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# Destructive Secrets and Destructive Consequences: Carla Del Ponte and the World Court Decision

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The recent decision of the International Court of Justice (ICJ) to not hold Serbia directly responsible and accountable for the genocide that occurred in Bosnia-Herzegovina is troubling and disappointing. The decision strengthens the cynical perception of the international community obstructing Bosnia-Herzegovina's need for justice to rebuild a stable and unified society. In 1995, the Dayton Peace Agreement fractured Bosnia-Herzegovina into two dysfunctional and perversely heteronomous entities: the Federation of Bosnia-Herzegovina and Republika Srpksa. The latter was established through the force of genocide. Not unsurprisingly, the two entities remain irreconcilable. The nationalist Serb leaders responsible for planning and carrying out genocide in Bosnia-Herzegovinia remain un-arrested; Radovan Karadžić and Ratko Maldić will likely live out their lives to their deaths without answering for their egregious crimes. This decision of the International Court of Justice was surprisingly under-reported in the world media. The decision consummated a long history of betrayal that the people of Bosnia suffered since 1992. The opportunity to redress this history was available but tragically abandoned with the World Court's decision.

A perplexing aspect of the judgment is that the World Court chose not to consider evidence already given by Serbia to another court at the Hague, the International Criminal Tribunal for the former-Yugoslavia (ICTY), evidence that would surely have decided the case differently. Geoffrey Nice, who was Prosecutor at the ICTY trial of Slobodan Milošević, reported that Carla del Ponte, Head Prosecutor at the ICTY, made a secret agreement with Belgrade. To attain the evidence she thought was needed, del Ponte allowed Serbia to keep aspects of this evidence concealed from the public. While the decision would serve the interest of ICTY in attaining a conviction against Milošević, it would later damage the law suit of the state of Bosnia-Herzegovina against the state Serbia at the ICJ. The ICTY considers cases involving individuals and the ICJ cases involving states. The ICJ did not seek this evidence pertaining to Bosnia's law suit, as was lamented in the written statements of two of the fifteen judges presiding over the case.

This study restricts itself to analyzing the morally confounding aspects of the few media reports regarding World Court decision, not from a legalistic, historical, or philosophical point of view, but from a sociological point of view. The study in particular draws upon the writing of Erving Goffman on impression management and

the maintaining of secrets. Goffman notes that, with respect to protecting a team's definition of the situation, secrets are destructive information the performing team needs to keep concealed. The revealing of secrets damages the definition of the situation, which the team needs to maintain to achieve its objectives and keep good standing in society.

Goffman says there are different types of secrets, and knowing what type of secret a secret is helps the team keep its secrets as well as measure the damage that occurs when a secret is disclosed. Three secrets–as formulated by Goffman–will be reviewed and applied to this subject: the dark secret, the strategic secret, and the entrusted secret. One secret, of course, can be viewed in different ways, depending upon the viewer's social status, psychological perspective, or historical position.

A dark secret is destructive information that is incompatible with a definition of the situation that a team maintains before its audience. Dark secrets involve moral betrayal. Dark secrets are the most destructive to the expressive coherence of the social reality that a team seeks to maintain.

For some holding to a conspiracy model, the disclosure of del Ponte's agreement with Belgrade reveals a dark secret. The definition of the situation del Ponte seeks to maintain is that she is legally, professionally, and morally committed to convict those responsible for war crimes in former-Yugoslavia. This is del Ponte's front region. The possibility that del Ponte colluded with lawyers from Serbia to the advantage of war criminals is incompatible with the definition of the situation del Ponte seeks to maintain. Lawyers from Serbia are an opposing team, representing the war criminals del Ponte is charged to bring to judicious trial. A secret agreement between del Ponte and Belgrade suggests that del Ponte is a double-agent, working more on behalf of the opposing team than on behalf of her own team. In helping Serbia keep crucial evidence that is damaging to itself from the World Court, del Ponte serves the state of Serbia and betrays the victims of Serbia's genocide. She also does a disservice to Serbia in that it is in Serbia's interest to make itself right with a people and country grotesquely violated. No state can maintain a true solidarity within its society while thinking genocide is an acceptable and effective tool for achieving its political ends.

A second type of secret is the strategic secret. The strategic secret is one that pertains to "intentions and capacities of a team which it conceals from its audience in order to prevent them from adapting to the state of affairs the team is planning to bring about" (Goffman, p. 141) The disclosure of a strategic secret is less destructive to a team's definition of the situation than the disclosure of a dark secret. Nevertheless, the disclosure of a strategic secret disrupts and compromises a team's performance, "for suddenly and unexpectedly the team finds it useless and foolish to maintain the care, reticence, and studied ambiguity of action that was required prior to loss of its secret" (Goffman, p. 142).

