/hi/english/world/africa/newsid_717000/717771.stm, 18 Apr. 2000); p. 1

¹⁰³ Victoria Brittain, 'More die of AIDS than war in Africa says Kofi Annan', *Guardian* (14 Mar. 2000), p. 15

¹⁰⁴ Gough, 'Husband-hiring hastens the spread of AIDS', p. 17

eastern DRC in order to have a Tutsi predominance in this part of the country is the essential element of this plan.¹⁰⁵

Perversely, the threat of HIV/AIDS has also been used to *protect* women from rape. Rose is a Hutu who was targeted for being accused of trying to protect Tutsis:

One of the interahamwe...asked me for money. I told him that I didn't have any. He told me that I was going to die because I had hidden people and now was not prepared to pay. He put a long knife at my throat and told me that he was going to kill me the way he wanted to. He took me out to the coffee bushes and pushed me on the ground and raped me. After he raped me, he told the other interahamwe that I was useless and could not give them any money. He also told the others not to rape me because I might have AIDS and could contaminate them. *I think he told them that to defend me from being raped by the others.*¹⁰⁶

It is, again, interesting that women who have been raped draw on the same discourses and reasoning to understand rape: Rose thinks that the rapist tried to protect her.

Concluding remarks

Women's health problems, including physical damage and HIV infection, receive far less government attention and resources than do projects such as the resettlement of Hutu refugees.¹⁰⁷

The question I asked at the start of this thesis was 'Can we identify the multiple discourses of rape in war, and is there an emerging hegemonic discourse of rape?' There are multiple discourses of rape in war that can be identified from the genocide in Rwanda. The discourse of rape in war as a physical need was used by Akayesu's Defence. But the testimony from rape survivors demonstrated that rape was far too violent and too frequent for this to be the case. The beliefs in colonial constructions of different ethnicities gave the rapes that occurred a number of different purposes. The belief in patrilineal descent resulted in many Tutsi women being raped and sometimes killed, and other Tutsi women being raped and allowed to live carrying a Hutu child. The belief that intercourse with a virgin can cure HIV has meant that very young women have

¹⁰⁵ 'Biological warfare: AIDS "spread by soldiers"', *Guardian: The Editor* (21 Nov. 1998), p. 19

¹⁰⁶ Rose, cited in 'Women speak: Human Rights Watch', p. 93, italics added

¹⁰⁷ Tétréault, 'In search of justice', p. 301

been – and continue to be – targeted for rape. The HIV/AIDS pandemic in Rwanda is a cause and a result of these discourses, but is paid less attention that is required by both IR and international institutions.

I have shown that there is no one way in which rape can be understood in the Rwandan genocide. There are multiple discourses of rape in war because the sexual (and the violent) must be defined through discourse, which will vary depending on its context and so construct multiple discourses. One discourse leads some who have been raped to believe that they have suffered a fate worse than death, while others who have been raped might consider themselves lucky not to have been killed. Among the multiple discourses I have identified an emerging hegemonic discourse of rape in war as a specifically sexualised violence, which is constructed and legitimised by international bodies such as the ICTR.

The trend towards using *sexual violence* rather than *rape* represents the emergence of a discourse of rape that treats all violent crimes that can be considered sexual as rape, and then labels them *sexual violence*. This shares with the other discourses of rape in war an ontology of the victim as a female who suffers in a personal capacity, and loses something of her female-ness as a result of the rape. The result of this is an emerging common sense where most crimes against women can be considered sexual violence because women are associated with the sexual. Rape was once ignored because it was considered to be too personal a crime; this personal part of rape is now being developed to argue that rape is one of the worst possible crimes because it is so personal. The acts of torture, mutilation and violence that the Prosecution presented as sexual violence (rather than rape) were incredibly violent. We should cease to consider rape as a special crime or as a sexual crime, and instead should strategically construct rape as a part of torture.

CHAPTER 6

BOSNIA: THE DEFENCE

Soldiers raping women is a frequent accompaniment of victory in war, and it happened on all sides, but the Serbs were responsible for by far the most cases and this has led people to link rape to the charge of genocide.¹

Foreign policy analysis in IR begins with the assumption that individual human action is instrumentally rational.² Rationality is defined as 'a decision process dominated by logical reasoning; conclusions are deduced from evidence and inferences made with a minimum of emotion',³ and is seen to belong to all foreign decision-makers. It was assumed that a rational man was in charge in Yugoslavia. But following the ethnic cleansing that took place, Robin Cook stated about Milosevic: 'I don't think any *reasonable* person could have predicted the level of genocide...'.⁴ Whether any reasonable person could have predicted the level of rape is a moot point. What this and the next chapter will analyse is the multiple discourses of rape that existed with the war.

Bosnian President Alija Izetbegovic warned of the danger of 'total war' breaking out and requested UN peacekeeping forces on 12 November 1991. On 20 December, Izetbegovic requested diplomatic recognition from the European Community; on 21 December an insurgent Assembly of Bosnian Serbs claimed the existence of the Serbian Republic of Bosnia-Herzegovina. Izetbegovic again request UN peacekeeping forces on 22 December. UN Security Council Resolution 724 stated that the conditions did not exist for a peacekeeping force in the former Yugoslav republics. On 9 January 1992 the Bosnian Serb minority declared the independence of a Bosnian Serb Republic.

The elected government of Bosnia-Herzegovina held a referendum on independence from 29 February to 1 March. Serbs, who had already declared independence, were encouraged to boycott the referendum; nonetheless, 62.7 per cent of eligible voters were in favour and Izetbegovic declared Bosnian independence on 3

¹ David Owen, *Balkan Odyssey* (London: Indigo, 1995), p. 118

² Laffey & Weldes, 'Beyond belief', p. 195.

³ Barner-Barry & Rosenwein, *Psychological Perspectives on Politics* (London: Prentice-Hall, 1985), p. 240

⁴ *Channel 4 News* (30 Mar. 1999), italics added

March. Radovan Karadzic, president of the Bosnian Serb administration, spoke openly of keeping Serb regions of Bosnia within Yugoslavia by means of war. The troubles in Bosnia-Herzegovina broke into full conflict in spring 1992, with Bosnian Serbs starting military action from the east of Bosnia, pushing westwards, on 6 April. By May Serbs controlled over 60 per cent of Bosnia, and by the end of 1992 controlled 70 per cent. On 13 May Murrack Goulding, head of the UN Department of Peacekeeping Operations, reported to the UN Security Council that there should not be a deployment to Bosnia.⁵ Before the war Bosnia's population was 44 per cent Bosnian Muslim, 33 per cent Serb, and 17 per cent Croat. By early 1993, the ethnic cleansing that had occurred resulted in Bosnia being divided 10 per cent Bosnian Muslim, 70 per cent Serb, and 20 per cent Croat.⁶ Approximately 150,000 people were killed during the conflict in Bosnia, with many more injured.⁷ Some estimates go as high as 250,000 killed and over two million displaced.⁸

Of the Serb-run concentration camps 'about twenty [were] solely rape/death camps for Muslim and Croatian women and children'⁹ where women were raped and made forcibly pregnant. The Genocide Centre at Zenica, Bosnia, gathered evidence of 17 rape camps, in places such as motels, schools, saw mills, cafes, private houses.¹⁰ The Hotel Vilina Vlas, Visegrad, was used to rape women, who were then killed and thrown into the River Drina. The Trnopolje camp, northern Bosnia, was used solely to keep women specifically to be raped.¹¹ Dr Melika Kreitmayer was leader of the gynaecological team that examined a number of rape victims in Brezovo Polje. She stated: 'My impression is that someone had an order to rape the girls'.¹² In places such

⁵ Sabrina Petra Ramet, *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to Ethnic War*, second edition (London: Westview, 1996), pp. 245-8

⁶ Eric Herring, 'International security and democratisation in Eastern Europe', Geoffrey Pridham, Eric Herring, George Sanford (eds.), *Building Democracy? The International Dimension of Democratisation in Eastern Europe* (London: Leicester University Press, 1994), p. 106

⁷ Steven L. Burg & Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (London: M. E. Sharpe, 1999), p. 170

⁸ Marc Weller, 'The Kosovo indictment of the International Criminal Tribunal for Yugoslavia', Ken Booth (ed.), *The Kosovo Tragedy: The Human Rights Dimension* (London: Frank Cass, 2001), p. 208

⁹ Natalie Nenadic (letter to MacKinnon from Zagreb, Croatia), cited in Catharine A. MacKinnon, 'Rape, genocide, and women's human rights', *Harvard Women's Law Journal*, Vol. 17 (1994), p. 7

¹⁰ Ed Vulliamy, *Seasons in Hell: Understanding Bosnia's War* (London: Simon & Schuster, 1994), p. 199

¹¹ Vulliamy, *Seasons in Hell*, p. 199

¹² Roy Gutman, *A Witness to Genocide: The First Inside Account of the Horrors of 'Ethnic Cleansing' in Bosnia* (Dorset: Element, 1993), p. 69

as Liplje, 'practically every woman in the village was raped'.¹³ The wars in the former Yugoslavia became infamous for their 'rape camps'. Soldiers or policemen would come to detention centres to select one or more women, and then take them away to be raped. Some women were raped in privately owned apartments and houses where they also had to cook, clean and serve the residents.

International agencies held back information on rapes during the conflict. Rape was overlooked as it was assumed to be part of any war, and the war itself was to be reported. Vulliamy states, 'In Trnopolje, to our [journalists'] shame, we had not even asked about mass rape, although prisoners did refer to girls being "taken away"'.¹⁴ After increasing reports of systematic mass rape emerged, a centre was established in Zenica to take testimony on what it defined as 'rape and other abuses against women, girls and female children of non-Serbian nationality'.¹⁵ An EC investigation, led by retired diplomat Dame Anne Warburton, concluded that approximately 20,000 women had been raped by Serb forces in Bosnia, while the Bosnian Ministry of the Interior estimated 50,000.¹⁶ However, the UN Commission of Experts only identified 1,600 cases of rape.¹⁷ Experts attached to the UN Human Rights Commission studied rape victims in hospitals in Croatia, Serbia and Bosnia. It has stated:

It is difficult to assess the actual numbers of individuals who suffered rape or sexual abuse; victims are often reluctant to report such experiences owing to social stigma and fear of reprisals.¹⁸

The UNHRC discovered evidence of approximately 12,000 cases of rape, predominantly by Serbs.¹⁹ However, as with the estimates produced in Rwanda, the UN Human Rights Commission estimated these figures from pregnant rape victims in hospitals.

On 22 February 1993 the UN Security Council resolved to establish an international tribunal. The *International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991* (ICTY) was established by

¹³ Daniel Kofman, 'Israel and the war in Bosnia', Thomas Cushman & Stjepan G. Mestrovic (eds.), *This Time We Knew* (London: New York University Press, 1996), p. 93

¹⁴ Vulliamy, *Seasons in Hell*, p. 196

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Burg & Shoup, *War in Bosnia*, p. 170

¹⁸ UN Human Rights Commission, cited in Burg & Shoup, *War in Bosnia*, pp. 170-1

¹⁹ Burg & Shoup, *War in Bosnia*, p. 170

Security Council Resolution 827 on 25 May 1993, under Chapter VII of the UN Charter. The ICTY was authorised to prosecute and try four clusters of offences: Grave breaches of the 1949 Geneva Conventions (Article 2), Violations of the laws or customs of war (Article 3), Genocide (Article 4), and Crimes against humanity (Article 5). The ICTY sits in The Hague, The Netherlands, and saw its budget grow from \$276,000 in 1993 to \$96,443,900 in 2001.

The trial of Kunarac, Kovac and Vukovic: the Defence

The trial of Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic began on 20 March 2000 and ended on 22 November 2000. It was sometimes referred to as the 'rape camp case', because of the evidence given by women who had been raped. The court gave its judgement on 22 February 2001. Kunarac was found guilty of rape and torture, both as a violation of the laws or customs of war and as a crime against humanity. He was sentenced to 28 years imprisonment, after being found guilty under the following counts:

- Count 1 of torture as a crime against humanity,
- Count 2 of rape as a crime against humanity,
- Count 3 of torture as a violation of the laws or customs of war,
- Count 4 of rape as a violation of the laws or customs of war,
- Count 9 of rape as a crime against humanity,
- Count 10 as a violation of the laws or customs of war,
- Count 11 of torture as a violation of the laws or customs of war,
- Count 12 of rape as a violation of the laws or customs of war.
- Count 18 of enslavement as a crime against humanity,
- Count 19 of rape as a crime against humanity,
- Count 20 of rape as a violation of the laws or customs of war.

Kovac was sentenced to 20 years imprisonment, after being found guilty under the following counts:

- Count 22 of enslavement as a crime against humanity,
- Count 23 of rape as a crime against humanity,
- Count 24 of rape as a violation of the laws or customs of war,
- Count 25 of outrages upon personal dignity as a violation of the laws or customs of war.

Vukovic was sentenced to 12 years imprisonment, after being found guilty under the following counts:

- Count 33 of torture as a crime against humanity,
- Count 34 of rape as a crime against humanity,
- Count 35 of torture as a violation of the laws or customs of war,
- Count 36 of rape as a violation of the laws or customs of war.

The ICTY's judgement was its first conviction of rape as a crime against humanity, and was welcomed by human rights groups as a step forward in international law. The next chapter will examine the case of the Prosecution and will question whether this emerging hegemonic discourse is as much of a development as is hoped. Rape must be imposed through language rather than simply observed, and the sexual is privileged over the violent within sexual violence. Furthermore, the emphasis on the sexual that is made by the Tribunals is too uncritical. This chapter will examine the case of the Defence and use it to structure different discourses of rape in war that I have identified.

The Defence of Kunarac, Kovac and Vukovic made arguments similar to those made by Akayesu's Defence. Included was the argument that any rape that *did* occur would have been the result of physical need. But this logic was also pursued in a direction not seen in the Akayesu case: rape was not the result of physical need, but instead was sexual intercourse as a result of love. An additional defence made was one of incredulity: it was argued that the rapes simply would not have taken place. The Defence also argued that rape was not possible in certain cases because one of the defendants had an injured groin. These arguments rely on a simplistic understanding of rape, and such beliefs were made possible by discourses that enforced gendered and ethnic differences.

Physical need, love and incredulity

The Final Trial Brief of the Defence argued that even if it was proved that Kovac had raped a woman he would have done so out of a sexual urge, not out of hatred.²⁰ This defence is the discourse of rape as a physical need, and was also used by the Defence in the Akayesu case. That rape can be defended on the grounds that the perpetrator

had a sexual urge towards the victim is understandable within the history of rape and its surrounding discourses. Rape is believed to be a form of sex rather than a form of violence. This is why the emerging discourse of rape as sexual violence is unhelpful (discussed in the next chapter).

In response to the Defence, the Trial Chamber found that even if Kovac's rapes had been the result of a sexual urge this did not preclude the rapes *also* being committed in the knowledge of their broader effects.

There is no requirement under international customary law that the conduct must be *solely* perpetrated for one of the prohibited purposes of torture, such as discrimination. The prohibited purpose need only be part of the motivation behind the conduct and need not be the predominant purpose or sole purpose. The Trial Chamber has no doubt that it was at least a predominant purpose, as the accused obviously intended to discriminate against the group of which his victim was a member, i.e. the Muslims, and against his victim in particular.²¹

In understanding the intention of rape, all possibilities must be considered, including the possibility of sexual urges. But the ICTY Trial Chamber is too readily accepting of the suggestion that rape could be performed as the result of sexual urges. If a form of *torture* was enacted (that is, a different form of torture to rape), and a defence then claimed that the torturer had an urge towards that form of torture, this would not be readily accepted as a possible defence. The same approach should be taken with rape, which strategically could be considered as a form of torture. In addition, there is little evidence that the rapes were the result of natural, physical urges: the rapes were too violent and too numerous. Johan Bos, a 31-year-old Dutch sergeant, claimed:

They [Serb military police] bragged about they had murdered people and raped women. They were proud of what they were doing. I didn't get the feeling they were doing it out of anger or revenge, more for fun. They seemed pleased with themselves in a sort of professional, low-key way.²²

Kovac's Defence against the accusation of rape by Witness FWS-87 developed the discourse of physical need to claim that there was some form of emotional relationship between them. To support this claim, witnesses for the Defence mentioned a letter with a heart drawn on the envelope, which was allegedly sent by Witness FWS-87 to Kovac. The Defence suggested that the relationship was one of love, and therefore any sex could not have been rape. This discourse is a common

²⁰ International Criminal Tribunal for Yugoslavia, *Prosecutor versus Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (<http://www.un.org/icty/kunarac/appeal/judgement/index.htm>, 2001), par. 816

²¹ ICTY, *Prosecutor v. Kunarac, et al.*, par. 816

form of a defence against rape: the victim had consented to the sex/rape. The discourse of rape as physical need is exacerbated by a culture and legal system that does not believe in the possibility of a woman being raped by her husband.²³ The Penal Code of Bosnia and Herzegovina states:

Whoever coerces a female *not his wife* into sexual intercourse by force or threat of force of imminent attack upon her life or body or the life or body of a person close to her, shall be sentenced to a prison term of one to ten years.²⁴

But the assumption that it is not possible for men to rape their wives or sexual partners is a discourse of rape that has been increasingly abandoned in domestic legal systems. Additionally, because of Rule 96, the Tribunal did not allow the possibility of consent as a defence. (I will return to Rule 96 later.) Witness FWS-87 denied ever having sent such a letter to Kovac, and none of the Defence witnesses had seen the content of the letter: they had only been told about it by Kovac.²⁵

The Defence of Kunarac developed the logic of this discourse even further. Rather than arguing that an incident of rape was the result of a physical need or of love, the Defence argued that one of the instances of rape was not rape because the 19-year-old girl had seduced Kunarac.²⁶ Rather than defending the defendants, these arguments demonstrate that the discourses of rape as a physical need and as an act very similar to sex are accepted within the Bosnian culture. An example of this is a statement made about Vukovic: 'FWS-50 also stated that, when he raped her, Vukovic told her that she was lucky in that she was the same age as his daughter, otherwise he would have done much worse things to her.'²⁷ That Vukovic was 'kinder' to Witness FWS-50 because she was approximately the same age as his daughter indicates the complexity of the discourses of rape that people – including the perpetrators – draw upon.

He ordered me to take off my clothes and lie down on the bed. He did the same thing. He began to kiss me and fondle me. When he saw that I wasn't feeling anything – I was just lying there staring at a point in space – I looked into his eyes and asked him if he had a wife. He said no. I asked him if he had a sister. He said yes. Then I asked, 'How do you think your sister would feel if someone did with her what you're doing

²² Johan Bos, cited in Jan Willem Honig & Norbert Both, *Srebrenica: Record of a War Crime* (London: Penguin, 1996)

²³ Among the five Yugoslav successor states only Slovenia allows in law for the possibility of a woman being raped by her husband (Ramet, *Balkan Babel*, p. 284).

²⁴ *Penal Code of the Socialist Republic of Bosnia And Herzegovina* (1991), Ch. XI, Art. 88(1), italics added

²⁵ ICTY, *Prosecutor v. Kunarac, et al.*, par. 762

²⁶ *Ibid.*, par. 853

²⁷ *Ibid.*, par. 814

to with me?’ He jumped up and ordered me to get dressed and leave. As I was leaving I said, ‘If you’re thinking of sending someone else to take me someplace again, I’d rather you just kill me here and now’. He said I didn’t need to be afraid, that no one would come get me anymore, and after that no one else did come.²⁸

There are multiple discourses of rape in war, and how these are interpreted, chosen between and acted upon cannot be determined by any one discourse.

Outside of the ICTY, the defence that was used against the charges of rape was that it was inconceivable that rape would take place. Zeljko Mejahic, the commander of the guards at the camp in Omarska, was accused of rape by Jadranka Cigelj. He rejected Cigelj’s rape accusation with incredulity:

In all responsibility I can state that there was no attempt at rape, and even less that I raped Jadranka Cigelj. I don’t know why I would do that, because she is 45 years old, while I am 26, and I don’t need a woman as old as that, particularly as she is a bad and unattractive woman. The way she was, I wouldn’t lean a bicycle on her, let alone rape her. These are just lies.²⁹

Mejahic is also using the discourse of rape as a physical need for his defence. That is, because rape is the result of physical need – rather than any violent action, planned or otherwise – he would only rape a woman that he physically needed. Mejahic claims that there is no possibility of physical need as he is younger, while she is older, ‘bad and unattractive’. Because the discourse of rape as a sexual act is so strong, Mejahic is able to attempt a logical disproof of the rape: the rape could not have happened because she is not sexually attractive. This additionally relies upon, and reinforces, the discourse of rape as a purely sexual act.

David Owen recalls speaking to Ratko Mladic (a general in the Bosnian Serb armed forces) who also reacted with incredulity:

Mladic was in personal conversation racist in his remarks but scathing about any implication that his officers would ever condone the rape of Muslim women by his men, laughing cruelly that they would have to be sex maniacs to rape so many women.³⁰

Similarly, Karadzic denied there were any detention camps for civilians in Bosnia, and denied that women or children were detained anywhere. Karadzic also said that he had no knowledge of systematic rape anywhere in Serb-controlled Bosnia: ‘We know of some 18 cases of rape altogether, but this was not organized but done by

²⁸ Sadeta, cited in, Stiglmayer, ‘The rapes in Bosnia-Herzegovina’, Alexander Stiglmayer (ed.), *Mass Rape: The War Against Women in Bosnia-Herzegovina* (London: University Of Nebraska Press, 1994), p. 95

²⁹ Jadranka Cigelj, cited in Gutman, *Witness to Genocide*, p. 145

psychopaths'. Any other claims of mass rape were 'propaganda...designed' by 'Muslim Mullahs'.³¹ Mladic and Karadzic both use a defence of rape that treats rape as one of the worst sins possible to in turn deny its possibility; they are both incredulous that their people can be accused of such acts.

As well as denying the accusation of rape because of its atrocious nature, Karadzic also accused the Bosnian Muslims of committing rape: 'There are six places in Sarajevo alone where they [the Muslims] are raping Serb women. We Serbs know what is going on'.³² Serbs also claimed that captured Serbian women were taken to Muslim-Croatian brothels.³³ Simo Drljaca (who became Serb police chief in Prijedor after a coup) claimed he had proof that Muslims planned 'to circumcise all Serb boys and kill all males over the age of 3, and send the women between the ages of 15 and 25 into a harem to produce janissaries'.³⁴ This is a reference to a medieval Turkish practice of forcing Serb women to bear children for use in the military. (The proof Drljaca had could not be produced as it was claimed to be elsewhere in Bosnia.)

The claims of rape by all sides are what Benton refers to as the myth of rape: that there will inevitably be rape in war.³⁵ Although the Serbs were the main perpetrators of rape in Bosnia, it is possible that Serbs believed that rape was being committed against them by Bosnian Muslims. S.T. was a female Muslim teenager who was raped three times in one night near the Trnopolje camp in northern Bosnia. Each of the three guards who raped her had four S's tattooed on their hands, for the Serb slogan 'Only solidarity saves the Serbs'. S.T. asked the final rapist, 'What are you doing?' He replied, 'That's what your people are doing to us as well'.³⁶ This example shows how ethnic difference is enforced both by the act of rape and by the discourse of rape, either as something that only the other side is doing, or as something that has to be done because the other side is doing it. In addition to the claims by Serbs that Bosnian Muslims and Croats were raping women, there is also evidence that Serbs created 'evidence' that their enemies were rapists.

³⁰ Owen, *Balkan Odyssey*, p. 82

³¹ Radovan Karadzic, cited in Gutman, *Witness to Genocide*, p. 158

³² Radovan Karadzic, cited in Gutman, *Witness to Genocide*, p. 65

³³ Ramet, *Balkan Babel*, p. 284

³⁴ Simo Drljaca, cited in Gutman, *Witness to Genocide*, p. 113

³⁵ Benton, 'Women disarmed', p. 163

³⁶ Gutman, *Witness to Genocide*, pp. 64-7

One Croatian woman described being tortured by electric shocks and gang-raped in a camp by Serbian men dressed in Croatian uniforms who filmed the rapes and forced her to 'confess' on film that Croatians had raped her.³⁷

This is a clear attempt to discredit the morality of the enemy, and to portray the other side as morally and ethnically inferior; to enforce differences and ethnic constructions.

Enforced differences and ethnic constructions

That's something you never forget. I still carry it around with me in my heart, in my soul. I think of it when I go to bed and I think of it when I get up. It doesn't let you go.... Before I got my first period afterward, I was about to have a nervous breakdown. I couldn't sleep, and I kept smoking one cigarette after the other.... They did it to humiliate us. They were showing us their power. They stuck their guns in our mouths. They tore our clothes. *They showed the 'Turkish women' they were superior.*³⁸

The ethnic cleansing that took place in Bosnia specifically targeted the majority group, Bosnian Muslims. Bosnian scholars estimate that over half of the mosques, historical monuments and libraries of Bosnia were wiped out.³⁹ (Serbs also destroyed a large percentage of Catholic churches in Bosnia and in Serb-occupied Croatia.⁴⁰) In early 1990 Serbs wrote graffiti such as 'Death to Muslims!' on Islamic buildings. In 1992, the Serbian army moved into eastern Bosnia. In the town of Zvornik, along the Drina River, the army hung a skull-and-crossbones flag from the window of the Rijecanska mosque. Serbian nationalist songs were played through a tape recorder from the minaret: 'If you're not with us we will kill you. We will slit your throats', and 'You're a liar if you say Serbia is small'.⁴¹ In Banja Luka (the second largest city in Bosnia-Herzegovina after Sarajevo), a mosque and Islamic burial chamber were vandalised in February 1992; Bosnian Serb authorities destroyed two more mosques in May 1993, and the remaining three mosques in September. Bosnian Serb forces had ruined 650 mosques by August 1994.⁴²

³⁷ Natalie Nenadic (letter to MacKinnon from Zagreb, Croatia), cited in MacKinnon, 'Rape, genocide', p. 7

³⁸ Hatiza, cited in, Stiglmayer, 'The rapes in Bosnia-Herzegovina', p. 92, italics added

³⁹ Gutman, *Witness to Genocide*, pp. 77–8; Ramet, *Balkan Babel*, pp. 286–8

⁴⁰ Ramet, *Balkan Babel*, pp. 276–8

⁴¹ Gutman, *Witness to Genocide*, p. 77

⁴² Ramet, *Balkan Babel*, pp. 276–8. In Bosnian-controlled Sarajevo 'Serb Orthodox churches stand untouched (unlike mosques burned down in Serbian-captured territory)' (Trudy Rubin, cited in Ramet, *Balkan Babel*, p. 278).

These acts were performed not just to reinforce difference, but more importantly to construct difference. Difference was constructed around ethnicity, with the main indicator of ethnicity being religion. It was necessary to construct ethnicities and enforce difference because the people of Yugoslavia had considered themselves to be Yugoslavs. Bosnian Muslims had long resisted the possibility of an alternative to the Yugoslav federation. Serbs and Croats had claimed that the Muslims were actually Serbs or Croats, rather than a separate ethnicity.⁴³ 'I was in the camp, I was raped, and I still can't understand that our friends are doing it, people who until yesterday were our friends.'⁴⁴ But Yugoslavs very quickly became Serbs, Croats or Muslims: in the 1991 census 44 per cent of Bosnia's population registered as ethnic Muslims, with 31 per cent Serb and 17 per cent Croat.⁴⁵ During the war, Arabic lessons were introduced in some Muslim-run schools.⁴⁶

Rape was one method used during the war to enforce the ethnic difference of religion as part of the broader Serb strategy to emphasise difference in religion and ethnicity. Rape was used to desecrate Bosnian Muslim discourses, and communicate hatred for them. The rapes that occurred during the war were made possible because of this broader social context. In Novo Selo, near Zvornik, Serb soldiers forced 150 women, children and old people into the local mosque where the Imam Memic Suljo was pressured to make the sign of the cross, eat pork, and rape a teenage girl. (Suljo refused and was beaten and cut with knives.)⁴⁷ A 32-year-old female Muslim refugee from Bratunac, eastern Bosnia, stated: 'We saw them rape the *hadji's* [local Muslim cleric] daughter – one after the other, they raped her. The *hadji* had to watch too. When they were done, they rammed a knife into his throat'.⁴⁸

The Serb army invaded the village of Rizvanovici on 24 July 1992. Sadeta was raped two days later:

They made us fondle them and kiss them.... They behaved like they could do anything they wanted. ... They swore, they cursed our *balija* mothers, and they made fun of us [both girls were virgins]. They said we were pretty girls, and we'd been saving ourselves just for them. ... Then we had to lie down and, the way they said it, relax and enjoy it.... It hurt for a minute. After that, all your feelings vanish, you become a stone and don't feel anything.

⁴³ Ramet, *Balkan Babel*, p. 193

⁴⁴ Hatiza, cited in, Stiglmyer, 'The rapes in Bosnia-Herzegovina', p. 93

⁴⁵ Ramet, *Balkan Babel*, p. 186

⁴⁶ *Ibid.*, pp. 129 & 277–8

⁴⁷ Gutman, *Witness to Genocide*, p. 78

⁴⁸ Stiglmyer, 'The rapes in Bosnia-Herzegovina', p. 82

... They got dressed too, took their weapons off the table, and brought us back to the women. On the way back they threatened to kill us if we let on anything about what happened.⁴⁹

The word *balja* is a contemptuous reference to Muslims, and was used by the Serbs to insult someone's mother.⁵⁰ It was used more specifically here to construct and enforce the difference between Serbs and Bosnian Muslims.

As well as emphasising the religion of Bosnian Muslims, Serbs also emphasised the superiority of the Serbs and their own religion. Witness FWS-50 testified that she was raped by a Montenegrin soldier who wielded a knife and threatened to draw a cross on her back to baptise her.⁵¹ Meira, a 17-year-old Bosnian Muslim, was raped by a man who threatened her with a hand grenade: 'He put a grenade in my hand. He told me, "*All Serbs are good*, and I am a good Serb". And if I didn't agree, he could kill both of us with a bomb'.⁵² The rapes cited in the Kunarac case took place in Foca, which the Serb authorities renamed 'Srbinje', literally meaning 'the town of the Serbs'.⁵³ While raping Witness FWS-183, Kunarac told her she would enjoy being 'fucked by a Serb'⁵⁴. Once he and another soldier had finished raping, they told her she would now carry a Serb baby, and not know who the father is.

[B]y construing the nation as 'victim' – something Serbia, Croatia, and Bosnia have all done, with varying degrees of legitimacy – regimes and their media lose sight of the fact that women are themselves victimized by patriarchal society.⁵⁵

Rape was also used to enforce difference through ethnic reconstructions. Women were held in camps and raped until they became pregnant. Ethnicities were produced through enforced impregnation. The discourse of rape as a means for the rapist to reproduce his ethnicity relies upon the belief that the male semen carries with it the ethnicity of the child. Serb aggressors and their Bosnian victims believed this, and the egg, womb, birthplace and upbringing were considered irrelevant in the making of 'Chetnik' babies. Some women who were raped were told, 'go and deliver fighting

⁴⁹ Sadeta, cited in, Stiglmeier, 'The rapes in Bosnia-Herzegovina', pp. 94–5

⁵⁰ Stiglmeier, 'The rapes in Bosnia-Herzegovina', p. 166: 18

⁵¹ ICTY, *Prosecutor v. Kunarac*, et al., par. 667

⁵² Meira, cited in Gutman, *Witness to Genocide*, p. 72, italics added

⁵³ ICTY, *Prosecutor v. Kunarac*, et al., par. 577

⁵⁴ *Ibid.*, par. 583

⁵⁵ Ramet, *Balkan Babel*, p. 283

Serbs'.⁵⁶ This discourse allows rape to act as a powerful tool of war, where culture is believed to be genetic.⁵⁷

Kennedy-Pipe and Stanley argue against this logic: 'a foetus does share the genetic material of both parents and unless the child is actually raised by the father, he or she is more likely to assimilate the culture of the mother'.⁵⁸ This should be true logically, but the outcome depends less on the culture that the child assimilates than the extent to which the child is assimilated by the culture. The discourses of rape in war have a far greater effect than scientific understandings of biological reproduction. The assumptions of male superiority determining the identity of the child – while the woman is merely a receptacle – are self-fulfilling. The women *also* define themselves as their 'protectors' and 'assaulters' do.⁵⁹

Jusuf Pasalic, a physician who was interned at the Trnopolje Internment Camp, estimates that between five and ten women were raped every night at the Trnopolje Camp, from 27 May and 25 August 1992. However, only fifteen women and girls went to the doctors in Trnopolje and told them they had been raped. Another fifty went, but did not say exactly what had happened. Pasalic states the problem: 'There's a psychological problem here.... Muslim society is patriarchal. A woman's honour is important, and the men are jealous. If a man has even the slightest suspicion that his wife may have cooperated voluntarily, the marriage is over'.⁶⁰

The forced impregnation of women through rape also relies upon the specific set of discourses that have been identified above, which serve to create and distance an *other* who can act as a womb. The discourses of rape present in Bosnia were reinforced by a culture where some viewed women as possessions. This is similar to what happened in Rwanda, where Tutsi women became desirable possessions that could be consumed like anything else by *interahamwe*. For example, Kovac detained Witness FWS-75 and A.B. (from the end of October 1992 until December 1992), and Witness FWS-87 and A.S. (from the end of October 1992 until February 1993) in an apartment. During that time they had to perform household chores, and were sexually assaulted, 'beaten, threatened, psychologically oppressed and kept in constant fear'.⁶¹

⁵⁶ Vulliamy, *Seasons in Hell*, p. 199

⁵⁷ MacKinnon, 'Rape, genocide', p. 13

⁵⁸ Kennedy-Pipe & Stanley, 'Rape in war', Booth, *Kosovo Tragedy*, p. 75

⁵⁹ Joan Didion, cited in Niarchos, 'Women, war, and rape', p. 667

⁶⁰ Stiglmayer, 'The rapes in Bosnia-Herzegovina', p. 91

⁶¹ ICTY, *Prosecutor v. Kunarac, et al.*, par. 747

A.B. was sold by Kovac for 200 Deutschmarks.⁶² A.B. and Witness FWS-87 were sold by Kovac to two Montenegrins for 500 Deutschmarks each (and, A.S. claimed, a truckload of washing powder).⁶³ Kunarac invited a soldier into his house and allowed him to rape Witness FWS-191 for 100 Deutschmark, if he so chose.⁶⁴

The above acts are sometimes referred to as enforced prostitution, but this (like the phrase *sexual violence*) is unhelpful. Prostitution is a voluntary act of offering sexual intercourse or other sex acts in exchange for money. If the act is not voluntary then it cannot be prostitution. Referring to this as enforced prostitution emphasises the sexual element at the expense of the violence done. The discourses of torture would strategically provide a more helpful way to understand the events.

Yugoslavia, along with the other post-communist states of Eastern Europe, replaced the rhetoric of dignity and equality of *women* with the dignity and importance of the *mother*, 'and not just the mother in general, but the *Croatian* mother, the *Slovak* mother, the *Hungarian* mother, and so on. ...women [were] reduced to instrumentalities for the reproduction of the nation'.⁶⁵ As the war in Bosnia continued the religious communities became increasingly important and re-asserted what they considered to be traditional values. By 1994 Imams were telling Bosnian Muslims to avoid marrying non-Muslims, and Muslim women were encouraged to cover their heads in public.⁶⁶

The traditional role of the Serbian woman is justified by the Mother of the Jugovici, the epic heroine from the Battle of Kosovo against the Turks of 1389: despite the death of her nine sons in the battle, she did not weep. She has served as a simulacrum for Serbian women to aspire to, in their role as mothers of the nation. 'The assertion of a Sarajevo woman who claimed that she planned to "fire off one baby every year to spite the aggressors" reflects the power of this myth and its message.'⁶⁷ Ramet encountered similar sentiments when in conversation with two Belgrade journalists who thought that Albanian- and Bosnian-Muslims 'have big

⁶² *Ibid.*, par. 756

⁶³ *Ibid.*, par. 778

⁶⁴ *Ibid.*, par. 742

⁶⁵ Ramet, *Balkan Babel*, p. 128

⁶⁶ *Ibid.*, pp. 129 & 277-8

⁶⁷ Salzman, 'Rape camps as a means of ethnic cleansing', p. 350

families in order to swamp Serbia and Yugoslavia with Muslims and turn Yugoslavia into a Muslim republic'.⁶⁸

This emphasis on motherhood and its responsibilities was also reflected and encouraged by state legislation. In October 1992 a document entitled *Warning* was published and signed by the Serbian ruling party, the Serbian Socialist Party, the Serbian Academy of Arts and Sciences, and the Serbian Orthodox Church.⁶⁹ This document focused on demographic issues, specifically the size and growth of the different ethnic groups within Serbia: Muslims (as well as Albanians and Romans) 'with their high birth rate, [were] beyond rational and human reproduction'.⁷⁰ Sevlata Ajanovic, an 18-year-old Bosnian Muslim, asked one of her captors why they had turned against them: 'The answer was that he had to do it. He said, 'Because you are Muslims, and there are too many of you'.⁷¹ As the police chief of Serb-controlled Banja Luka commented in 1992, 'In ethnic warfare the enemy doesn't wear a uniform or carry a gun. Everyone is the enemy'.⁷²

This particular set of circumstances provided the conditions for rape to provide a means to increase the reproduction of Serbs while halting the reproduction of Bosnian Muslims. Hatiza was taken to Trnopolje camp in July 1992. She was told, 'We're bringing you to a concentration camp. The next time we meet, you'll have one of our kids in your belly'.⁷³ Some women were held captive for weeks once pregnant to make an abortion more difficult.⁷⁴ Nezira stated:

I was violated at least once every other night on average, for a number of weeks. ... I became pregnant quite soon which was lucky in a way, because it meant I was exchanged with thirteen others. I was also lucky to be early enough to have an abortion, which others were not. I hated the thing inside me. ... I have not had a single regret about having an abortion.⁷⁵

The Pope appealed to women to keep the babies who were a result of rape, 'turning an act of violence into one of love'.⁷⁶ Such a call would certainly fall on deaf ears given that the majority of pregnant women were Muslims made pregnant by Christians.