It is easy to imagine how from the viewpoint of ICTY a secret deal with Belgrade to attain evidence to convict Milošević was a strategic rather than dark secret. The agreement was not an end-in-itself, but a means to an end to which del Ponte committed herself. From the viewpoint of del Ponte, the gain in using this means outweighed the cost. If the agreement with Belgrade led to a conviction, something

that never happened because of Milošević's death, the procedure, in so far as it was not illegal and fell within legitimate legal practice, was justified. For del Ponte, this strategic secret is not a dark one. In the New York Times on April 9, 2007, del Ponte explains this perspective.

Mrs. Del Ponte confirmed that she had sent a letter in May 2003 to the former Serbian foreign minister, Goran Svilanović, saying that she would accept the sealing of "reasonable" portions of the records. "It was a long fight to get the documents, and in the end because of time constraints we agreed," she said. "They were extremely valuable for the conviction of Slobodan Milosevic."

The matter was simply strategic: del Ponte agreed to the sealing of reasonable portions of the records from the Yugoslav Supreme Defense Council in order simply to attain them; they were deemed necessary to convict Milošević. While del Ponte was doing what good lawyers do, the problem is, first, no conviction against Milošević was attained because he died before the over-extended and excessively long trial concluded and, second, the way in which a conviction against Milošević was sought by the ICTY undermined the ability of Bosnia-Herzegovinia to attain a conviction against not the people of Serbia but against the state of Serbia at the ICJ.

A third type of secret, the entrusted secret, provides another frame from which to consider the same matter, albeit from yet another perspective. Entrusted secrets are "the kind which the possessor is obliged to keep because of his relation to the teams to which the secret refers" (Goffman, p. 143). If del Ponte agrees to keep in confidence state documents from Serbia, Belgrade gains an entrusted secret, that is, a secret whose exposure discredits, not the definition of the situation Belgrade seeks to maintain, but the definition of the situation ICTY seeks to maintain as an impartial seeker of justice. Nice said that he had warned Del Ponte not to make any concession to Serbia. He, nevertheless, reports that "She approved by a letter to Goran Svilanović, the former Yugoslav Minister of Foreign Affairs, the protective measures of a 'reasonable' part of the collection of the documents, without prior inspection of the Prosecution."

In making such a deal, del Ponte entrusts Belgrade in two problematic ways. First, she entrusts that Belgrade will be reasonable in taking protective measures to conceal part of the collection of the documents shared with the ICTY without prior inspection of the Prosecution. Second, she entrusts that Belgrade will also keep this potentially destructive information regarding ICTY from the public because she is helping Belgrade to keep destructive information regarding Serbia from the public. That is, del Ponte assumes that her favor will generate a reciprocal favor. The problem is that del Ponte becomes beholden to Belgrade, but Belgrade will not necessarily feel beholden to ICTY. This was a trap that the Serbian team legal set, and del Ponte stepped into it, which is terrible given how many times the identical trap had been repeatedly set by Serbia for the international community during its aggression against Bosnia-Herzegovina.

It is poor judgment to expect Serbia not to disclose this entrusted secret at an opportune time. To facilitate the process of European integration, Serbia needs the positive endorsement of del Ponte that it is co-operating with ICTY even when it refuses to arrest Ratko Mladić and hand him over to the ICTY. It is therefore in the interest of Serbia to discredit ICTY in whatever way it can. It is surprising that ICTY

put itself in this compromising situation with Serbia. Natašha Kandić, director of the Humanitarian Law Center in Belgrade, reports this conversation after news of the ICJ decision.
After the verdict, she said, she met with a leading member of the Serbian team. 'He was very pleased,' she said, 'but I confronted him. I said, 'You did not tell the truth.' The man, a scholar she said she could not name, replied: "It's normal, every country will do everything possible to protect the state. Bosnia wanted a lot of money for damages.' Ms. Kandić adds: 'I said that one day the truth will come out. And my friend said: 'But that's the future. Now it's important to protect the state.'
The point is clear: the team of Serbian lawyers manipulated del Ponte. While they betrayed and sacrificed Milošević as an individual, they saved the state of Serbia and its people. Milošević, the political master of scapegoating, became the state's scapegoat in order to secure the state's interest in undermining Bosnia's case at the World Court holding Serbia responsible for genocide and its terrible costs. Once again, the international community colluded in this vulgar political ritual.

It is unfair to say that del Ponte willfully betrayed Bosnians who were victims of war crimes, crimes against humanity, and genocide. As a morally committed lawyer, this was never her intention. She, too, is a victim of this complex political situation. It is fair to say that she was entrapped by the Serbian legal team into the discrepant role that Goffman calls "the shill." Ratko Mladić entrapped the well-intentioned United Nations and its peace keeping forces into the same role, in particular during fall of Srebrenica. In 1995 Dutch soldiers did not only witness the murders and sadistic abuse of Bosnian Muslims in Srebrenica; Dutch soldiers also became passive accomplices of the genocide due to Mladić's artful co-optation. The shill is a term for a deceptive practice at a carnival aimed at luring customers. The shill allows ordinary members of the audience to watch him or her win handily at a game in order to entice them to play. The shill, though, is not an ordinary member of the audience; the shill is deceptively working on behalf of the carnival and against the better judgment of the naive audience.