⁶⁸ Ramet, *Balkan Babel*, p. 185

⁶⁹ Salzman 'Rape camps as a means of ethnic cleansing', p. 350

⁷⁰ *Ibid.*, p. 350

⁷¹ Sevlata Ajanovic, cited in Gutman, *Witness to Genocide*, p. 76

⁷² Honig & Both, *Srebrenica*, pp. 177-78

⁷³ Hatiza, cited in, Stiglmeier, 'The rapes in Bosnia-Herzegovina, p. 92

⁷⁴ Kennedy-Pipe & Stanley, 'Rape in war', p. 74

⁷⁵ Nezira, cited in Vulliamy, *Seasons in Hell*, p. 198

⁷⁶ Pope John Paul II, cited in Vulliamy, *Seasons in Hell*, p. 199

In Rwanda the raping of women occurred as part of the genocide, to rid the country of Tutsis. In Bosnia the raping of women occurred to give birth to Serbian children and soldiers *after* the ethnic cleansing. As refugees arrived in Travnik, Zenica and Sarajevo mounting evidence emerged of mass rape as a systematic tool of the Serb war against Muslims and Croats.⁷⁷ Sevlata Ajanovic, an 18-year-old Bosnian Muslim, was told by one of her captors that they wanted to 'plant the seeds of Serbs in Bosnia'.⁷⁸ Camps were organised where rooms were used to beat men by day and rape women at night.⁷⁹ Jadranka Cigelj, a 45-year-old Bosnian Croat, said she was held in the Omarska camp for seven weeks in 1992: 'They took the women one by one. Not every one every day. They had a timetable'.⁸⁰

M.C., a 28-year-old, said that when Serbs attacked her village of Trosanj, 'The raping began immediately. ... Only the women over 50 were safe. ... They always took the 10 youngest'.⁸¹ M.C. said she was raped about 150 times in the two months she was held.⁸² Rather than demonstrating that rape is about sex because women over 50 would not be raped because they are unattractive (as Mejahic argued), this demonstrates that the raping that occurred was intended to cause pregnancy and was pre-determined. For example, Beba, a 24-year-old Bosnian Muslim, was raped by Serbs in her home town. She then went to Foca and hid in an apartment. From the apartment Beba could see the Partizan sports centre and 'the same men entering and leaving daily'. 'I can say in Foca there were 50 men involved in rape. They slept during the day and raped at night'.⁸³ One woman held at the sports centre says she was raped over 100 times in two months. Zlata (a 23-year-old Bosnian Muslim) remembers some men telling Vojislav Seselj (a militant nationalist from Sarajevo) and his men: 'Don't worry. The girls have been raped once'.⁸⁴

These testimonies demonstrate the extremes to which the Serbs took the ethnic cleansing of Bosnia. It also disproves the Defence's argument that any rapes that occurred were the result of physical need. The Serbs used rape as a systematic form of violence against Bosnian Muslim women. And there is testimony from women who

⁷⁷ Vulliamy, *Seasons in Hell*, p. 196

⁷⁸ Sevlata Ajanovic, cited in Gutman, *Witness to Genocide*, p. 76

⁷⁹ Gutman, *Witness to Genocide*, p. 144

⁸⁰ Jadranka Cigelj, cited in Gutman, *Witness to Genocide*, p. 144

⁸¹ M.C. cited in Gutman, *Witness to Genocide*, p. 166

⁸² Gutman, *Witness to Genocide*, p. 166

⁸³ Beba, cited in Gutman, *Witness to Genocide*, p. 164

⁸⁴ Gutman, *Witness to Genocide*, p. 70

say that the Serbs who raped them did not want to do so, because they recognised the rapes as violence. This further deconstructs the argument that rape is the result of physical need. For example, Mirsada, a 23-year-old Bosnian Muslim, was told by the Serb who raped her, 'We have orders to rape the girls'; he also told her that he was 'ashamed to be a Serb' and that 'everything that is going on is a war crime'.⁸⁵ Hafiza, a 23-year-old Bosnian Muslim, tried to stop the soldier who raped her by saying, 'You have a mother and a sister, a female in the family'. The soldier replied, 'I must. I must'.⁸⁶ Meira, a 17-year-old Bosnian Muslim, said the man who raped her, 'said that he had to do it. He said it was better for me that he did it than the followers of Seselj, who would rape 10 men to one woman'.⁸⁷ Some women told Dr Kreitmayer they had been taken to a house and told to tell others they had been raped even though they were not.⁸⁸ M.C. and other women were ordered to an outdoor stadium and gang-raped by uniformed soldiers. 'I counted 29 of them. Then I lost consciousness...'⁸⁹ When M.C. regained consciousness she heard the commander tell the troops, 'Enough is enough', followed by a quarrel and gunfire. An officer then drove M.C. back to the Partizan sports hall.⁹⁰ Nezira, from Rogatica, said, 'The kind ones would say there was nothing to worry about if I did what they told me to.'⁹¹

Concluding remarks

The victims say that right now they would like to be anywhere but in Bosnia-Herzegovina. Most say that once they leave here, they do not plan to return ever again.⁹²

Testimonies in this chapter show that for some men committing rape the act was not a sexual one; for them it was a violent act that they did not want to commit. This also shows that the Defence's argument that rape was the result of physical need is not true. Equally, the wider Serb community's claim that Serbs did not commit rape is not true. Serbs in Bosnia committed rape in a systematic way, both inside and outside 'rape camps'. Bosnian Muslims were raped to make them leave Bosnia, and were also

⁸⁵ *Ibid.*, p. 68

⁸⁶ *Ibid.*, p. 68

⁸⁷ Meira, cited in Gutman, *Witness to Genocide*, p. 72

⁸⁸ Gutman, *Witness to Genocide*, p. 69

⁸⁹ M.C., cited in Gutman, *Witness to Genocide*, p. 166

⁹⁰ Gutman, *Witness to Genocide*, p. 166

⁹¹ Nezira, cited in Vulliamy, *Seasons in Hell*, p. 197

raped when they were leaving to stop them from coming back. Refugees crossed the Vlasic Mountain in northern Bosnia, which became the only route for escaping Bosnia after Croatia closed its borders. A Croat shepherd who worked on this route said that a group of Croats had been held at the top of the Vlasic Mountain all night:

The women arrived in tears. They had been taken off the buses and stripped naked. The pretty ones had been taken away. No one could see where they went. They could only hear the screams.⁹³

In mid-July 1999, the ICTY at The Hague issued a ruling that Bosnian Serb forces, operating under Mladi, were under a 'direct chain of military command' from Belgrade. Accordingly, it redefined the Bosnian war as 'an international armed conflict'.⁹⁴

The discourse of rape in war as an enforcer of ethnic difference depended heavily on the broader social context. Ethnic differences were created and enforced by desecrating Muslim beliefs through rape. Ethnicities were also created by the enforced impregnation of women by Serbs to create future generations of Serbs to populate the areas that were 'ethnically cleansed'. These acts in turn aided the ethnic cleansing by creating permanent reminders of what happened in Bosnia. But this is not to paint one coherent discourse of rape in war, or even of rape in the war in Bosnia. Not all women were raped to be made pregnant. Borislav Herak, a Serb, confessed to raping and murdering eight women. He said that Serbs were encouraged by their superior officers to rape women and kill them afterwards.⁹⁵ The next chapter will examine further discourses of rape in war from Bosnia, and will analyse the emerging hegemonic discourse of rape as a specifically sexualised violence.

⁹² Gutman, *Witness to Genocide*, p. 73

⁹³ Unnamed Croat shepherd, cited in Gutman, *Witness to Genocide*, p. 123

⁹⁴ Ian Traynor, cited in Jones, 'Gendercide in Kosovo', p. 6: 13

⁹⁵ Vulliamy, *Seasons in Hell*, p. 193

CHAPTER 7

BOSNIA: THE PROSECUTION

This section examines arguments put forward by the Prosecution in the trial of Kunarac, Kovac and Vukovic at the ICTY to identify discourses of rape involved in the Bosnian war. In its treatment of rape, the Prosecution (among other international perspectives) has reinforced the discourse of rape as *sexual* violence, leading to the emergence of sexual violence as the hegemonic discourse of rape in war. There is an underlying association that equates the sexual with the female and the body, and this shares an ontology of rape with the perpetrators and the victims of rape in war. But testimonies from rape victims show that rape can involve a high degree of violence that is disregarded as a result of the increasing emphasis on the sexual.

In this chapter I will first examine the ICTY's attempts to define rape and its relationship to sexual violence. I will show that it is the *sexual* aspect of sexual violence that is privileged, despite claims to the contrary. Instead, there is an emphasis on the feminised and feminising processes, such as 'womenandchildren', dignity, honour, violation and humiliation. These common discourses of rape in war are therefore reproduced, with a strong emphasis on the sexual shame of the victim. This will show the extent to which rape has come to designate almost any form of violence against women. I will then focus on testimony given by victims of rape within the framework of violence, mutilation and torture to demonstrate the emphasis on violence within sexual violence. I will also cite testimony that claims that rape is worse than death to support this position. It is important for these additional and competing discourses to be included to demonstrate the multiple discourses of rape in war. Rape cannot simply be understood as one (correct) discourse rather than another (incorrect) discourse, despite the emerging hegemonic discourse of rape as a specifically sexualised violence.

The trial of Kunarac, Kovac and Vukovic: the Prosecution – what is rape?

To come to a working definition of *rape* for the trial of Kunarac, Kovac and Vukovic, the ICTY Trial Chamber first considered the definition of rape constructed in the ICTY trial of Anto Furundžija. In the Furundžija case, the ICTY Trial Chamber decided on a definition of rape as:

- i. the sexual penetration, *however slight*:
 - of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
 - of the mouth of the victim by the penis of the perpetrator;
- ii. by coercion of force or threat of force against the victim or a third person.¹

This definition of rape covers forced penetration. Part (ii) covers the violence of rape, and this is a generally agreed part of the definition of rape: rape must be forced – and hence violent – to count as rape. Part (i) covers the much more contested part of the definition: the sexual. It is much more difficult to agree upon what counts as sexual, because the sexual is constructed through discourse. The Furundžija definition has implied degrees of sexuality. For example, penetration of the vagina is rape, regardless of what is used to penetrate the vagina. The same applies to the anus. Not, however, with the mouth: penetration of the mouth must be with a penis, or the act is not rape.

This means that one of the objects involved in the rape must be considered sexual for the act to be classified as rape. A stick forced into a vagina is rape, because the vagina is sexual; a stick forced into a mouth is not rape, because neither the stick nor the mouth is considered sexual. It is interesting that the anus is considered sexual, but the mouth is not, and this again demonstrates that rape must be imposed through language, rather than simply observed.

For the Kunarac, Kovac and Vukovic case the Trial Chamber decided that the Furundžija definition was too narrow. Not in terms of the sexual, but in terms of the violent. The level of violence that the Furundžija definition of rape requires is force, threat of force or coercion. The Trial Chamber's concern was that the Furundžija

¹ International Criminal Tribunal for Yugoslavia, *Prosecutor versus Anto Furundžija* (<http://www.un.org/icty/furundzija/trialc2/judgement/index.htm>, 1998), par 177, italics added

definition does not allow for the possibility of additional factors that may result in an act of rape being non-consensual or non-voluntary. (This view eventually resulted in Rule 96, discussed later.)

Instead, the ICTY Trial Chamber conducted a survey of domestic rape law, to identify 'common denominators' and the underlying 'principle'. It concluded that the principle of numerous domestic rape laws is that, to be rape, the act must violate sexual *autonomy*. That is, the act must be not truly voluntary or consensual on the part of the victim. The Kunarac, Kovac and Vukovic Judgement states, 'In most common law systems, it is the absence of the victim's free and genuine consent to sexual penetration which is the defining characteristic of rape'.² 'The basic principle which is truly common to these legal systems is that serious violations of sexual *autonomy* are to be penalised.'³

The ICTY Trial Chamber settled on the following definition of rape:

[T]he Trial Chamber understands that the *actus reus* of the crime of rape in international law is constituted by: sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.⁴

Although the Judgement is correct to place a strong emphasis on the violent rather than the sexual, throughout these considerations the sexual is left unproblematised. It is the issue of violence that taxes the jurisprudence, not the sexual. What exactly is sexual autonomy, and how can it be identified? The answer to this question is implicit within the emerging hegemonic discourse: because the female is strongly associated with the personal and the sexual, rape is often identified when a crime is committed against a woman. The question of autonomy is also left unproblematised, because of the introduction of Rule 96 to the Tribunals' statute.

Rule 96 states:

² ICTY, *Prosecutor v. Kunarac, et al.*, par. 453. To support this statement, Smith's *Smith & Hogan Criminal Law* (1999) is cited: 'The essence of rape is the absence of consent [...]. At one time it was stated that the intercourse must have been procured through force, fear or fraud. Some books continue to state the law in those terms until very recently but they have been out-of-date for well over a century', p. 457.

³ ICTY, *Prosecutor v. Kunarac, et al.*, par. 457, italics original

⁴ *Ibid.*, par. 460

In cases of sexual assault:

- (i) no corroboration of the victim's testimony shall be required;
- (ii) consent shall not be allowed as a defence if the victim
 - (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or
 - (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;
- (iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;
- (iv) prior sexual conduct of the victim shall not be admitted in evidence.⁵

This is the first incidence of sexual assault being used in international criminal proceedings arising out of armed conflicts, and allows the Tribunals to try sexual assaults other than, but still including, rape. Rule 96 deals specifically with the giving of evidence in cases of 'sexual assault', and states that in cases of sexual assaults no corroboration of the victim's testimony is required. Additionally consent is not permitted as a defence in a wide range of situations, and prior sexual conduct of the victim cannot be admitted in evidence.

As a result, the definition of *rape* that the ICTY uses conflates and confuses different definitions of rape and sexual violence/assault (as did the ICTR in the Akayesu case). Rape is defined very specifically for the Kunarac, Kovac and Vukovic trial, and pays little attention to the sexual elements of rape. This is despite the recognition by the Trial Chamber that there is a general trend towards characterising more forms of sexual violence as rape:

Art. 177 of the German Criminal Code was amended with effect from 1 April 1998 to provide that the crime of sexual coercion or rape is also committed when a perpetrator 'tak[es] advantage of the situation in which the victim is defencelessly exposed to the offender's impact'. Although this provision is not relevant to the determination of the state of the international law at the time of the crimes alleged in the indictments, it serves as an indication of the trend in national legal systems to a *broader range of circumstances* which will classify sexual activity as rape.⁶

Conversely, Rule 96 provides the trial with a very broad view of sexual assault without actually defining what is meant by *sexual assault*. A comprehensive set of conditions is provided that apply to any form of sexual assault, and *only* to sexual assaults. The

⁵ International Criminal Tribunal for Yugoslavia, *Rules of Procedure and Evidence: revision 13* (http://www.un.org/icty/basic/rpe/IT32_rev19.htm, 2000)

⁶ ICTY, *Prosecutor v. Kunarac, et al.*, ft. nt. 1125, italics added

provisions of Rule 96 are intended to apply to highly traumatised victims of very personal violence (that is, *rape*); however, Rule 96 applies to all forms of sexual assault (whatever they may be), but not torture. The broad provisions of Rule 96 can apply to any form of violence that is in some way personal. Or rather, to most forms of violence that are directed at women, with the Prosecution and the ICTY considering women who have suffered violence to be in need of special attention.

I argue that, as a strategic preference, where sexual assault does not meet the requirements of torture the provisions of Rule 96 should not be applied. For example, Witness FWS-87, A.S. and A.B. were forced to strip and dance naked on a table while Kovac watched them from a sofa, pointing weapons at them.⁷ This does not constitute rape by the Trial Chamber's definition. It can be considered sexual assault (although *sexual assault* is not defined). Although these experiences would be unpleasant, they are not the worst experiences presented during the trial. It would be curious to afford a higher degree of personal consideration to their suffering than to someone who has lost their family, been mutilated, and so on. But the trial emphasises the particularly personal nature of rape and sexual assault, and does so only for these acts. Rule 34 of the Tribunals' Statute: 'There shall be set up under the authority of the Registrar a Victims and Witnesses Section consisting of qualified staff to...provide counselling and support for them, *in particular in cases of rape and sexual assault*'.⁸

For example, 'The accused Radomir Kovac certainly knew that, having to stand naked on a table, while the accused watched them, was a *painful and humiliating experience* for the three women involved, even more so because of their young age'.⁹ These acts are noted as humiliating in the trial Judgement predominantly because they happened to women, which (re-)constructs the emerging hegemonic discourse of rape in war as a specifically sexualised violence, associating the female with the personal, the sexual, and the body. A similar statement from the Judgement claims: 'He [Kovac] subjected them [women] to degrading treatments, including beatings *and other*

⁷ *Ibid.*, par. 772

⁸ ICTY, *Rules of Procedure and Evidence*, italics added

⁹ ICTY, *Prosecutor v. Kunarac, et al.*, par. 773, italics added

humiliating treatments'.¹⁰ Again, the assumption of humiliation is the result of the victims being female rather than any other particular circumstances of the act itself.

In the Judgement against Kunarac, Kovac & Vukovic, specific mention is made of the seriousness of rape.

By the totality of these acts, you have shown the most glaring disrespect for the *women's dignity* and their *fundamental human right to sexual self-determination*, on a scale that far surpasses even what one might call, for want of a better expression, the '*average seriousness of rapes during wartime*'.... You were a soldier with courage in the field, somebody whom your men undisputedly are said to have held in high esteem. By this *natural authority* you could easily have put an end to the women's suffering. Your active participation in this nightmarish scheme of *sexual exploitation* is therefore *even more repugnant*.¹¹

This paragraph references many discourses of rape in war. It reinforces the discourse that rape is a violation of 'women's dignity', and that rape is a sexual act. This is emphasised by the claims that the rapes disrespected the women's 'sexual self-determination', and that there is an 'average seriousness of rapes during wartime'. Both claims emphasise the sexual at the expense of the violent. Furthermore, the claim that the actions were worse than the 'average seriousness of rapes during wartime' does not just want a better expression; the very idea seems to be suspect. This derives from the discourse of rape in war as a natural by-product of war. The statement implies that the rapes in this war were exceptional and therefore in need of prosecution.

Rather than making rape in war a crime, this justifies the previous non-prosecution of rape in war. This is not a development in international law, as the punishments of rape by both Tribunals have drawn on and reproduced common discourses of rape in war. This in turn has led to the emergence of a hegemonic discourse of rape in war as sexual violence. For example, the following statement is also made in the trial Judgement:

Particularly appalling and deplorable is your treatment of 12-year-old A.D., a helpless little child for whom you showed absolutely no compassion whatsoever, but whom you abused sexually in the same way as the other girls.¹²

¹⁰ *Ibid.*, par. 781, italics added

¹¹ International Criminal Tribunal for Yugoslavia, *Judgement of Trial Chamber II in the Kunarac, Kovac and Vukovic Case* (<http://www.un.org/icty/pressreal/p566-e.htm>, 2001), p 6, italics added

¹² *Ibid.*, p 8

Once again, the sexual aspect of rape is reinforced instead of the violence aspect. Most people would agree that violence is bad, and is worse against a child than an adult, but that is not all that is being said. It also implies that had the girl been older – that is, nearer the age of consent – the crime would have been less severe; this again reifies the sexual aspect of the crime and tries to understand it in terms of ‘normal’ sexual intercourse.

Both Tribunals understand rape as something very different to other forms of violence, due to its associations with the female, the personal, and the sexual. The following examples are all from the ICTY.

[T]he terror took on another, very *personal* dimension.¹³

Rape is one of the worst sufferings a human being can inflict upon another.¹⁴

What the evidence shows, are Muslim women and girls, mothers and daughters together, *robbed of the last vestiges of human dignity...*¹⁵

The Trial Chamber finds that this sexual exploitation of A.B. and FWS-75, in particular their sale, constitutes a *particularly degrading attack on their dignity*.¹⁶

[T]he three accused committed, by any measure, particularly serious offences against *the most vulnerable of persons* in any conflict, namely, *women and girls*, in the Foca region of Bosnia and Herzegovina.¹⁷

Lastly, that these offences were committed against *particularly vulnerable and defenceless women and girls* is also considered in aggravation.¹⁸

The fact that his [Kovac] offences were committed *against particularly vulnerable and defenceless girls and a woman* is a matter considered in aggravation.¹⁹

That his offences were committed against a *particularly vulnerable and defenceless girl* is considered in aggravation.²⁰

In all of these examples, women and children are referenced and pitied, but the violence that occurs is neglected at the expense of reifying the shameful, degrading, humiliating or dishonourable. Furthermore, women are not just victims during the war in Bosnia: it has been estimated that over 20 per cent of combatants in the former Yugoslavia were

¹³ ICTY, *Judgement of Trial Chamber II*, p 2, italics added

¹⁴ ICTY, *Prosecutor v. Kunarac, et al.*, par. 655

¹⁵ ICTY, *Judgement of Trial Chamber II*, p 2, italics added

¹⁶ ICTY, *Prosecutor v. Kunarac, et al.*, par. 756, italics added

¹⁷ *Ibid.*, par. 858, italics added

¹⁸ *Ibid.*, par. 867, italics added

¹⁹ *Ibid.*, par. 874, italics added

²⁰ ICTY, *Prosecutor v. Kunarac, et al.*, par. 879, italics added

female.²¹ Men were also victims of rape (or rather, torture, as will be discussed in the next section) and these acts deserve equal attention.

The rise to prominence of rape as a war crime in international law has been very quick, and there has been much media interest in it. As I suggested with relation to the ICTR's prosecution of Akayesu, the testimony of rape victims might have been used as a result of their efficacy in producing prosecutions, rather than a sudden awakening to the horrors of rape in war. This attitude is also indicated by the ICTY, with almost half of all persons indicted by the ICTY being accused of sexual assaults or rapes, as either perpetrators or superiors.²²

[T]he Trial Chamber recognises the difficulties which survivors of such traumatic events have in remembering every particular detail and precise minutiae of these events and does not regard their existence [i.e. minor inconsistencies] as necessarily destroying the credibility of other evidence as to the essence of the events themselves.²³

This statement that differences in testimony do not necessarily contradict that testimony is in addition to the provisions of Rule 96. Examples of sexual assault can be subsumed within rape as they do not require proof of consent, and no corroboration of the victims' testimonies is required. This is contributing to the emergence of a hegemonic discourse of rape in war as sexual violence that does not question *the sexual* but instead reifies it.

Although the rules surrounding rape, sexual violence and sexual assault have been useful in securing convictions, there have also been problems. In May 1997 Dusko Tadic, a Bosnian Serb prison guard, was found guilty of 11 counts of crimes against humanity, and sentenced to 20 years in prison. Two of the three judges ruled that 'a man could be convicted of the offence of rape simply on the word of an anonymous accuser'.²⁴ Lawyers objected that Tadic was not allowed to know the name of these important witnesses. The Prosecution witness's identity was kept from the court (including the accused), and was later 'found to be a pathological fantasist'.²⁵ The ICTY has not made such an order since.

²¹ Halliday, 'Gender and IR', p. 842

²² ICTY, '...and the first on rape and sexual assault charges since Tokyo', *Bulletin*, No. 15/16 (www.un.org/icty/BL/15art4e.htm, Mar. 1997), p. 1

²³ ICTY, *Prosecutor v. Kunarac*, et al., par. 679

²⁴ Kennedy-Pipe & Stanley, 'Rape in war', p. 77

²⁵ Stephen Sedley, 'Howzat?', *London Review of Books*, Vol. 25 No. 18 (25 Sep. 2003), p. 18

Torture, mutilation and (sexual?) violence

Rape, torture and outrages upon personal dignity are treated as three related but different events by the Prosecution: 'there can be no doubt that rape, torture and outrages upon personal dignity, as charged in the present case, are serious offences'.²⁶ The Prosecution does mention the possibility of trying rape as an outrage upon personal dignity:

[W]ith regards to rape and outrages upon personal dignity, the Prosecutor charges rape and outrages upon personal dignity separately in this case, although, *in her view*, rape clearly could have and has been classified as an outrage upon personal dignity.²⁷

The suggestion is that rape could be part of outrages upon *personal dignity*; no mention is made of classifying rape as torture. This association between – and emphasis on – the sexual and personal elements of rape is leading to the emergence of the hegemonic discourse of rape in war that the thesis has identified.

There is one paragraph devoted to the *relationship* between torture and rape:

Applying the approach adopted by the Appeals Chamber in the [Zejnir] Delalić case, convictions for rape and torture under either Article 3 or Article 5 based on the same conduct would be permissible. Comparing the elements of rape and torture under either Article 3 or Article 5, *a materially distinct element of rape vis-à-vis torture is the sexual penetration element. A materially distinct element of torture vis-à-vis rape is the severe infliction of pain or suffering aimed at obtaining information or a confession, punishing, intimidating, coercing or discriminating against the victim or a third person.*²⁸

This draws a distinction between rape and torture, and concludes that they are different. But the differences drawn rely upon the discourse of rape in war as sexual violence, and the assumption that rape is a personal violence without any wider implication (perhaps because it is assumed to only target women). This requirement for sexual penetration is derived from the Tribunal's own definition of rape that it provides for the purposes of the trial. There is also the claim that rape is *not* the 'severe infliction of pain or suffering aimed at obtaining information or a confession, punishing, intimidating, coercing or discriminating against the victim or a third person'. For example, a girl of 14 was tied naked to a tank and driven around her village near Prijedor. She was then raped, and 'thrown in front of her parents so that they could see her half dead'.²⁹ Testimony from Bosnia and Rwanda has shown that rape in war is frequently (if not always) carried out

²⁶ ICTY, *Prosecutor v. Kunarac, et al.*, par. 408

²⁷ *Ibid.*, par. 554, italics added

²⁸ *Ibid.*, par. 557, italics added

²⁹ Anonymous witness, cited in Vulliamy, *Seasons in Hell*, p. 200

with the intention of severely inflicting pain or suffering, and done so to punish, intimidate, coerce or discriminate. This could be done to target the victim or a third person. And there is no reason why this could not be done to obtain information or a confession from the victim or a third person. This demonstrates my argument that rape can strategically be understood and punished within the language, laws and rules of torture.

One of them was biting at my breasts... There was a curtain across the room, and when they had finished they said: 'Go get your baby', I went behind the curtain, her head was blue and she had foam on her mouth. She had no pants and there was lots of blood streaming down her legs, and I knew they had raped her.³⁰

Sabrija Gerovic was held with 10 other women at a chicken farm near Cerska, and her daughter, Samira, was taken from her. Twenty-four hours later, Sabrija was taken to a room and raped by seven men. Sabrija had purple puncture marks on her breast from the rape. Her daughter, Samira, was born in 1989. She was also raped during the war, and told her mother, 'a man touched me'.³¹ This example of a child of approximately three years of age being raped severely problematises the claims that described rape as a physical need, or love, or even as enforced impregnation.

Testimony from survivors of rape from the conflict in Bosnia describes acts that strategically could be better understood as torture rather than sexual violence. The women who were raped were not enduring sex they did not want. They endured torture that has left a physical legacy of complete exhaustion, vaginal discharges, bladder problems, irregular menstrual bleedings, infertility and pregnancy, and a psychological legacy of depression, suicidal behaviour, and feelings of constant fear.³² For example, E.N., a 14-year-old, was raped by a Serb commander: 'he asked me... "Have you ever fucked?" I said, Sir, please don't do that, I was begging him. He pushed me, and hit me and said "Get on the couch". Then he tore my dress and hit me again. Then he closed my mouth with his fist'.³³ E.N.'s mother continued:

³⁰ Sabrija Gerovic, cited in Vulliamy, *Seasons in Hell*, pp. 195–6

³¹ Vulliamy, *Seasons in Hell*, p. 195

³² International Criminal Tribunal for Yugoslavia, *The Prosecutor of the Tribunal Against Dragoljub Kunarac and Radomir Kovac: Amended Indictment* (<http://www.un.org/icty/indictment/english/kun-iii991108e.htm>, 2000), par. 6.5 & 7.7

³³ E.N., cited in Vulliamy, *Seasons in Hell*, pp. 199–200

I heard my daughter screaming. She was calling me to rescue her from this maniac. I heard him grunting. My own womb was tearing apart. He was shouting 'Have you had enough, bitch?' Then he left the room, and said angrily, 'Don't anyone touch the girl!' In another room, the daughter of my sister was abused in the same way. One Chetnik watched me and my sister all the time, telling us not to shout. Then they said we could go in, and we found M. [another girl] almost unconscious, and naked, and E. crying with torn clothes and injuries.³⁴

Although the Serb refers to what he is going to do as a sexual act, this does not mean that the victims (or others) need recreate this discourse in understanding the act. Witness FWS-50 testified that she was raped 'in a beast-like manner' by a Montenegrin soldier.³⁵ Rape can leave a lasting reminder, which is another reason to consider rape as a form of torture. Heira, a 25-year-old Bosnian Muslim woman, said, 'We all feel that we lost everything. We have been abandoned. We have been imperilled. Every woman, if she is raped, has to feel the same'.³⁶

The emerging hegemonic discourse of rape as sexual violence has had the additional effect of reinforcing the view that rape is something that only happens to women. When rape happens to men, it is not recognised as such because men are not so readily associated with the personal and the sexual, or as bodies that can be violated. But this is not because there are no acts that happen to men that could be constructed as a sexualised violence. The following act could almost fit the Trial Chamber's definition of rape by being the penetration of the mouth with sexual organs:

Omarska [detention camp] had been a place where a prisoner was forced to bite the testicles off a fellow inmate who, as he died of pain, had a live pigeon stuffed into his mouth to stifle his screams. The guards responsible for this barbarism were described by one witness as 'like a crowd at a sporting match'.³⁷

However, such acts were not what was had in mind when the definition of rape was formulated, as the victim is assumed to be female. There are other examples of violence against men from the conflict in Bosnia that could be *interpreted* to include a sexual aspect. For example, on June 17, 1992, Serbian guards forced a twenty-one-year-old Muslim Emin J. to drink a litre of motor oil and then bite off and swallow the testicles of

³⁴ E.N.'s mother, cited in Vulliamy, *Seasons in Hell*, p. 200

³⁵ ICTY, *Prosecutor v. Kunarac, et al.*, par. 667

³⁶ Heira, cited in Gutman, *Witness to Genocide*, p. 72

³⁷ Ed Vulliamy, cited in Jones 'Gendercide in Kosovo', p. 34

three fellow prisoners who had already been beaten half to death.³⁸ Another example comes from United States Embassy officials, who claimed that one witness reported seeing a man have his testicles tied with wire to the back of a motorcycle. It drove off quickly and the man dies of massive blood loss.³⁹

Nedjad Hadzic, a 23-year-old Bosnian Muslim, recalls a Muslim policeman, Emir Karabasic, being forced to strip naked by a guard. The guard asked, 'Do you remember the time you beat me up in the cafe?' A second Serb guard found another Bosnian Muslim (against whose father he had a grudge) and first made him drink old motor oil, and then bite off Karabasic's testicles. Hadzic said, 'The shrieks were unbearable. Then there was the silence'.⁴⁰ Because all of the above examples happened to men it is less clear whether they are acts of rape: it seems to be much harder for people to conceive of a sexual element in the act due to men not being so readily associated with the sexual and the personal, which is why they find it harder to label the act *rape*.

MacKinnon maintains the link between rape and the sexual, and argues that pornography is to blame for the rapes that occurred throughout the former Yugoslavia:

The saturation of what was Yugoslavia with pornography upon the dissolution of communism – pornography that was largely controlled by Serbs, who had the power – has created a population of men prepared to experience sexual pleasure in torturing and killing women. It also paved the way for the use on television of footage of actual rapes, with the ethnicity of the victims and perpetrators switched, to inflame Serbs against Muslims and Croats.⁴¹

MacKinnon's view is the result of considering rape to be a sexual act, and of a conflation of the sexual and the violent. MacKinnon claims that *one* Serbian soldier's experience of pornography led him to become a rapist: Borislav Herak testified in a war crimes trial in Sarajevo in March 1993 that the rapes he committed had been ordered for 'Serbian morale'.⁴² MacKinnon points out that this was his first sexual experience and that he owned a lot of pornography. The link between pornography and rape is meant to be clear;

³⁸ Stiglmeier, 'The rapes in Bosnia-Herzegovina', p. 88

³⁹ Gutman, *Witness to Genocide*, p. 98

⁴⁰ Nedjad Hadzic, cited in Gutman, *Witness to Genocide*, p. 99

⁴¹ MacKinnon, 'Rape, genocide', p. 14

⁴² Catharine A. MacKinnon, 'Turning rape into pornography: postmodern genocide', Stiglmeier, *Mass Rape*, p. 75

however, the possibility that Herak had not been exposed to enough sex (so warping his conceptions of sex and women) is not considered.

Rather than reconsidering the sexual, MacKinnon compares Linda Lovelace's regret at starring in *Deep Throat* during 'what is called peacetime' to being forced into a concentration camp.⁴³ 'Sex has also been used before to create, mobilise, and manipulate ethnic hatred, from the Third Reich to *Penthouse*.'⁴⁴ Whatever may be thought about *Penthouse*, it is not comparable with the Third Reich, or responsible for it. A video of a woman being gang-raped and killed is not what many people would call pornography. Anything can be pornographic to some people; or rather, the sexual must always be constructed through discourse, and some people may construct the sexual in ways that are unappealing. But this does not create necessary bonds between them.

The victims of rape can also share this discourse of rape as a sexual violence. Seventeen-year-old Zernia Grozanic from Kozarac said 'We tried to look ugly': 'I stopped washing my hair; it was long, oily and awful. I didn't wash my face either; it was dirty and sticky, and I had on some baggy, ripped-up clothes'.⁴⁵ Zernia assumes that the acts of rape that are being committed are sexual, and by taking up an appearance that is non-sexual she can avoid being raped; that the acts of rape continued further problematises the discourses of rape drawn upon by the Defence, and the hegemonic discourse of rape as a sexualised violence.

Rape as worse than death

I swore that I'd die rather than let myself...be raped.⁴⁶

Maybe that's their way of hurting Muslim women and Croatian women, and the whole female race. Killing them isn't interesting enough for them anymore. It's a lot more fun to torture us, especially if they get a woman pregnant. They want to humiliate us...and they've done it, too. Not just in my case, either, all the women and girls will feel humiliated, defiled, dirty in some way for the rest of their lives.... I feel dirty myself

⁴³ MacKinnon, 'Turning rape into pornography', p. 73

⁴⁴ MacKinnon, 'Rape into pornography', p. 75

⁴⁵ Zernia Grozanic, cited in Stiglmeier, 'The rapes in Bosnia-Herzegovina', p. 90

⁴⁶ Hatiza, cited in, Stiglmeier, 'The rapes in Bosnia-Herzegovina, p. 92

somehow. And I feel as though everybody can see it when they pass me in the street. Even though it isn't true, no one could know about it. But the humiliation is there.⁴⁷

The degree of violence and suffering contained in the testimonies of rape survivors partly explains the discourse of rape in war as being worse than death. This discourse also problematises the discourse of rape as a sexual act. Senada, a 17-year-old Bosnian Muslim woman, recounted her experiences to *Newsday* through the chief gynaecologist at Tuzla Hospital, stating 'I wouldn't want anyone else to have the same experience. It is worse than any other punishment in the world'.⁴⁸ Many women initially subscribed to the discourse that rape is worse than death. Pasalic noticed that women initially defended themselves from rape fiercely: 'At first the raped women and girls were beaten black and blue, especially in the lower body region'.⁴⁹ But as rape and death became inevitable during the conflict, women did try to survive:

Later on we didn't find that kind of injury on them any more. The others probably told the others the best way to survive. A nineteen-year-old girl told me that she closed up tight inside. She lay down, tried to think of something else, and wasn't there; she blocked it out mentally. She said that all she felt was a foreign object penetrating her, something cold and hard, that caused a ripping feeling. Then she said, 'When I could hear that he was drinking and cursing, I came to again. I stood up, and he said furiously, "You're pathetic"'.⁵⁰

In some cases, the rape was meant to precede death; rape was part of the murder. Pasalic stated that it was supposed to be usual to kill the girls after raping them:

One girl told me that an older soldier saved her life. She'd been taken to a control point in the woods and was raped there by several drunken soldiers. They were supposed to kill her afterward, but this soldier brought her back to the camp.⁵¹

Antonio Cassese, an Italian jurist who served as the president of the court as the head of its international panel of eleven judges recounted an example that uses the torture of rape on one person to torture another person.

[He was a f]amous guy, a Muslim. When he was captured, they said, 'Aren't you So-and-So?' He admitted he was. So they broke both his legs, handcuffed him to a radiator, and forced him to watch as they repeatedly raped his wife and two daughters and then slit their throats. After that, he begged to be killed himself, but his tormentors must have realized that the cruellest thing they could possibly do to him now would simply be to set

⁴⁷ Sadeta, cited in, Stiglmeier, 'The rapes in Bosnia-Herzegovina', p. 96

⁴⁸ Gutman, *Witness to Genocide*, p. 69

⁴⁹ Stiglmeier, 'The rapes in Bosnia-Herzegovina', pp. 90-1

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 91

him free, which they did. Somehow, this man was able to make his way to some UN investigators, and told them about his ordeal – a few days after which, he committed suicide.⁵²

In this example rape is not worse than death but instead leads to death. Cassese detailed another example, from the trial of Tadic, where death was preferable to rape: ‘Tadic...is alleged to have supervised the torture and torments of a particular group of Muslim prisoners, at one point forcing one of his charges to emasculate another – *with his teeth*. The one fellow died, and the guy who bit him went mad’.⁵³

These are examples of rape being worse than death in the sense that what happened was either so violent that it did lead to death, or death would have been preferable. There are also longer term social effects of rape that continue to affect rape victims’ lives, meaning they can no longer lead the life that they did. Almira Ajanovic, an 18-year-old Bosnian Muslim, was raped by three Serb soldiers every night for five nights in her home village of Liplje. On the sixth night Almira was raped in front of her father: ‘That Chetnik said that he was going to marry me. My father kept silent. ... I didn’t want to see my father again for one month. ... I still cannot talk about this with him’.⁵⁴ Jasmina Feric, a 20-year-old Bosnian Muslim, said, ‘I am very ashamed. ... We will be afraid of making love again our whole lives’.⁵⁵ Sevlata Ajanovic, an 18-year-old Bosnian Muslim, was raped every night that she was held:

Everyone who is with us now [other refugees] does not believe we were forced. And they think we are going to go with them [the Serbs] again. We can’t imagine marriage as a normal thing. We know that the man will always be suspicious.⁵⁶

Not all people who were raped subscribe to the discourse of rape being worse than death. R.C., a 44-year-old, was raped during the Bosnian conflict. She feels lucky to still be alive. R.C. said, ‘When they take you away, they may kill you. So if you are raped, you feel lucky. At least you’re alive’.⁵⁷ Nezira similarly felt lucky to become pregnant quite soon after being raped. ‘I became pregnant quite soon which was lucky in a way,

⁵² Lawrence Weschler, ‘Inventing peace: what can Vermeer teach us about Bosnia? A three-hundred-year-old lesson about fashioning order in a world of chaos’, *New Yorker* (<http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/genocide/inventing.html>, 20 Nov. 1996), pp. 52–68

⁵³ Weschler, ‘Inventing peace’, italics original

⁵⁴ Gutman, *Witness to Genocide*, p. 74

⁵⁵ Jasmina Feric, cited in Gutman, *Witness to Genocide*, p. 76

⁵⁶ Sevlata Ajanovic, cited in Gutman, *Witness to Genocide*, p. 76

⁵⁷ R.C., cited in Gutman, *Witness to Genocide*, pp. 166–7

because it meant I was exchanged with thirteen others. I was also lucky to be early enough to have an abortion, which others were not.’⁵⁸ Sadeta’s biggest fear after she was raped was that she might be pregnant: ‘...I met a teacher who took me to a gynaecologist. She examined me and found out that I wasn’t pregnant. Somehow I felt better after that. That was a month and a half after the rape’.⁵⁹ Another response to rape is anger. Ziba Hasanovic, an 18-year-old Bosnian Muslim, said, ‘I am angry. I want revenge’.⁶⁰

Concluding remarks

Most importantly, the enumeration of rape as a crime against humanity in the Statute is an acknowledgment that mass rape committed against civilian populations is not only an attack on individuals but moreover is an assault on humanity at large. All of humanity and the concept of civilisation itself is violated when mass rape is committed, whether during war or otherwise.⁶¹

Rape is increasingly being identified as a terrible crime. This, in itself, is an improvement. But rape is being identified as a very particular type of terrible crime; one that is so personal for the victim that all of society suffers, and so must be treated as unique. But in this discourse, the violence that has been done to the rape victim is discounted in favour of the sexual, personal absence that is created for others. Gutman shows a picture of a woman crying with the caption: ‘Tuzla, Bosnia-Herzegovina: Rape victim from Brezovo Polje, northern Bosnia’.⁶² It is not clear what purpose the picture serves. The woman is clearly upset, but are we meant to be able to see that she has been raped? Has something changed in her? A second picture shows three women huddled together and crying, with the caption: ‘Tuzla: Muslim rape victims’.⁶³ A third picture shows a number of women standing together, captioned: ‘Tuzla: Distraught, hurt, angry. Rape victims from Brezovo Polje’.⁶⁴ A fourth shot is captioned:

⁵⁸ Nezira, cited in Vulliamy, *Seasons in Hell*, p. 198

⁵⁹ Sadeta, cited in, Stiglmayer, ‘The rapes in Bosnia-Herzegovina’, p. 96

⁶⁰ Ziba Hasanovic, cited in Gutman, *Witness to Genocide*, p. 76

⁶¹ ICTY, ‘...and the first on rape’, p. 1

⁶² Gutman, *Witness to Genocide*, plate 5

⁶³ *Ibid.*, plate 6

⁶⁴ *Ibid.*, plate 8

Tuzla: Their father and brothers were taken to concentration camps. Their mothers were sent alone across a minefield. Then the daughters were systematically raped and released. The Brezovo Polje rape victims, shown reunited with their mothers.⁶⁵

The intention behind all of these photographs is to raise the issue of rape as a war crime. Gutman was one of the first reporters to highlight this issue, and deserves credit for doing so; however, the problem is with what these photographs imply about what has happened to these women, and what *rape* is. The pictures serve to reinforce the idea that rape is something that effects women by violating, spoiling or removing something precious, rather than being an act of violence performed on them. Similarly, Vulliamy says of one rape victim that he interviewed: 'Maybe Nezira did once have the terrified, injured face of the women photographed upon their arrival in Zenica to break news of the horrors of the rape camps; after all, Nezira was one of them, although not photographed'.⁶⁶ These personal associations of the discourse of rape were used to lend rhetorical effect to an argument made by Muhamed Sacirbey, the ambassador and permanent representative of Bosnia-Herzegovina to the United Nations. He argued before the UN Security Council on 30 August 1993 that Bosnia-Herzegovina was 'being gang-raped, forced into submission through the use of violence and aggression, including rape, deprived of means of self-defense, and then treated as if it had been seduced'.⁶⁷

The addition of Rule 96 to the Tribunals' Statute is a result of this emerging hegemonic discourse. It is also contributing to this problem by making the discourse of rape in war as an especially personal, sexualised crime the common sense. This is meant to be a development in thinking about rape, but instead acts as a reverse discourse, reinforcing the common discourses of rape in war by expecting raped women to be humiliated, shamed, degraded and dishonoured. Although some women share this ontology of rape as a personal absence, I have also identified discourses of rape in war as worse than death, and counter discourses that consider survival of rape to be lucky.