In what sense did del Ponte inadvertently act in league with Serbia while appearing to be an ordinary member of the world audience? Her agreement with Belgrade helps support the definition of the situation that Serbia seeks to foster, namely, that it is neither legally nor morally accountable for genocide in Bosnia. As Head Prosecutor at ICYT, del Ponte's tolerance toward Serbia's request to keep damaging evidence protected and the trust it demonstrates toward Belgrade become a model. If the Trial Chamber hearing Milošević's case grants protective measures for the documents originating from the Yugoslav Supreme Defense Council, why should the rest of the world not also adapt a lenient attitude? Just as members of the audience at a casino desire to mime the lucky player who wins handily at the booth, the rest of world desires to mime del Ponte's permissive attitude toward Serbia with regard to its responsibility for genocide in Bosnia.

The material analyzed here are the appearances that exist in the media regarding the ICJ judgment. No interviews were conducted; no documentary investigation occurred. Since the appearances, however, are socially and culturally constructed, they have a certain empirical Weight in their own right in that they influence not only perceptions but also actions. It is difficult to surmise what Goffman calls the back region of this

subject, that is, the facts behind these media appearances, given the conflicting reports and the sealed agreements at the ICJ and the ICTY. It, though, is easy to surmise the moral significance of these appearances, even if we can neither confirm nor refute the facts behind them. While the back region of the ICTY and the ICJ is inaccessible to journalists and scholars, this limit does not prevent an investigation of the matter. The symbolic interactionalist approach of Goffman, which focuses on the observable interplay between the front and back region of a team, avoids positivistic debates on matters not knowable through direct observation and rhetorical squabbles regarding the semantics of international law; the symbolic interactionist approach frames for observation the social phenomenon itself and its egregious content.

In a media release, del Ponte categorically denies that she made a deal with Belgrade regarding the protection of evidence as was reported by her former-colleague Nice. From del Ponte's point of view, Nice, as a key member of ICTY, is what Goffman would call a renegade. Nice betrayed the definition of the situation defining the team performance of ICTY for a higher principle; he writes, "There was no conceivable reason for making a deal with Yugoslavia." The disclaimer of del Ponte, however true, is without a doubt still an instance of impression management where the motive is to sustain a certain definition of the situation for ICTY and curtail the damage of exposed secrets and destructive information. In the disclaimer, del Ponte notes that the World Court and the ICTY are two different and independent courts. One judges states as actors (ICJ) and the other individuals (ICTY). She notes that when it comes to cases at the World Court, it is the responsibility of that institution, not the ICTY, to determine what evidence it will consider and request the documents it deems necessary. She understandably transfers responsibility for the matter to the World Court and asserts her independence from the decision. As can be read in the ICJ judgment that is available online, the World Court, for some unexplained reason, did not request the documents in question, as is noted in the dissenting statements of two judges presiding over the case at the World Court.

It could be argued by seasoned pundits that it was not realistic to expect the World Court to find and hold Serbia responsible for planning, initiating, and carrying out genocide in Bosnia. The hope was naive. Other countries have been guilty for the same crime throughout history. To single out Serbia in this way, such reasoning argues, would be hypocritical. Serbia would again see itself as the scapegoat of a hypocritical international community, and this would just make matters worse. What Serbia did was no different from what other countries have done and will do in the future throughout human history.

To resist this political realism and this moral indifference, it should be noted that the World Court had an opportunity to set a moral standard for states to which not only Serbia but also all countries would be accountable. If Serbia were found guilty and held responsible for the horrific consequences of genocide, a precedent would have been set. A moral bar would have been raised a little higher. Other countries would have had to think twice about the consequences of being responsible for war crimes, crimes against humanity, and genocide. Iraq would have had a better chance of suing the United States for the crimes against humanity inflicted in its country; Lebanon would have had a better chance of using the state of Israel for war crimes against civilians during its several wars against Lebanon; and Chechnya would have a better

chance of suing Russia for atrocities inflicted against its people. It is said that the decision of the World Court irreparably damaged Bosnia; it also irreparably damaged world order, of which Serbia, too, is a truly desperate part. Tragically, Serbia was denied the opportunity to answer for its war crimes. The international community was an accomplice of Serbia; it, too, is guilty, and perhaps the international community is protecting not so much Serbia but itself.

The real tragedy here is that the judgment of the World Court does great harm to world order: Serbia and other states will continue to live under the illusion that it is advantageous to commit gross injustices at the collective level and do so with impunity. No individual in the world sees this position as moral, but some see it as a principle of greatness. The World Court did little to cure this ignorance that infects the world moral order today. Instead, the World Court paid homage to this demented principle of greatness to the disadvantage of Serbia and every state in the world.

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