The central question of this thesis is 'Can we identify the multiple discourses of rape in war, and is there an emerging hegemonic discourse of rape?' I have identified multiple discourses of rape in war from the ethnic cleansing that occurred in Bosnia.

⁶⁵ *Ibid.*, plate 7

⁶⁶ Vulliamy, *Seasons in Hell*, p. 197

⁶⁷ MacKinnon, 'Rape, genocide', p. 15

Within the multiple discourses there is an emerging hegemonic discourse of rape as sexual violence. This discourse is not new, but the degree to which it reproduces and legitimates some of the more common discourses of rape in war is new. It is increasingly accepted that rape *is* sexual violence, and that it is the sexual that is crucial. Indeed, it is the sexual element of the violence that makes rape rape. But it is this increasing focus on the sexual that is (re-)constructing a hegemonic discourse of rape as a particularly sexualised and personal act. This personal element prevents rape from being understood strategically as a form of torture, instead being understood as a unique type of crime. There is no justification of why the sexual is to be treated as a special type of crime, only bald assertion that rape is an especially bad crime due to its association with the feminine and the personal.

Victims of rape can share this discourse of rape as a sexual act. Take the following excerpt from the trial: 'Kunarac did not entirely succeed [in] penetrating FWS-191 because, *as FWS-191 was still a virgin, she was rigid with fear*. He succeeded in *taking away her virginity* the next day'.⁶⁸ For this statement to make sense, it must be assumed that rape is less frightening for someone who is not a virgin than for someone who is. Yet again, this reinforces the emerging hegemonic discourse of rape in war, rather than problematising *rape*, and discounts the violence that the act threatens and achieves. Similarly, to say that Kunarac *did* succeed in taking away her virginity seems to misappropriate what is intended by the term virginity. There is an almost mystical suggestion that virginity can be 'taken away', rather than given away through choice. Witness FWS-191 has still yet to choose to have a sexual relationship with another so could still consider herself a virgin. Satka, a 20-year-old Bosnian Muslim woman, also shares the discourse of rape as a sexual act, when there is little to suggest that rape is a sexual act. Satka said she despised the man who raped her 'because he had no feeling for me. I wasn't his girlfriend. It was savagery'. 'I was an honest girl. I was a virgin. I gave it to someone who didn't deserve it. Someone whom I love deserves it. But not a savage.'⁶⁹

The acts that are described demonstrate that violent aspects of the act of rape are discounted in favour of the aspects that are sexual and personal. That acts of violence

⁶⁸ ICTY, *Prosecutor v. Kunarac, et al.*, par. 724, italics added

⁶⁹ Satka, cited in Gutman, *Witness to Genocide*, p. 72

against men are rarely fitted within a discourse of rape in war demonstrates the need for the sexual to be socially constructed before rape can be identified (and that it is predominantly the female who is associated with the sexual and the personal). I have shown that acts of rape would strategically be better conceived of within, and punished by, the requirements of torture. This would not require external parties to construct sexuality in relation to their own discourses. This should be done with particular reference to victims of rape, allowing the victims to choose and describe their own discourses about the acts that they have suffered.

CHAPTER 8

BURMA

General Ne Win stood down as President of Burma and Chairman of the Burma Socialist Programme Party in July 1988. He had held the position since 1962, when he deposed Prime Minister U Nu in a coup. Decades of repression and isolationism had sent the 'rice bowl of Asia' into a period of economic decline. General Ne Win handed power to Sein Lwin. During the uprising in Rangoon in March 1988, the *Lon Htein* (a paramilitary police force) had beaten and shot students, and raped female students. Sein Lwin was commonly known to be directly involved in the killings and rapes, and was forced to resign after 18 days in office. He was replaced by an ex-army-officer, Dr Maung Maung, another person close to Ne Win.¹ It was following this period the State Law and Order Restoration Council (SLORC)² seized power in September 1998.

SLORC seized power in Burma by a military coup. It was announced on state radio that a new government under General Saw Maung was to be formed.³ A curfew of indefinite duration was imposed. SLORC was made up entirely from people who had previously been in power.⁴ SLORC said that it would carry out Ne Win's promise of elections: a referendum was to be held to choose whether the political system should be single- or multi-party, and that 'if the choice is for a multi-party system, we must hold elections for a new parliament'.⁵ The elections were called in 1990, which the National League for Democracy won by a large majority: 392 of the 485 seats.⁶ SLORC declared the results void and re-imposed repressive military rule.

¹ Pascal Khoo Thwe, *From the Land of Green Ghosts: A Burmese Odyssey* (London: Flamingo, 2003), pp. 161–2

² SLORC has become known as the State Peace and Development Council since November 1997; however, it is still commonly referred to as SLORC (Apple, *School for Rape*, p. 9). SLORC changed the name of the country from *Union of Burma* to *Union of Myanmar* on 18 September 1988 (Brenda Belak, *Gathering Strength: Women from Burma on their Rights* (Chiang Mai: Images Asia, 2002), p. 7). The country is referred to as *Burma* throughout this thesis.

³ Thwe, *Land of Green Ghosts*, p. 177

⁴ *Ibid.*, p. 176

⁵ General Ne Win, cited in Thwe, *Land of Green Ghosts*, p. 160

⁶ Indai Lourdes Sajor & Judy Taguiwalo, *Report on the Training Needs. Analysis of the Capability and Response of Novib Partners in Burma in Addressing Violence Against Women in War and Armed Conflict Situations* (Philippines: Asian Centre for Women's Human Rights (ASCENT), 1999), p. 8

SLORC employs the *pyithu Tatmadaw* – the people’s army – against ethnic insurgent fighters within Burma.⁷ Billboards in Burma carried government slogans such as ‘Sweat and blood – that is the *Tatmadaw*’.⁸ The *Tatmadaw* are known to commit rape. Belak states that sexual violence is not ‘a new phenomenon in Burma, where it has been reported for decades and is commonly used as a form of torture’.⁹ Women from six to 80 years old have been raped, including being gang raped, by soldiers in front of their families.¹⁰ Pollock states that a researcher at an army camp in the north of Thailand reported how soldiers referred to gang rape with relish and pride.¹¹ The violence can involve having objects such as knives and guns inserted into vaginas; women have also been mutilated, having had breasts, lips and other body parts cut off.¹² Some women are also forced to work for the Burmese army as porters, who might rape and kill them.¹³

There have been many (posthumous) reports of rape from Rwanda and Bosnia due to the media prominence that the genocide and the ethnic cleansing received. As a result, testimony from people who had been raped was accessible. This is much less the case with Burma. Although there has been conflict within Burma for decades, this has never achieved a great deal of international or media attention. As such, obtaining testimony was more difficult. The testimony that I have obtained was collected by small Non-Governmental Organisations working in areas around Burma. Within the testimonies there can still be identified different discourses of rape in war, and the emerging hegemonic discourse of rape as sexual violence is also present, if much less prevalent.

For similar reasons, there are no accurate figures for the number of rapes that have occurred in Burma. The number of rapes in the former Yugoslavia and Rwanda have been estimated at approximately .08 percent and 3.3 percent respectively of the

⁷ Apple, *School for Rape*, p. 9.

⁸ Thwe, *Land of Green Ghosts*, p. 112

⁹ Belak, *Gathering Strength*, p. 61

¹⁰ Belak, *Gathering Strength*, p. 62

¹¹ Jackie Pollock, *Violence Against Women: Thailand Country Report 2000* (delivered: Cambodia, 17–19 Jan 2000), p. 3

¹² Belak, *Gathering Strength*, p. 62

¹³ Soe Soe Wai, ‘Engagement and aid: my point of view’, Thanakha Team, *Burma: More Women’s Voices* (Bangkok: ALTSEAN-Burma, 2000), p. 96; Migrant Action Program, *Seeking Safety; Meeting Violence; Migrant and Refugee Women’s Journey from Burma* (Chiang Mai: Migrant Action Program, 2001), p. 3

countries' total populations. Applying those percentages to Burma would indicate somewhere between 36,800 and 1,500,000 rapes.¹⁴ The figures that demonstrated the numbers of rapes in the Rwandan and former Yugoslavian conflicts are very rough estimates. The above figures for the number of rapes in Burma is an estimate based on estimates. Care is needed when figures this far removed from their source are used to prove something. It does not prove that there are high incidents of rape being committed. But there is enough testimony of rape to identify the discourses of rape in the civil war in Burma. I examine the discourse of rape as marriage, or rather as a promise to marriage. This discourse is specific to Burma because of the places of women and the *Tatmadaw* in Burman society. Rape as marriage is used to assimilate ethnic minorities within the Burmese majority. I then examine how rape is used much more specifically as violence to punish both ethnic and political difference. Finally I examine the place of law to punish rape in Burma, and signs of the emerging hegemonic discourse of rape as a sexual violence.

Rape, marriage and assimilation

In Burma, a strong emphasis is placed on the preference of marriage. This is partly because marriage is seen as the correct thing to do. Women who do not marry will be suspected of having something wrong with them: 'In Kachin culture, they think that maybe there is an evil spirit in her or something'.¹⁵ Additionally, sex is seen as a part of marriage, not something that is done outside of marriage. Interviewee CINT 8 stated: 'If you have sex before marriage and your family finds out, they will force you to get married'.¹⁶

Although sex is considered to be strongly related to marriage, rape is also considered to be strongly related to sex (as will be seen in this chapter). Interviewee CINT 18 stated that, 'This encourages the practice of forced marriage between women and the men who have raped them'.¹⁷ A Migrant Action Program workshop on different types of violence identified that some women had to endure 'forced

¹⁴ Apple, *School for Rape*, p. 41

¹⁵ Belak, *Gathering Strength*, p. 45

¹⁶ CINT 8, cited in Belak, *Gathering Strength*, p. 52

¹⁷ Belak, *Gathering Strength*, p. 77

marriage to [a] rapist'.¹⁸ (In such a context, domestic violence is also an issue.¹⁹) If a man rapes a woman then there is a strong expectation that they will marry. For example, a 19-year-old woman from Wan Paw, Shan State, was raped on 9 April 2000 in Murng Yawng township. She was raped by Private Kyaw San, and knew him because he bought food from her stall in front of her house. The woman's father and the village headman reported the rape to Kyaw San's commander. No action was taken by the commander, who said: 'It happened because my soldier loves your daughter. If you are afraid of losing face, isn't it good to let your daughter become Kyaw San's wife?'²⁰

As well as rape being considered to constitute an intent to marry, marriage is also considered to be the solution to rape. As a result, 'punishments' for rape also involve marriage. (Or from the point of view of the victim, the compensation for rape is increased rape.) Authorities in Burma sometimes demand that the rapist marries his victim, or that he pays her compensation for failure to fulfil his 'pledge' to join in legal union with her.²¹ Interviewee CINT 142 stated: 'In my community, if a rapist is identified and caught, he will be brought before the village elders and questioned. He will either be forced to marry the woman or to pay a fine.'²² Similarly, interviewee CINT 150 stated: 'If a woman was raped or sexually assaulted, she'd have to report it. The Burmese police would get the offender and try to get him to accept responsibility for the woman, marry her and live with her. If he doesn't accept responsibility then he has to pay a fine'.²³

A girl was raped by a Thai soldier in March 2002 outside a Karenni camp in Mae Hong Son, Thailand, which borders Burma. The refugee camp decided to follow the traditional Karenni approach: the rape victim would receive 20,000 baht and one cow. The cow was also a reference to marriage: the gift of cows that is made from a man to a woman when they marry. This example also references other discourses of rape in war. The rape victim's father thought she was to blame for the rape for having

¹⁸ MAP, *Seeking Safety; Meeting Violence*, p. 3

¹⁹ *Ibid.*, p. 3

²⁰ Belak, *Gathering Strength*, p. 77

²¹ *Ibid.*, p. 76

²² CINT 142, cited in Belak, *Gathering Strength*, p. 76

²³ CINT 150, cited in Belak, *Gathering Strength*, p. 76

left the camp at all. The rape victim's brother thought that she should commit suicide, because she had been spoiled.²⁴

A MAP workshop on violence identified that women were 'isolated after rape, because the community stigmatises and blames women who have been raped'.²⁵ A woman who loses her virginity outside of wedlock, engages in sexual activities that are considered inappropriate, or does sex work is described as *pyetseedeh*, meaning spoiled, ruined or damaged.²⁶ This term only applies to women, and there are no similar terms used – or needed – for men. These conditions still apply to women if they have been raped:

When a woman is raped, sometimes instead of having pity on her, the neighbours look down on the woman and say that her character is damaged, and people try to avoid dealing with her. Really, if she has been raped, other women should have more sympathy towards her, because she is oppressed. But some women believe that if they deal with someone who has been raped, then their reputations will also suffer.²⁷

Women feel that if others know they have been raped, they will be looked down upon and despised by other people.²⁸ Interviewee CINT 84 said: 'If my daughter has some "bad stories" in her background and other people know that, it may cause her trouble when she marries. So [women] conceal all the things'.²⁹ There have been reports that some women who have been raped sometimes do sex work after they have been raped 'because they are already "spoiled" in their own eyes and those of the community'.³⁰

Thwe claims that it is not virginity that is crucial so much as cleanliness. 'The Padaung took great pains to find a "clean" partner. Ideally, cleanness included virginity, but the tribe had never insisted upon that before it came under the influence of the Church.'³¹ What this shows is that although virginity is linked to cleanliness in Burman discourse, they are not identical. '[A] Shan girl could take several lovers and still preserve her good name. The only absolute taboo for all of us was having an illegitimate child...'³²

²⁴ Interview with Migrant Action Program staff (Apr. 2002)

²⁵ MAP, *Seeking Safety; Meeting Violence*, p. 3

²⁶ Belak, *Gathering Strength*, p. 52

²⁷ CINT 84, cited in Belak, *Gathering Strength*, p. 74

²⁸ Belak, *Gathering Strength*, 75

²⁹ CINT 84, cited in Belak, *Gathering Strength*, p. 52

³⁰ Belak, *Gathering Strength*, p. 72

³¹ Thwe, *Land of Green Ghosts*, p. 39

³² *Ibid.*, p. 40

The discourses of rape that claim that a raped woman is spoiled leaves women with little choice about whether to marry their rapist. Because of the lower position of women in society, it is unlikely that they will be the ones who get to choose. For example, men from refugee and exile communities have said that they ‘wanted to give women some of the rights they desire, but not all of them’.³³ This demonstrates that women are not considered equal. Although women are defined as equal under Burmese law, women still suffer from patriarchal rule.

Traditional Burmese sayings include, ‘Husband is god, son is master’, ‘The hen’s crow will never bring the dawn’, and ‘A male dog is higher in status than a woman’.³⁴ British colonialism reinforced this conservative side of traditional Burmese beliefs on the position of women.³⁵ Both men and women are thought to possess *pon*, meaning power or dignity. Women are meant to possess *pon* in their hair. Women’s beauty is traditionally symbolised by their elaborate hairstyles.³⁶ Men’s *pon* depends upon their strength or ability,³⁷ and women are capable of polluting the *pon* of men.³⁸ But only women can lose this dignity if they are raped. This is very similar to the discourse of rape in war as a sexual violence that removes something of the female’s person. This discourse is considered in the final section of this chapter.

Another part of women in Burma’s lower position is demonstrated by the fact that women are used as forced entertainment. Interviewee CINT 89 stated:

The soldiers order the head of the village to collect the beautiful young girls and send them to the army camp. If the villages don’t comply, they will be punished. The girls have to sing and give the soldiers massage, and entertain them with singing and dancing and that sort of thing. If a soldier likes a young woman, sometimes he will keep her there and rape her... I knew of one girl who was raped by soldiers and I was afraid it might happen to me. So I left and came to India.³⁹

Belak states that in some areas it is believed that marrying a *Tatmadaw* soldier eliminates the risk of rape and other violent acts.⁴⁰

³³ Belak, *Gathering Strength*, p. 9

³⁴ *Ibid.*, pp. 33–4

³⁵ Sajor & Taguiwalo, *Novib Partners in Burma*, pp. 21–2

³⁶ Belak, *Gathering Strength*, p. 56: 4

³⁷ *Ibid.*

³⁸ Kalaya Nee, ‘Cultural constraint or political restriction’, Thanakha Team, *Burma: More Women’s Voices*, p. 66

³⁹ CINT 89, cited in Belak, *Gathering Strength*, p. 66

⁴⁰ Belak, *Gathering Strength*, p. 77

For government soldiers, prestige is earned by killing a rebel, marrying a rebel's daughter or raping the women in rebel communities.⁴¹

The acts of rape discussed have two possible effects. If the people involved do not marry after then the woman will be considered damaged or spoiled. She may not marry, and may not have children. If they do marry then any children they have will be the ethnicity of the father, that is, Burmese, and Burmese-speakers are usually considered to be Burmans irrespective of their ethnic background.⁴² Either way, the result is a contribution to the ethnic cleansing of Burma. '[R]ape must also be considered as a method for diluting the blood of ethnic minorities and preventing women from bearing children "for" their own ethnic group.'⁴³ One lady interviewed by Apple recalls a letter from the SLORC to the *Tatmadaw* that stated 'your blood must be left in the village'.⁴⁴

The letter is evidence to suggest that this policy of ethnic cleansing through rape, marriage and assimilation is supported by the SLORC. The *Tatmadaw* offers monetary rewards for these marriages.⁴⁵ The government rewards the Burmese with money for marrying Kachin women and getting them pregnant, with different amounts for chiefs' daughters, educated girls, and ordinary girls. These policies are also in place in Karen State.⁴⁶ There are also promotions in rank available depending on the social standing of the woman who is married, and hence prevented from reproducing. One interviewee told how a Burmese soldier who is a private could be:

- promoted to lance corporal if he marries an uneducated Chin woman,
- promoted to sergeant clerk if he marries a Chin woman who has passed the 10th standard (an educational award),
- promoted to second lieutenant if her marries a post-graduate Chin woman,
- promoted further if he forces his wife to practice Buddhism.⁴⁷

The policy of ethnic cleansing through rape, marriage and assimilation is recognised by its targets. Interviewee CINT 199 claimed, 'This is just a genocide using

⁴¹ Sajor & Taguiwalo, *Novib Partners in Burma*, p. 16

⁴² Belak, *Gathering Strength*, p. 78

⁴³ Apple, *School for Rape*, p. 112: 100

⁴⁴ *Ibid.*, p. 44.

⁴⁵ *Ibid.*, p. 96

⁴⁶ Belak, *Gathering Strength*, p. 78

⁴⁷ *Ibid.*

intermarriage', and another interviewee, CINT 110, said: 'The Burmese government is trying to wash out the Kachin'.⁴⁸ It is possible to resist the rapes:

The Burmese soldiers came to my house, and they tried to rape me. They wanted to sleep with me, and they asked me for my love. They did this to all the women. If they came, we showed them our knives. We didn't let them sleep with us...⁴⁹

I will now consider how masculinities function to construct the identity of the *Tatmadaw's* recruits, and create the conditions of possibility for them to rape women. In societies that are highly bound, and with highly pervasive masculinities, the military will be more closely associated with the construction of masculinities. Military life functions as a 'total institution'⁵⁰ shaping and moulding masculinities to those internal to the system. The United Nations Development Programme has reported that Burma's level of military spending (relative to health and education) exceeds that of all Asian countries except North Korea.⁵¹

The long running nature of the conflict means that men are trained from a young age for this specific conflict. (In Bosnia and Rwanda the conflicts were relatively recent and the discourses of rape relied on more general cultural contexts for their logic.) The men are recruited when they are still teenagers, in a society of masculinity that considers the *Tatmadaw* a respectable job for young men. Once they are a member, they are allowed virtually no contact with their outside world.

By limiting the community of people with whom the soldier associates, the *Tatmadaw* essentially controls his world. By restricting this world to the smallest possible circle, a company within a battalion, the *Tatmadaw* is able to reconstruct civilisation for the soldier so that he can no longer imagine an alternative ideology.⁵²

Left with few outlets to express their identities – letters from family, friends and girlfriends are deliberately withheld – rape becomes an acceptable form of expressing masculinity. The *Tatmadaw* creates a total institution of violent masculinity, where

⁴⁸ CINT 110 & CINT 199, cited in Belak, *Gathering Strength*, p. 78

⁴⁹ CINT 271, cited in Belak, *Gathering Strength*, p. 57

⁵⁰ Erving Goffman, cited in David Morgan, 'Theatre of war: Combat, the Military, and Masculinities', Harry Brod (ed.), *The Making of Masculinities: The New Men's Studies* (Winchester: Allen & Unwin, 1987), p. 169

⁵¹ Apple, *School for Rape*, p. 23

⁵² *Ibid.*, p. 94.

soldiers are taught that their masculinity will determine victory over the enemy. Masculine victory is defined as fighting, dominating and committing violence.⁵³

This institutionalised indifference toward the soldiers' physical well-being is easily transformed into a generalised attitude of disrespect for others' bodily integrity. In its most extreme form, the ultimate manifestation of this attitude is rape.⁵⁴

Masculinities do not create coherent identities for men. Instead, they create feelings of insecurity from the competing and sometimes contradictory demands. '[S]tress in men's lives is caused, not by the individual's failure to socialise properly as a male..., but by the contradictory demands of the male sex role itself.'⁵⁵ Some of the *Tatmadaw's* recruits see rape as a chance to win the affections of women. Some soldiers place metal balls in their penises under that belief that this increases women's sexual pleasure.⁵⁶ Through this, they hope to win the woman they rape, and hence marry her. The power of masculinities is reinforced by a society that *formally* recognises and emphasises the importance of women's rights, but treats women as lower members of society as seen above.

The relationships that occur between men and other men and women rely upon discourses of 'hegemonic masculinity' and 'emphasised femininity'.⁵⁷ Although there are many forms of masculinity and ways of being masculine, hegemonic masculinity is that which is dominant and creates competing and sometimes contradictory demands on men to behave *like* men. Porter claims that it is not hegemonic man who falls prey to the discourses of rape, but rather men who are unable to live up to this simulacrum. They must find another way of forming their masculinity, and this can be through rape. 'Rapists are thus the waste of patriarchy, but they are its wayward sons not its shock troops; not its life-blood but a diseased excrescence.'⁵⁸ Brod also takes the view that rapists have failed to adjust to the hegemonic masculine discourse. Rape is therefore the work of men who are not-yet-men. Violent men are not deviants or *nonconformists*, rather they are '*overconformists*, men who have responded all too fully to a particular aspect of male socialisation'.⁵⁹ This is the intent behind the

⁵³ *Ibid.*, p. 15

⁵⁴ *Ibid.*, p. 67

⁵⁵ Brod, 'The case for men's studies', p. 53

⁵⁶ Apple, *School for Rape*, p. 44.

⁵⁷ R. W. Connell, *Gender and Power: society, the person and sexual politics* (Cambridge: Polity Press, 1987), pp. 180-6

⁵⁸ Porter, 'Rape', p. 235

⁵⁹ Brod, 'The case for men's studies', p. 51.

training of young men for the *Tatmadaw*, so that they over conform to the violent environment they are placed in. The need to train young men as rapists demonstrates that rape is not the natural, physical urge that it was claimed to be by the Defences of Akayesu, and Kunarac, Kovac and Vukovic.

The belief in ethnic minority communities of the relationships between rape, sex and marriage demonstrates a discourse of rape in war not found in the other case studies. Marriage was not related to rape in Bosnia. Although marriage was mentioned in testimonies from Rwanda, this was as a euphemism for rape and imprisonment. In Burma we see examples where marriage as the result of rape is accepted as rape by both the rapist, and the rape victim's community.

Punishing ethnic and political difference

Alan Smith has likened gauging the situation in Burma to Kremlinology. Burma has a population of approximately 50 million people; approximately seventy per cent of the population is rural.⁶⁰ There are over 20 major ethnic groups, and over 40 other ethnic groups, with the government recognising 135 linguistic groups. There are eight main ethnic groups: Burmese, Shan, Karen, Kachin, Kayah, Chin, Mon and Arakanese. Burmese account for approximately 65 per cent of the population, with Shan around 10 per cent and Karen around seven per cent. All of the other groups are less than two per cent of the population.⁶¹ The Burmese are the majority group; the Burmans are all the peoples of Burma.⁶²

Despite the Burmese constituting approximately two thirds of the population and no other ethnic group making up more than 10 per cent of the population, the SLORC is still threatened by ethnic claims for independence and political claims for democracy. In addition to the attempts to erase the minorities in Burma through rape, marriage and assimilation, there are also attempts to instil fear in the minorities. Rape is also used to this end.

⁶⁰ Alan Smith, 'Political, economic and social development of the neighbouring country', *Burmese Refugees Conference* (1 Apr. 2002), Holiday Garden Hotel, Chiang Mai, Thailand

⁶¹ Ying Cherry, 'Towards national reconciliation', Thanakha Team, *Burma: More Women's Voices*, pp. 102–3

⁶² Belak, *Gathering Strength*, p. 7; Apple, *School for Rape*, p. 20; Thwe, *Land of Green Ghosts*

The Shan are the largest minority in Burma. It is estimated that 100,000 Shan are hiding in irrigated fields, fruit plantations, construction sites and warehouses.⁶³ Shan refugees are technically Internally Displaced Persons/People, who have been fleeing the military offensives against the Shan State Army, which reformed in 1996. On 30 March 1997, SLORC troops raped and then shot dead a 12-year-old girl while she was taking hay to cattle in a field near her village, Ho Pung, Lai Kha township. Her relatives requested permission to bury her body; the SLORC troops used the rape as a warning of punishment, saying: '*She must be kept like this as an example for you people of Shan State to see. If you bury her you must die with her.*'⁶⁴

The Karen are the second largest minority in Burma, and are variously Buddhist, Buddhist-animist and Christian. Since 1948, they have been fighting for an independent homeland along the Thai-Burmese border, through the Karen National Union and the Karen National Liberation Army. This area between the Salween river and the border of Thailand is known as the 'Karenni Liberated Zone', and has been defended from the Burmese army for over 25 years.⁶⁵

Since the 1970s the SLORC has followed its Four Cuts policy. This is targeted at villages suspected of colluding with ethnic armies, and aims to cut supplies of food, funds, intelligence and recruits, with the goal being relocation of the village.⁶⁶ Refugees in camps on the Thai border tripled between 1990 and 1992, as Mon and Karenni villagers fled together for the first time. As of 1998 there was estimated to be between 100,000 and 200,000 internally displaced persons in Karen State and Tenasserim Division.⁶⁷ In 2000 there were over 120,000 refugees in 11 Thai-Burma Border Camps.⁶⁸ There were also over 400,000 migrant workers from Burma registered in Thailand.⁶⁹

In 1997 SPDC troops launched an offensive in several areas of Burma's eastern border to defeat the Karen National Union army. There were numerous incidents of rape documented during the fighting. Twelve women were captured and

⁶³ Friends Without Borders, *Taking Shelter under Trees: Refugee Protection and Sustainable Forest Management* (Chiang Mai: Friends Without Borders, 2001), p. 16

⁶⁴ Belak, *Gathering Strength*, p. 63, italics added

⁶⁵ Thwe, *Land of Green Ghosts*, p. 184

⁶⁶ Belak, *Gathering Strength*, p. 60

⁶⁷ *Ibid.*, p. 60

⁶⁸ Friends Without Borders, *Taking Shelter under Trees*, p. 16

⁶⁹ MAP, *Seeking Safety; Meeting Violence*, p. 4

raped by SLORC soldiers in February 1997 in Kaneh Khon. One 25-year-old, Naw Sei Phaw, was raped by three soldiers in front of her husband and family and then knifed to death. In Phaung Daw village, a woman was gang-raped in front of her husband and father until she lost consciousness and died. (The husband and father were then beaten to death.) At least 10 young women from Ka Nel Khaw village were gang-raped at Ta Mae Hta base, as reported by one woman who escaped.⁷⁰ In the Karenni State, women – including pregnant women – were ‘raped and disfigured, often bayoneted whether they had resisted or not’;⁷¹ some were crippled, mutilated or killed.

The violence of the *Tatmadaw*’s actions was also reflected in their language. Thwe states that when the *Tatmadaw* called enemies ‘sons of my fucking’, they meant that ‘they were superior to us – almost stern fathers and elders’.⁷² Thwe also recounts when he bugged the *Tatmadaw*’s communication line and eavesdropped on their conversations:

They were exchanging angry words and insults, mixed with ritual banter, regiment to regiment.

‘Come in, Nagah [dragon]. Galdon’s [Garuda, a creature of Burmese mythology, half man and half bird] speaking. Come in Nagah. Where the hell are you? Still raping the women and burning the villages? Could you leave that off for a bit and come in? Are you there, rapists? Over.’

‘Nagah, speaking. We’re doing our fucking best, motherfuckers!’⁷³

When asked why they feel so strong a need for democracy, the least political will answer: ‘We just want to be able to go about our own business freely and peacefully, not doing anybody harm, just earning a decent living without anxiety and fear.’ People do not, as the Burmese ‘democracy songs’ put it, want to be mere ‘rice-eating robots.’⁷⁴

Aung San Suu Kyi’s National League for Democracy won the 1990 election that led to the re-imposition of military rule. Rebels who had been fighting for independence from Burma came to see her as their only chance of democratic rule, and refer to her as ‘The Lady’.⁷⁵ She has been held under house arrest at various periods for several

⁷⁰ Belak, *Gathering Strength*, p. 62

⁷¹ Thwe, *Land of Green Ghosts*, p. 187

⁷² *Ibid.*, p. 229

⁷³ *Ibid.*, p. 240

⁷⁴ Aung San Suu Kyi, cited in Sunil Khilnani, *The Idea of India* (London: Penguin, 1997), p. 204

⁷⁵ Luke Harding, ‘The Burma star’, *Observer* (5 May 2002), p. 27

years, and when released her freedom of movement is still heavily restricted. Her marriage to a foreigner is considered a 'betrayal' to her country as she 'has given her body to a non-Burmese'.⁷⁶ Aung San Suu Kyi receives verbal sexual abuse at public events for her westernisation, with the SLORC describing her as a 'foreign stooge' and a 'genocidal prostitute'.⁷⁷

In addition to punishing ethnic differences, the *Tatmadaw* also punishes political differences: rape is used to punish women who hold political opinions that are different to the regime. Moe, a friend of Pascal Khoo Thwe, was put in prison in March 1998 after coming to the attention of the secret police. Once released, she recounted what had happened to her:

They hit me about the head with sticks, and whipped me with canes. Before they let me go, three officers came into my cell and kicked me about like a football, from three sides. I was semi-conscious when they all raped me in turn. They laughed, and said: 'Remember, this is what you will get if you ask for "democracy" and fucking freedom'.⁷⁸

Two weeks later Moe vanished, and her mother was informed that Moe had died of natural causes. In another instance, five women were captured and detained on 17 September 1997. Their husbands were involved with the Myeik-Dawei United Front, and had gone to attend ceasefire talks with SLORC representatives in Taung Byauk village. The men were ambushed and killed, and the women were gang-raped and imprisoned in Tavoy prison.⁷⁹

Such punishing of political difference with rape has the desired effect. Interviewee CINT 286 stated: 'Women don't dare [take part in politics] because if the government arrests them, soldiers rape them. When they arrest men, they arrest and punish them. Women, they rape'.⁸⁰ Similarly, interviewee CINT 77 said:

Actually parents are more worried that their daughters will get involved in politics. They can't imagine how women and girls might be treated if they're arrested. They really fear for their daughters being sexually harassed by men or raped by authorities, as there have been so many stories about these cases in jails and prisons. It doesn't matter so much for boys, because it's not important whether men are virgins or not, but *for girls, it's their whole lives*.⁸¹

⁷⁶ Sajor & Taguiwalo, *Novib Partners in Burma*, pp. 21–2

⁷⁷ Harding, 'Burma star', p. 27

⁷⁸ Thwe, *Land of Green Ghosts*, p. 87

⁷⁹ Belak, *Gathering Strength*, p. 62

⁸⁰ CINT 286, cited in Belak, *Gathering Strength*, p. 282

⁸¹ CINT 77, cited in Belak, *Gathering Strength*, p. 282, italics added

This makes a clear claim that rape is worse for women. This is based on the fact that, as seen earlier, virginity is considered to be an important virtue for women in Burma. Virginity is not an issue for men, but it is interesting that rape is mentioned here as a punishment for men. But this is not always the case: ‘Women are more afraid than men, because if the camp is attacked again, we are worried that the women will be captured and raped. *Nobody can rape men.*’⁸²

Rape and law

Burmese law identifies three types of law under which sexual violence can be punished: (1) assault with intent to outrage modesty, (2) rape, and (3) breach of promise or abduction to compel marriage or cause defilement.⁸³ This further explains the use of rape as a means to enforce marriage, and hence dilute ethnic minorities. Rape is considered to be a ‘promise or abduction to compel marriage’. In Burmese law, the act only becomes rape when it is not followed by marriage; that is, when the promise is breached.

Although the laws of Burma do refer in a gender-neutral way to the rights of the Burmans, this does not translate into practice for men or women. Between 8 and 12 October 1999, two female students – 17 and 18 years old – were detained and raped by Lieutenant Colonel Htun Sein, commander of the local Light Infantry Battalion 515. The women reported what happened to their community leaders, but were told by school authorities that it would be better not to take action against Htun Sein because there was little chance of winning any possible case.⁸⁴

One interviewee reported that a girl in her early teens was gang-raped by five or six soldiers in Arakan State, and later died. The group that knew the girl were told: ‘Just take this money for the funeral and sign here where it says “Thank you for your assistance”.’⁸⁵ In addition to the culture not providing women with much protection, the law of Burma does not provide much protection from rape. In fact, the law even

⁸² CINT 22, cited in Belak, *Gathering Strength*, p. 69, italics added

⁸³ Belak, *Gathering Strength*, p. 74

⁸⁴ *Ibid.*, p. 64

⁸⁵ *Ibid.*, p. 75

contributes to rape by making marriage an acceptable outcome of rape (and so preventing the rape from being rape).

Law is too much of an abstract concept for many Burmans, who do not have the necessary educational backgrounds to understand and employ laws for their own benefit.

[V]ery few of the women we spoke with had any experience or knowledge of whether women enjoyed equal rights under the law, because the whole notion of appealing to law was unknown to them. Concepts of women's human rights under international law were even more foreign to them.⁸⁶

But there are human rights groups that try to employ these laws, and frame them in an international context. There is no tribunal to deal with the crimes that occur in Burma. But there are attempts by human rights groups to frame these crimes within a similar discourse; that is, as a discourse of rape as sexual violence, where the sexual is equivalent to female.

For example, Migrant Action Program's Worksheet 12, *Refugee Women*, states:

In addition to all the protection problems refugees experience, women need *special protection that reflects their gender*: protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.⁸⁷

It is important to draw attention to these types of abuse so that they can be recognised and prevented; however, the answer does not lie in gender-specific laws and rights. Both men and women can be manipulated, physically and sexually abused and exploited, and discriminated against. These abuses can take effect in different ways in different cultures, and for different genders. But it is not the purpose of law to encode the different ways in which this can happen.

Women Exchange, a group of Migrant Action Program, produced a set of guidelines. Worksheet 5, *Sexual Rights*, states:

Recognising sexual rights will help ensure that women and girls are not subject to: ... Physical, sexual and psychological violence in the community or work place, including sexual abuse, sexual harassment and intimidation, and rape; ... Systematic rape as a weapon of war. ... *Definition and recognition of sexual rights are necessary to prevent* sexual violence, coercion and discrimination across the world. Health,

⁸⁶ *Ibid.*, p. 13

⁸⁷ Women Exchange, *Guidelines*, p. 44, italics added

education and legal systems can promote sexual rights for all the world's women and men.⁸⁸

There is a firm belief that promoting the language of rights can help to protect people, and help people to protect themselves. It would allow people to access a language to describe what they think has been done to them. Developing this logic, MAP's Worksheet 13, *Rape*, encourages groups to discuss what they could mean by *rape*:

Ask the following questions:

Is forcing your wife to have sex rape?

Is dragging a stranger into a dark alley and forcing her to have sex rape?

Is putting an object in a woman's vagina against her consent rape?

Is forcing your girlfriend to have sex rape?

Can a man rape a sex-worker?

Is having sex with your wife while she is drunk and asleep rape?

Is having sex with a consenting 15-year-old rape?

If the man forces a woman to have sex but agrees to use a condom, is it rape?

If a man threatens to hit a woman to have sex, but does not hit her and has sex is this rape?⁸⁹

By identifying such acts as crimes, people can report what has happened to them, and hope to prevent further acts. But there is the additional effect of promoting the hegemonic discourse of rape in war as a broad range of possible sexual crimes that happen to women, a discourse identified throughout the other case studies.

MAP subsequently held workshops to encourage women to talk about these issues. A number of two-day workshops, *Know Your Rights, Know the Law*, were held in five different locations along the Thai-Burma border. The workshops 'explored local laws about rape, violence, domestic violence and conventions covering sexual and gender-based violence'.⁹⁰ Each workshop was attended by 15 to 25 women of different ethnic backgrounds including Burman, Chin, Kachin, Karen, Karenni, Lahu, Mon, Pa-O, Shan and Tavoy. The age range was between 16 and 50 years; with the majority of women in their twenties.⁹¹ The women outlined aspects of violence from being in Burma. MAP now produces a radio programme: 'Map's radio

⁸⁸ *Ibid.*, p. 22, italics added

⁸⁹ *Ibid.*, p. 51

⁹⁰ MAP, *Seeking Safety; Meeting Violence*, p. 2

⁹¹ *Ibid.*, p. 2

programme volunteers are now also writing scripts about domestic violence, rape and abuse.⁹²

'[E]xposing human rights violations in general and *women's abuses in particular* will erode the regime's militaristic rule.'⁹³ It is unknown how much the revelation of human rights violations will delegitimise the current rule in Burma. But there is a clear assumption here that 'women's abuses', are particularly effective at gaining attention, because of their implicit link with the personal. It is such claims by international bodies that are constructing the emerging hegemonic discourse of rape as sexual violence as the common sense.

Concluding remarks

The Myanmar culture and religion strongly influence the mentality and behaviour of men and women alike. The teachings of Lord Buddha that committing crimes like rape and sexual violence are of great sin serves as a protection of women and children. Therefore there are few reported cases of rape and sexual assault in Myanmar.⁹⁴

Burma's report to the Convention on the Elimination of All Forms of Discrimination against Women claimed made a statement of incredulity that rape could happen in Burma because of the type of country that it is. This is similar to the defence against rape made by the Serbs. The government also falsely accused others of the acts they were committing, by warning against enemies within Burma: 'the jungles almost on the edge of the town [were] populated by rebels who, we were told, kidnapped young women...'.⁹⁵ Interviewee CINT 190 reported a male doctor working in a Burmese refugee camp in Bangladesh as saying:

In the camp, there are very few cases of rape. Women have complained to get compensation, but because the procedure is long, they usually retract their charges. *If the rape case was legitimate, there would be no complaints, and the families would arrange a marriage.* If this were true they would go to the camp leaders, not to the UNHCR. But some women are raped by villagers.⁹⁶

It is examples such as these, where rape is not taken seriously, that led to the Shan Human Rights Foundation (SHRF) producing a booklet in Burmese, compiling

⁹² Sajor & Taguiwalo, *Report on the Training Needs*, p. 32

⁹³ *Ibid.*, p. 10, italics added

⁹⁴ Union of Myanmar's *Report to CEDAW*, cited in Belak, *Gathering Strength*, p. 73

⁹⁵ Thwe, *Land of Green Ghosts*, p. 87

⁹⁶ Belak, *Gathering Strength*, p. 70, italics added

all the known rape cases committed by SLORC soldiers in the Shan State in 1998, and listing all the details available about the rapists. One thousand copies of the booklet were printed and distributed in and around Shan State. The booklet lists 67 cases of rape. The SHRF wanted these reports to be seen by the perpetrators. By publishing the reports in Burmese and including names, ranks and units of the rapists, there was a chance that they would be seen by those responsible. 'If the rapists realised that their actions were not going undocumented, this might prevent them from committing such crimes.'⁹⁷

While a positive step, this makes an assumption that men who commit rape are shamed by it, and ashamed of it. Although there is often assumed to be something shameful in the act of rape for the victim, this is much less the case for the perpetrators (at least by the perpetrators' own standards). Examples in this chapter demonstrate that many rapes occur with the support of the *Tatmadaw*, and can lead to a monetary reward or a promotion.

In Burma, rape is strongly linked with the sexual in the examples I have cited. Rape is considered to be a sexual act that is performed by men against women. But, despite rape also being considered a sexual act in examples from Rwanda and Bosnia, the discourse of rape in war as a sexual act in Burma is very specific to the culture in which it is constructed. Discourses of rape are flexible enough to allow people to describe numerous different acts as rape. Rape is used in Burma against ethnic minorities as a tool of assimilation. Rape acts as a promise of marriage, which is only punishable under Burmese law if the rapist does not then marry his victim. This is the result of women being seen as culturally lower, defined by their body's personal possession (or otherwise) of dignity or honour. It is also the result of men being trained in the *Tatmadaw* from a young age, and being made to believe in rape as a sexual act that will define them as a sexual man, and allow them to take a wife, an act encouraged by the SLORC.

Rape is also used in Burma as a tool of punishment. Rape acts as a tool of violence against both ethnic minorities and political opponents. It marks out differences, and remains as a threat for others who follow a similar ethnic or political course. It is for these reasons, among others, that I consider rape to strategically be

⁹⁷ Sajor & Taguiwalo, *Report on the Training Needs*, p. 9

better considered as a part of torture. Torture still allows many acts to be described as torture as a result of the acts' discursive implications, but it does not have the same *requirement* for the imposition of a sexual discourse. The sexual is strongly associated with the personal, and it is this that first led to rape being ignored, and has now led to rape being treated as a unique specifically sexual crime. Having problematised the intersection between the sexual and the violent, in the final chapter I examine the strategic possibility of reconceptualising rape in war as torture. The testimony from Karen women who were raped demonstrates this possibility. Interviewee CINT 85 identifies a tortuous intent to the *Tatmadaw*, and their use of rape to achieve these ends:

I think for torture, female students were mostly made to feel shameful. [The authorities] humiliate them..., women are vulnerable in a sexual way. For men it is physical pain – to hit them and beat them. For women, it is to take off their *longyis*.⁹⁸

⁹⁸ Belak, *Gathering Strength*, p. 282

CHAPTER 9

CONCLUSIONS

This thesis has shown that the commonly cited example of rape in war as a unified example does not hold. Rape has been contextualised in Bosnia, Burma and Rwanda, and has been shown to have multiple meanings in each. These meanings are not simply observed, but are imposed through language. Local and international influences on the discourses of rape have been analysed. Although I have identified and problematised multiple discourses of rape in war where there was assumed to be one, I have also identified an emerging hegemonic discourse. This is constructing as the common sense a discourse of rape as sexual violence, where *the sexual* is frequently privileged over *the violent*, and refers to (*generic*) *sexual violence against women* rather than (*specific*) *violence conducted in a sexual way*.

To identify the multiplicity of meanings in language, a post-positivist framework was used, specifically a discourse analysis informed by Foucault. Feminist IR and IR more generally can benefit from a more critical, less positivist framework. A Foucauldian critical discourse analysis does not allow for an extra discursive position from which to judge, and the multiple discourses of rape in war identified demonstrate that rape can have no single unified meaning. I have argued throughout that rape could strategically be better understood as torture within international law. By way of a conclusion I examine this argument and the need for its continual problematisation.

Multiple and hegemonic discourses of rape in war

For when men rape, as opposed to murder or beat up women, they effectively help themselves to a pre-existing set of symbolisms. So the question as to what rape means in our culture is still left standing. Unless, of course, the question of why men rape is not to be answered in terms of the behaviour of individuals at all.¹

¹ Tomascelli, 'Introduction', p. 13

The central question of this thesis is, can we identify the multiple discourses of rape in war, and is there an emerging hegemonic discourse of rape? I have identified multiple discourses of rape in war, and have also identified an emerging hegemonic discourse of rape as sexual violence. To structure my conclusions I will make reference to the themes and assumptions that I stated in the overview.

In my overview I stated five themes that constituted the substance and logic of my thesis. I will address these themes in turn. The first theme was the problematic nature of moving from *rape* to *sexual violence*, and my preference for retaining the term *rape*. The reason for a move to sexual violence is to extend the range of acts that can be included as rape (or rather, as sexual violence). The intention is to highlight the violence inherent in rape, but the result is an uncritical acceptance of the sexual elements of rape that acts as a reverse discourse to rape. My thesis has problematised rape and its intersection between the sexual and the violent. Rape at first referred to the non-consensual penetration of a woman's sexual organs by a man's sexual organs; that is, the penetration of the vagina by the penis. But sexual organs can then be extended to include the woman's anus, and then her mouth. The penetration of the mouth is not specifically sexual, but it is sexual for the man by the penetration with the penis. And once only one party has to construct the act as sexual then many acts can then be described as rape, such as the mutilation of the vagina with sticks. But at this point rape is a lot different to the meaning of non-consensual sexual penetration, and has the same meaning as *sexual violence*. Strategically it is preferable to maintain the term rape and extend the universe of its possible sexual interpretations than to introduce a new term.

The second theme was the problematic nature of the universal framework that is commonly used to study rape, and the need to better understand *rape* within local and cultural contexts. My thesis has contextualised and problematised the intersection between the *sexual* and the *violent*, and shown that different instances of rape are not different instances of the same event, but instead different instances of different events. The reasons behind the rapes are different, the way the rapes are carried out are different, and how the rapes are understood are different. Feminist IR rationalises rape exogenously, citing different examples of rape as examples of the same event; I have problematised this understanding. My original intention was to show that rape differed in different cultural contexts; however, I did not expect to find the degree to

which rape can differ within the same cultural context. This has been an additional benefit of my methodological approach. Taking a non-universalist approach as the starting point of an analysis of events in IR provides a more nuanced understanding. This is in-line with Foucault's attempts to expose the silences and differences within discourses.

As well as identifying multiple discourses of rape, my third theme was the use of a *critical* discourse analysis allowing me to critique these discourses without claiming that they are really there or necessary. My research has shown that there are clear differences between the rapes that occurred in the Rwandan genocide, the ethnic cleansing of Yugoslavia, and the civil war in Burma. In Rwanda, the discursive colonial constructions of Tutsi women as highly desirable allowed Hutu militias to conceive of Tutsi women as possessions worth possessing (in the short term). Furthermore, the patrilineal view of descent of children's ethnicity (enforced by colonial times) led to Tutsi women being killed after being raped, or being left so injured from the rapes that they could never have children. This was different to the former Yugoslavia. Although the same beliefs applied regarding patrilineal descent, the outcome of this was completely different. Women were raped with the intention of making them pregnant to have Serbian children (rather than to prevent them having their own children, as in Rwanda). This led to the raping of women being much more organised, with women being held in camps and raped until they were pregnant, and then held until an abortion was far too difficult. The same belief in patrilineal descent in Burma instead leads to the assimilation of ethnic minorities through rape, which then implies marriage. The multiple discourses of rape cannot be understood without reference to the local conditions of their emergence.

The fourth theme of my thesis was the emergence of a hegemonic discourse of *rape* as a specifically sexualised violence as the result of the increased international focus on rape in war since the 1990s. This discourse has built on and reinforced other definitions of rape-as-sexual-violence that were already in existence (see theme two). This expansion of the definition of rape to include almost any act of violence such that the term *rape* or *sexual violence* becomes almost meaningless is an interesting demonstration of the construction and effects of discourse. But this discourse of rape as sexual violence is being used to include almost any act of violence committed against a woman, where the woman is associated with the sexual and the personal.

This acts as a reverse discourse, and reproduces the discourses of rape in war as being dishonourable, degrading, humiliating and shameful for the woman raped. Rape comes to represent a metaphysical condition of absence as a result of the sexual, rather than a physical state resulting from violence. This is why the multiple discourses of rape in war should be problematised; it should be the victims of rape who choose the discourses that describe the act, and construct in what way, if any, it was sexual. This leads to the fifth theme.

My fifth and final theme was the strategic possibility of an international framework to understand rape in war that draws on current international laws regarding torture. Although I have argued for the problematisation and recognition of the difference of the multiplicity of discourses of rape in war, this does not mean that recognition of the act becomes impossible. It is possible within an international legal framework to argue that rape constitutes a form of torture, and this provides space for victims to choose the discourses that describe the act. This is an area for further research, as is the additional consideration of whether it would be possible to lessen the effects of rape through discourses such as these.

In formulating the research question, and contextualising it within an IR framework, I also made a number of assumptions. The first was that feminism and gender studies provide a critical approach to the study of IR. I have shown that feminism and gender studies provide a critical approach to the study of IR because they challenge the very framework of IR, and what is relevant to IR. Rape is an important component of war, and was ignored until Feminist IR began to consider it as an issue.

The second assumption was that discourse analysis provides a new and critical approach to the study of rape within the field of Gender and IR. This relates to the first assumption: although feminism and gender studies have produced a critical account of the absence of studies of rape in IR, a too-positivist account of rape has resulted in an uncritical acceptance of the meaning and implications of rape. I hope my thesis can contribute to this field. The ways in which I hope to contribute make up my third and fourth assumptions.

My third assumption was that empirical case studies would confirm that rape is not a universal phenomenon in terms of its understanding and impact. In addition to

confirming that rape is not a universal phenomenon in either understanding or impact, the case studies have also shown this even applies within one cultural context. Examples from the case studies have been very diverse, and despite an emerging hegemonic discourse, this is by no means the only discourse.

My fourth assumption was that understandings of rape in different cultures are produced by different discourses, and so will show variations. Different discourses of rape occurred in the different case studies, and even when the same discourse of rape emerged in different places, it occurred for different reasons. For example, rape was used as a tool of genocide in Rwanda with the common intent being to rape women so violently that they would be unable to have children. In Bosnia the common intent was to rape women to create Serb-fighters as their babies. In Burma, the common intent behind rape is to lead to marriage.

The final assumption I made was that the discourses of the Tribunals and human rights are resulting in the emergence of a hegemonic discourse of rape. The discourses of the Tribunals and human rights are resulting in the emergence of a hegemonic discourse of rape in war as a specifically sexualised violence. But this is not the just result of the Tribunals, but also the effects of human rights groups – directly or indirectly – on the Tribunals, and the broader international discourses that they are related to. Rather than being an intended discourse of rape in war, the process is far more haphazard than expected and acts as the reverse discourse to rape, reconstructing discourses of rape in war that would be better critiqued and problematised.

Constructing rape as a sexual violence

There were no precedents on which we could rely. We came from many legal backgrounds and we tended to rely on our own training and legal systems. Our task, however, was to construct a new international jurisprudence.²

The legal profession has taken on board the feminist criticisms of the legal process that creates ‘the second assailant’ when moving ‘from police to prosecutors to

² Richard Goldstone (ICTY prosecutor), cited in Stephen Sedley, ‘Howzat?’, *London Review of Books*, Vol. 25 No. 18 (25 Sep. 2003), p. 18

judges'.³ With this in mind, it is understandable that the tribunals have attempted to counteract this possibility by specifically catering for victims of rape and sexual violence; however, this idea would be better applied more broadly to all victims. This universalising of domestic rape law has led to the application of western countries' rape law to rape in war, with no change of emphasis inbetween. Segal states:

[T]he strategies needed to prevent rape in a context where people have chosen to be together (although *not* agreed to have sex) are, at least in part, different from those needed to prevent the types of sexual assault which most women fear, which come out of the blue.⁴

An area of difference that has emerged between rape in peace and rape in war is the issue of consent. Rule 96 from the Statute of the Tribunals rules that consent cannot be a consideration, let alone a defence. This is because in situations that are inherently coercive (that is, conflicts) consent is immediately vitiated.

What is believed to give rape its specific abhorrence is that is considered to be a violation of the soul as well as the body, acting upon the sexual and personal elements of the female victim, and robbing her of her honour. Foucault's *Discipline and Punish* traces the change from when the body was punished to relieve the soul, to where – since about 1760 – the soul itself was the object of correction (through punishment). Foucault quotes Malby: 'Punishment, if I may so put it, should strike the soul rather than the body.'⁵ There has been insufficient analysis of the confusion between body and soul in analyses of rape. Sometimes rape is seen as an attack on the body, but more often the abhorrence of rape results from the perceived attack on the soul. This is an area for future research.

The UN has come a long way in recognising the importance of rape as a war crime. It was not until June 1993 that the UN addressed violence as an issue with specific relation to women and formally accepted 'women's rights as an integral part of human rights'.⁶ The Declaration on the Elimination of Violence Against Women, adopted by the UN General Assembly in 1993, only mentions human rights in its Preamble: 'the Declaration does not clearly present violence against women as a

³ Elizabeth Stanko, cited in Segal, *Slow Motion*, p. 235

⁴ Segal, *Slow Motion*, p. 248, italics original

⁵ Foucault, *Discipline and Punish*, p. 16

⁶ Halliday, 'Gender and IR', p. 838

general human rights concern'.⁷ In 1994 the UN Commission on Human Rights appointed Radhika Coomaraswamy, a Sri Lankan jurist, as Special Rapporteur on Violence Against Women, the first gender-specific mandate of a Special Rapporteur.

As a manifestation of violence against women, rape and sexual violence, including sexual harassment, are *universal*, cutting across State borders and cultures, used in *all* countries and in *all* cultures as weapons of degradation and terror against women. *All* forms of sexual violence against women serve as methods of subjugating women by controlling their sexuality through violence, fear and intimidation.⁸

Coomaraswamy's statement in her report to the United Nations Economic and Social Commission highlights how rape (as sexual violence) is emerging as a singly-coherent discourse from an international perspective. The statement offers an oversimplified understanding of rape. It also echoes Brownmiller by stating that *all* countries and *all* cultures use this form of terror. This is a useful correction to the assumption that rape is not important, but it does not help us to develop our understandings of rape. It assumes that the victims of rape and sexual assault must be women, and leaves *the sexual* unproblematised.

There is an interesting tension between the laudable intention to punish rape, and the attempt to isolate rape as a separate crime in its own right. This acts as the reverse discourse to rape and reinforces part of the power that the discourse holds, reifying rape. Noeleen Heyzer, the Executive Director of UNIFEM, states that:

The human, social and economic cost of *gender-based violence* is incalculable. Transcending boundaries of nationality, culture, religion and socio-economic status, *violence against women and girls* in its different manifestations plagues *every* society through harmful consequences *to women's* physical and emotional health, loss of self-esteem, and as a leading cause of death of women through murder and suicide.⁹

What this quote shows is the tendency within international circles to conflate – and universalise – gender and women. This tendency is dangerous for two reasons. The first is that it sidelines gender issues as women's issues that men need not worry about. The second is that it reinforces the idea that rape is something that can only happen to women, because of women's weak nature and their association with the sexual and the personal, being defined by the body rather than the mind.

⁷ Hilary Charlesworth & Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), p. 235

⁸ Radhika Coomaraswamy, United Nations Economic and Social Council (Commission on Human Rights, 53rd Session), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences* (12 Feb. 1997), p. 6, italics added

⁹ Noeleen Heyzer, 'Foreword', Frederick & AWARE, *Rape*, p. vii, italics added

The corrective to this is *gender-awareness*, not a conflation of gender and women. Although this awareness can be universalised, the same cannot be said for the resulting understandings of rape. The Association of Women for Action and Research imply such an understanding. They state that the same atrocities happen to the civilian males and females, but then add to this: ‘*However, women face additional atrocities since “...females are sexually assaulted with alarming regularity...”*’.¹⁰ But just because more men or women suffer a particular type of violence need not necessarily make it a specifically male or female violence; however, this emerging hegemonic discourse of rape is reflected in the development of the International Criminal Court (ICC).

The practice of the Tribunals has guided the ICC ‘in terms of providing a definition of rape and sexual violence and of making clear their elements and substantive content since the ICC Statute does not define such crimes’.¹¹ On 17 July 1998, 120 states voted to adopt the Rome Statute of the ICC. The statute came into force on 1 July 2002, and in its first session in September 2002 formally adopted the Elements of Crimes and the Rules of Procedures and Evidence. I argued in the literature review that a constructivist approach to IR offers a more useful framework in understanding rape, and this understanding applies more generally, including with the development of the ICC:

A constructivist perspective can resolve the indeterminacy of the rationalist explanation – the persuasive lobbying activities of NGOs as norm entrepreneurs were an influential factor in deciding the design tradeoff in favor of an independent court. NGO influence, in turn, depended on states’ openness to both the involvement of NGOs in the negotiations and the positions advocated by them.¹²

The constructivist approach allows that these norms are not yet settled, and as such the discourses of rape need not be accepted as settled. Despite the emergence of a hegemonic discourse of rape as sexual violence, there is still room to strategically renegotiate this discourse, and to consider the already existing framework of torture to

¹⁰ Frederick & AWARE, *Rape*, p. 5, italics added

¹¹ Askar Yusuf, *Implementing International Humanitarian Law: From the Ad Hoc Tribunals to a Permanent International Criminal Court* (London: Routledge, 2004), p. 159; see also William A. Schabas, *An Introduction to the International Criminal Court: second edition* (Cambridge University Press, 2004), p. 13

¹² Caroline Fehl, ‘Explaining the International Criminal Court: a “practice test” for rationalist and constructivist accounts’, *European Journal of International Relations*, Vol. 10 No. 3 (2004), p. 383

conceive of rape within international legal frameworks: 'a constructivist analysis of normative developments in the field of human rights [helps] explain the consensual *identification* of the problem in international criminal justice by the international community'.¹³

Once this international law regarding rape emerges it is enshrined as foundation-less and necessarily true, when in fact law is (necessarily) *ad hoc*.

[I]t should not be wrong to say that the practice of the ad hoc tribunals has played the central role for the creation of a new category of grave breaches in relation to rape and any other forms of sexual violence and for the inclusion of these crimes into serious violations of Common Article 3 of the ICC Statute.¹⁴

It is therefore important to problematise the emerging hegemonic discourse of rape and its relation to the ICC's legal discourses of rape, which are also not *necessary* or *true*, as there is no extra-discursive position from which they can be formed.

Prior to the Tribunals, when rape was considered a crime within international law it was as a crime against honour. The movement towards rape as a specifically sexualised violence is intended to move away from this reliance on honour, but instead in practice acts as the reverse discourse and so reinforces it. Foucault refers to sex as 'that secret which seems to underlie all that we are',¹⁵ where personal identity and sexuality are strongly related, and so a violation of sexuality is also a violation of a person's identity. This view is informing the emerging hegemonic discourse of rape as a personal humiliation and violation: 'While any form of violent attack may have severe emotional consequences for its victims, the *sexualization* of violence in rape greatly intensifies those consequences for women in Western societies.'¹⁶ But Heliwell states that 'rape is not everywhere experienced by women victims in the deeply traumatic terms taken for granted by most Western feminist writers on the topic',¹⁷ and points to evidence from Mehinaku and some Papua New Guinea societies. The multiple statements and discursive formations presented in this thesis and their reliance on the particular culture in which they are formed support this point. 'The work of such disparate thinkers as Maurice Merleau-Ponty, Foucault, and Pierre Bourdieu has demonstrated that bodily (including emotional) responses are largely

¹³ Fehl, 'Explaining the International Criminal Court', p. 360, italics original

¹⁴ Aksar, *Implementing International Humanitarian Law*, p. 161

¹⁵ Foucault, *Will to Knowledge*, p. 155

¹⁶ Heliwell, "'It's only a penis'", p. 791, italics original

¹⁷ Heliwell, "'It's only a penis'", p. 792: 3

socially constituted; the fact that they are therefore not universally shared renders them no less real for those women who experience them.’¹⁸

The association between women, the personal and the sexual that is evident in the emerging hegemonic discourse of rape is identified in the Tribunals by Mertus. Mertus claims that the nature of the Tribunal’s legal questioning in the Foca (Bosnia) case ‘supported the notion that women have a “true essence, invariable and fixed properties which define [them as Women]”’.¹⁹ Furthermore, this emerging hegemonic discourse of rape in war is considered to require its own sets of rules within which rape can be understood and punished. For instance, Booth sees these developments in the Rome Statute as ‘progressive with regards to *women’s* issues’ and states: ‘Because of the various gender-based and sex-based crimes in the Rome Statute it is important that women (and men) with specialist expertise regarding violence against *women* be appointed to the Court.’²⁰ Furthermore, this emergence of a hegemonic discourse of rape in war is seen in the additional provisions made for victims: the Rome Statute requires the Prosecutor to respect victims and witnesses, ‘*in particular* where it involves *sexual* violence, *gender* violence or violence against children’.²¹

By focusing upon *gender-based violence*, where gender is synonymous with women, rape becomes any form of violence with a sexual aspect and women are equated with *the sexual*; it then becomes inevitable that it is women rather than men who are considered to have been raped. International discourses have a tendency to reinforce the sexualised and personal nature of rape when their intention is to punish it. This shares with the other discourses of rape in war an ontology of the victim as a female who suffers in a personal capacity, and loses something of her female-ness as a result of the rape. ‘Traditionally, gender-based crimes refer to women and the use of this term may have wrongly guided the ICC.’²² The result of this is an emerging

¹⁸ Heliwell, “‘It’s only a penis’”, p. 792: 3

¹⁹ Julie Mertus, ‘Shouting from the bottom of the well: the impact of international trials for wartime rape on women’s agency’, *International Feminist Journal of Politics*, Vol. 6 No. 1 (March 2004), p. 115

²⁰ Cherie Booth, ‘Prospects and Issues for the International Criminal Court: lessons from Yugoslavia and Rwanda’, Philippe Sands (ed.), *From Nuremberg to The Hague: The Future of International Criminal Justice* (Cambridge: Cambridge University Press, 2003), pp. 166 & 174, italics added

²¹ *Rome Statute of the International Criminal Court*, Art. 54 para. 1, Schabas, *Introduction to the International Criminal Court*, p. 229, italics added

²² Aksar, *Implementing International Humanitarian Law*, p. 161

common sense where most crimes against women can be considered sexual violence because women are associated with the sexual.

The Rome Statute provides a 'detailed enumeration of rape and similar crimes',²³ referring, as crimes against humanity, to '[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity'.²⁴ *Rape* itself is not defined in the Rome Statute: 'at the time the drafters may have felt it was obvious enough to be left to the judges to figure out. Within a few months of the adoption of the Rome Statute, judgements of the *ad hoc* tribunals had developed two somewhat different definitions of the crime of rape.'²⁵ (The different definitions are discussed in the Tribunal case studies.) The ICC's Elements of Crimes does define *rape*, which is similar to the ICTY's definition (see page 156):

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or the anal or genital opening of the victim with any object or any other part of the body.²⁶

These provisions distinguish rape not by the degree of violence involved but by the body part involved. A similar distinction is made between whether a penis or an inanimate (that is, lesser in the same terms as the above hierarchy) object is used. From a strategic point of view, what we should be concerned with when punishing rape is not whether the organ is/was sexual, but what degree of violence – including mental violence or torture – is inflicted upon the person, and suffered by the person. If rape is a personal violation, then so too is murder and torture.

This assumption that rape is a universal female-related category that can be simply identified by the organ involved rather than being imposed through social construction requires victims of rape to confess (in Foucault's terms) within the discourses that have already been deciphered by those interpreting: 'Witness after

²³ Schabas, *Introduction to the International Criminal Court*, p. 55

²⁴ 'Rome Statute of the International Criminal Court', Art. 7, para. 1, Schabas, *Introduction to the International Criminal Court*, p. 198

²⁵ Schabas, *Introduction to the International Criminal Court*, p. 47

²⁶ 'Elements of Crimes', Art. 7(1)(g)-1, para. 1, Schabas, *Introduction to the International Criminal Court*, p. 48, italics added

witness in the Foca case was compelled to narrowly define what happened to them in line with the rules of evidence and the *legal definition of rape*.²⁷

As rape is a socially constructed category, in the future perpetrators, victims, or others could construct it differently. As such, the specifically sexualised definition of rape used by the ICC will not necessarily provide a sufficient framework for identification and punishment of the crimes intended:

In wartime situations, rape should not be restricted to the concept of penetration on the basis that no one can guess the future perpetrators of rape who will employ different methods of committing sexual violence that may also be considered as rape.²⁸

This increased codification can have the reverse effect: ‘The greater the detail in the provisions, the more loopholes exist for able defence arguments.’²⁹ Mertus argues that ‘international women’s rights advocates should explore the limitations of international tribunals and examine complementary and alternative mechanisms’.³⁰ I argue that some of these limitations could be removed by moving to a framework of torture.

It would strategically be more useful for these acts to be considered and punished as acts of torture rather than as a specifically sexualised type of violence that requires its own set of rules; this would allow victims of rape to construct and choose their own sets of discourses in response to what has happened to them. It might also allow the violence that has occurred to be highlighted by the victims without also calling upon the associated stigmas that are re-constructed by the Tribunals and others.

The UN Special Rapporteur On Torture stated in 1992 that he views rape during detention as a form of torture.³¹ The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment defines *torture* as follows:

[A]n act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him [!] for an act he [!] or a third person has committed or is suspected of having committed, or intimidating or coercing him [!] or a third person, or for any reason based on discrimination of any kind, where such pain or suffering is inflicted by or at the instigation of or with the

²⁷ Mertus, ‘Shouting from the bottom of the well’, p. 116, italics added

²⁸ Aksar, *Implementing International Humanitarian Law*, p. 158

²⁹ Schabas, *Introduction to the International Criminal Court*, p. 55

³⁰ Mertus, ‘Shouting from the bottom of the well’, p. 113

³¹ ASCENT & Novib-Netherlands, *Capability Building*, p. 9

consent or acquiescence of a public official or other person acting in an official capacity.³²

In international law, sexual violence is torture only when it involves the consent or acquiescence of an official person. Therefore, there has to be an official element to make this sexual violence *torture*. But given that international law is invariably constructed to punish officials for their part in large-scale events, this is quite likely.

A strategic re-conceptualisation of rape in war as torture

Maybe the target nowadays is not to discover what we are, but to refuse what we are.³³

Concretizing other possibilities is surely the best way to enable people to imagine how their being-in-the-world is not only changeable but, perhaps, ought to be changed.³⁴

The fundamental question is this: Why does a woman of Gerai see a penis as lacking the power to harm her, while I, a white Australian/New Zealand woman, am so ready to see it as having the capacity to defile, to humiliate, to subjugate and, ultimately, to destroy me?³⁵

Reconceptualising rape in war as torture is a double-edged theory of rape, refusing to recognise an extra-discursive validity to rape, while identifying and punishing that which considers itself as rape. Rather than attempting to construct rape as sexual violence as the emerging hegemonic discourse does, it is strategically more useful to recognise the discursively constructed nature of rape, and to treat it as such by punishing rape as an act of torture. This would allow victims greater choice in the discourses that describe the acts. In addressing rape, and in collecting evidence about rape, a discursive-sensibility is required. That is, rape must be understood as *intended* without validating the intention or acting as the reverse discourse. This is a viable

³² ASCENT & Novib-Netherlands, *Capability Building*, p. 6

³³ Foucault, cited in Rabinow, 'Introduction', p. 22

³⁴ Jennifer Milliken, 'The study of discourse in International Relations; a critique of research and methods', *European Journal of International Studies*, Vol. 5 No. 2 (1999), p. 244

³⁵ Heliwell, "'It's only a penis'", p. 797

direction for future research: how feasible the strategic construction of rape as torture is.

Rape can have no unified meaning, and strategically is better understood in international law as an extension of torture. This argument is directed at those who argue that there should be separate laws – and even courts – to deal with those who rape women. There have been incidences of rape being punished as torture: the UN Commission on Human Rights' Special Rapporteur on Torture, Professor Kooijmans, 'identified rape as torture in some contexts, [but] he did so inconsistently. ... His condemnation of rapes in Bosnia-Herzegovina focused on the harm resulting to ethnic communities and failed to acknowledge the harm inflicted on women as individuals because of their sex and gender'.³⁶

Rapists, rape-victims, human rights activists and lawyers are increasingly sharing an intersubjectively constructed ontology of rape as sexual violence. If rape can be shown to be intersubjective, rather than objective – and if some discourses can make rape *worse* – then perhaps it may be possible to lessen the effects of rape. A historical example of this is given by Barbara Lindemann's study of eighteenth century Massachusetts. She suggests that one reason why very few rapes occurred was because servants could not be *raped* by upper- and middle-class men; even the servants believed this.³⁷

Marcus points out that one of feminism's major breakthroughs concerning rape was to render the rapists' discursive interpretations as less relevant in judging the act:

Whose words count in a rape and a rape trial? Whose 'no' can never mean 'no'? How do rape trials consolidate men's subjective accounts into objective 'norms of truth' and deprive women's subjective accounts of cognitive value? Feminists have also insisted on the importance of *naming* rape as violence and of collectively narrating stories of rape.³⁸

Rape as sexual violence, as prosecuted by the Tribunals, acts as a reverse discourse to rape and so reinforces the discourses of rape as a fate worse than death, and as a violation of honour and dignity. Treating rape as torture instead allows the victim

³⁶ Charlesworth & Chinkin, *Boundaries of International Law*, p. 219

³⁷ Segal, *Slow Motion*, p. 239

³⁸ Marcus, 'Rape prevention', p. 387, italics original

greater choice in describing the act, and it is the victim's discourse that is important in judging the act.

Another way to refuse to recognise rape as the real fact of our lives is to treat it as a *linguistic* fact: to ask how the violence of rape is enabled by narratives, complexes and institutions which derive their strength not from outright, immutable, unbeatable force but rather from their power to structure our lives as imposing cultural scripts. To understand rape in this way is to understand it as subject to change.³⁹

I have argued that strategically *rape* should be subsumed within the current international laws and conventions on torture. This therefore implies some form of universalism, a stance that has been strongly argued against by both feminists and post-structuralists; why replace rape with a different meta-narrative? My strategic recommendation is not intended as a meta-narrative but as a position for permanent critique and problematisation.

My thesis has identified how the meaning of rape has changed significantly over recent decades, and how treating rape as sexual violence has unintended implications. Any discourse of rape must be based on numerous other current discourses, and all of these are liable to change. Rorty states that '*whatever* terms are used to describe human beings *become* "evaluative" terms'.⁴⁰ Conceiving of rape as a form of torture could well have unintended implications. Hence Foucault suggests 'a permanent critique of our historical era'.⁴¹ It seems to me that these two positions can be productively held together. Rorty's ironic embracement of liberalism is never meant to be totalising, and is the type of self-aware reasoning that a truly Foucauldian subject would have to embrace to be able to function in society (without being caught in a logical *reductio ad absurdum*). This Foucauldian subject would be well placed to engage in a permanent critique of these contingent institutions. Rape and the sexual will always be fiercely fought over and subject to change, and as such should be subject to problematisation, and the broader discourse of torture provides more space in which this can be done.

Demonstrating the contingent nature of any law does not make it irrelevant. If anything, the fact that laws are contingent and socially chosen and agreed makes them

³⁹ *Ibid.*, pp. 388–9

⁴⁰ Rorty, 'Method, social science, and social hope', p. 50, italics original

⁴¹ Foucault, 'What is Enlightenment?', p. 42

more relevant. However, it also shows that the law is not *True*, but only useful. '[T]he problem is not so much that of defining a political "position" (which is to choose from a pre-existing set of possibilities) but to imagine and bring into being new schemas of politicisation.'⁴² Drawing on Wendy Brown, Campbell suggests that norms should be decided politically, rather than deriving them epistemologically.⁴³ Similarly, paraphrasing Rorty, Cochran states: 'Philosophy's preoccupation with epistemology and universal truth is a form of repression that limits human possibilities'.⁴⁴ We could speak of *rape* ironically; that is, we could recognise the contingency of the claims we make of rape as torture (or otherwise) for contemporary strategic ends.

For rape to be punished within international law as a form of torture would require shifts as significant as the inclusion of rape, sexual violence and sexual assault within the Tribunals. Claude argues that such 'collective legitimization' is one of the main functions of universal international organisations, particularly the United Nations.⁴⁵ One such reconceptualisation has been attempted by Coomaraswamy. In her second report, in 1996, the case was made for defining severe forms of domestic violence as torture. The similarities given were: people are 'isolated and live in a state of terror; they suffer physically and psychologically; they develop coping mechanisms that come to dominate their existence; both forms of violence are committed intentionally in order to terrorise, intimidate, punish or to extort confessions...'.⁴⁶

A strategic reconceptualisation of rape as torture could allow for the sexual to be removed from the victim's understanding of what has happened to them, and of what the act has done to them, should they so choose.

[T]he internalisation process of competing identities allows for a degree of subjectivity. Such disciplinary practices:

...secure their hold not through the threat of violence or force, but rather by creating desires, attaching individuals to specific identities, and establishing norms against which individuals and their behaviours and bodies are judged and against which they police themselves.⁴⁷

⁴² David Campbell, 'Why fight: humanitarianism, principles, and post-structuralism', *Millennium*, Vol. 7 No. 3 (1998), p. 518

⁴³ Campbell, 'Why fight', pp. 501 & 520

⁴⁴ Molly Cochran, 'The liberal ironist, ethics and International Relations theory', *Millennium: Journal of International Studies*, Vol. 25 No. 1 (1996), p. 32

⁴⁵ Inis Claude, 'Collective legitimization as a political function of the UN', Kratochwil & Mansfield, *International Organizations*, pp. 192–201

⁴⁶ Charlesworth & Chinkin, *Boundaries of International Law*, pp. 235–6

⁴⁷ Julia Sawicki, *Disciplining Foucault: Power and the Body* (London: Routledge, 1991), p. 68

We need to think in terms of the ‘indefinitely generalisable mechanism of “panopticism”’.⁴⁸ By constantly looking inwards at the self’s practices, the self can occasionally reconsider and redefine these practices. Cahill points out that the process after the rape ‘does not construct the pre-rape person’.⁴⁹ But we must not be ‘afraid of permanently partial identities and contradictory standpoints. The political struggle is to see from both perspectives at once because each reveals both dominations and possibilities unimaginable from the other vantage point’.⁵⁰ The recognition of *rape* as discursive can allow for positive reconceptualisation, and as such is a strategic position to allow political action in an area that I have problematised.

It may be helpful to think in terms of the way people misunderstand sadomasochism (S&M). S&M is often considered by those outside of it to be curious – repellent even – because of its inherently violent nature; however, the violence is controlled aggression, which need not be conceived of as aggression by those involved. Conversely, rape is often thought of as predominantly sexual, but need not be thought of as so, especially by those who suffer it. Foucault states:

I think that S&M is...the real creation of new possibilities of pleasure, which people had no idea about previously. The idea that S&M is related to a deep violence, that S&M practice is a way of liberating this violence, this aggression, is stupid. We know very well what all those people are doing is not aggressive; they are inventing new possibilities of pleasure with strange parts of their body – through the eroticization of the body. I think it’s a kind of creation, a creative enterprise, which has as one of its main features what I call the desexualization of pleasure. The idea that bodily pleasure should always come from sexual pleasure as the root of *all* our possible pleasure – I think *that’s* something quite wrong. These practices are insisting that we can produce pleasure with very odd things, very strange parts of our bodies, in very unusual situations, and so on.⁵¹

Foucault identifies the problem in assuming that there is an inherently violent nature to S&M. There is controlled aggression in S&M, which ultimately means that it is not really aggression that is being spoken of. And just because they are not in contact with *sexualised* areas of the body it does not mean that they cannot conceive of what they are doing as sexual. Conversely, the emerging hegemonic discourse of rape in war

⁴⁸ Michel Foucault, ‘Panopticism’, Foucault, *Foucault Reader*, p. 206

⁴⁹ Cahill, *Rethinking Rape*, p. 215

⁵⁰ Donna Haraway, ‘A manifesto for cyborgs: science, technology, and socialist feminism in the 1980s’, Seidman, *Postmodern Turn*, p. 90

⁵¹ Foucault, ‘Sex, power, and the politics of identity’, Foucault, *Ethics*, p. 165, italics original

constructs an understanding of rape as having an inherently sexual nature. But rapists are not involved in sex merely by virtue of being in contact with sexualised areas of the body.

Rape must be contested and re-contested; critiqued and problematised. The field of discourse is not infinite; there are always constraints on what can be thought of as rape, and as sexual. But what can be considered as sexual is far greater than can be contained in a definition of rape or sexual violence. Rape only exists in and because of discourse, and the sexual is added to the violent act through discourse. The broader framework of discourse provided by torture allows a greater choice of discursive formations, and it should be the person who suffered the violent act who chooses how to describe what was done.

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