

Naomi Ramos

Gender Perspectives on the Post-Holocaust Transitional Justice Process

This paper reviews existing gender perspectives on the post-Holocaust transitional justice process. It takes stock of the literature and suggests avenues for further research. Critical perspectives on the gender dimension of experiences during and after the war are explored, evidencing some under-researched topics. The paper adopts an inclusive notion of gender by reviewing relevant feminist, queer, and masculinities perspectives. Firstly, it examines the treatment of sexual and gender-based violence during the post-Holocaust transitional justice process, before summarizing existing feminist, queer, and masculinities perspectives. This general picture makes it possible to shed light on the issues of structural invisibilization and intersectionality at play in narratives and commemoration of the Holocaust.

Keywords: feminist, gender, Holocaust, intersectionality, queer, sexual and gender-based violence, transitional justice

Geschlechtsspezifische Perspektiven auf den Transitional-Justice-Prozess nach dem Holocaust

Ziel dieses Artikels ist es, einen Überblick über die bestehenden geschlechtsspezifischen Perspektiven auf den Transitional-Justice-Prozess nach dem Holocaust zu geben, um eine Bestandsaufnahme der Literatur durchzuführen und Wege für weitere Forschungen aufzuzeigen. Der Artikel ermöglicht es, von kritischen Perspektiven auf wenig untersuchte Themen der geschlechterspezifischen Dimensionen der Erfahrungen während und nach dem Krieg zu lernen. Dabei werden relevante feministische, queere und Männlichkeiten-Perspektiven geprüft, die zu einer umfassenden Vorstellung von Genderperspektiven führt. Zunächst wird der Umgang mit sexueller und geschlechtsspezifischer Gewalt im Rahmen des Transitional-Justice-Prozesses nach dem Holocaust untersucht, bevor die bestehenden feministischen und queeren Perspektiven zusammengefasst werden. Der Artikel erlaubt es, ein allgemeines Bild von Genderperspektiven in diesem Prozess zu zeichnen, welches ein Licht auf strukturelle Unsichtbarmachung und Intersektionalität wirft, die im Narrativ und Gedenken des Holocausts eine Rolle spielen.

Schlagwörter: feministisch; Geschlecht; Holocaust; Intersektionalität; queer; sexuelle und geschlechtsspezifische Gewalt; Transitional Justice

1. Introduction

Gender perspectives are quite recent in the scholarship on transitional justice and the Holocaust (Von Wahl, 2012; Schulz, 2020). Historical works adopting a gender perspective on the Holocaust have emerged from the end of the sixties (e. g. Harthausen, 1967; Wilde, 1969; Ringelheim, 1984; Kokula, 1986; Schoppmann, 1991; Herrn; 2013). These contributions are

significant as they participate to the formation of collective memories. Moreover, crucial tenets of feminist perspectives on Holocaust memorialization were necessarily addressed by scholars starting from the eighties. Indeed, clarifying the need to consider women's differential experiences was part and parcel of researching the topic given resistance from other scholars in the field (Ringelheim, 1985; Goldenberg, 1990). Nevertheless, most of the literature that combines a gender perspective with an explicit consideration of transitional justice objectives has come later (e. g. Stein, 1998; Ní Aoláin, 2000; Jensen, 2002; Andrews, 2003; Jacobs, 2008; Von Wahl, 2012; Newsome, 2016).

The literature has adopted the lenses of feminist, queer, and masculinities perspectives to embrace a diversity of topics, several of which will be addressed in this paper. Two points of focus will be given particular importance. Firstly, notable contributions consider the implications of structural discrimination against women as well as sexual and gender minorities for the post-Holocaust transitional justice process. Secondly, the scholarship has underlined the lack of attention given to sexual and gender-based violence (SGBV) against persons of all genders (Hedgepeth & Rochelle, 2010; Glowacka, 2021; Curry, 2021) after the war.

While Nazis have often kept precise records documenting deportation and extermination of persons, sexual violence has obviously not been documented in the same way. This led SGBV to often be overlooked or dismissed by historians despite its presence in testimonies and memoirs. Moreover, social norms shaming victims of rape also made it harder for survivors to testify and have their experiences recognized (Levenkron, 2010). In addition to this, structural bias is reflected in the way legal categories define harm, often making occurrences of SGBV and women's experiences in general invisible to legal processes (Ní Aoláin, 2012). In the 1980s, feminist Holocaust scholars started to address the particular experiences of women and the first conference on the topic took place in 1983 (Ringelheim, 1985). While they were often met with resistance (Hedgepeth & Rochelle, 2010; Levenkron, 2010), gender perspectives on the Holocaust and the transitional justice process thereafter did develop during the last decades (Hedgepeth & Rochelle, 2010).

Moreover, LGBTQI+ victims of Nazis have been invisibilized in transitional justice processes. Under the Nazi regime, ostracization and persecution of sexual and gender minorities increased in comparison with the interwar period. This occurred in particular through more severe criminalization of same-sex relationships between men than before and persecution including deportation of same-sex desiring men to concentration camps. There was no significant break in policy after the Holocaust. The continued criminalization of same-sex relationships between men after the war obviously made the recognition of their status as victims in the transitional justice process impossible (Verhelst López, 2018). This prompted the German historian Hans-Joachim Schoeps (1963, p. 86) to declare in the beginning of the sixties: "For the Homosexuals the Third Reich has not yet ended.". While activism has spurred late recognition of this facet of the Holocaust, survivors have never obtained material reparations (Von Wahl, 2012).

Against this background, this article seeks to take stock of the current state of the literature on these topics and suggest new avenues for research. What knowledge does the existing literature on the post-Holocaust transitional justice process bring in terms of gender perspectives, and what are the main gaps so far? After discussing the use of terms and concepts, the article will first describe how sexual and gender-based violence took place during the Holocaust. In a second part, the study will look at how SGBV was (or not) addressed during the post-Holocaust transitional justice process. The third part will address further feminist as well as LGBTQI+ or

queer and masculinities perspectives on the post-Holocaust transitional justice process. To evidence the contributions made to knowledge on the post-Holocaust transitional justice process, these will be examined through the framework of this concept and in particular some of its crucial components: justice through prosecution initiatives, both material and symbolic reparations, as well as memorialization (United Nations Secretary-General, 2010). Overall, the research investigates transitional justice understood as:

processes of dealing with the aftermath of violent conflicts and systematic human rights abuses in order to provide conditions for a peaceful future. It makes use of a number of instruments and mechanisms, including national and international tribunals, truth commissions, memory work, reparations and institutional reforms, which aim at uncovering the truth about past crimes, putting past wrongs right, holding perpetrators accountable, vindicating the dignity of victims-survivors and contributing to reconciliation. (Buckley-Zistel & Zolkos, 2012)

The article will adopt a cross-disciplinary perspective, as it considers scholarship from the legal, historical and social sciences fields. It aims to adopt an inclusive approach to gender perspectives, meaning that it will include relevant feminist, queer and albeit to a lesser extent masculinities perspectives (Schulz, 2020) on the post-Holocaust transitional justice process. Feminist scholarship on transitional justice is concerned with bringing a feminist lens to a field which has usually taken a universal approach without considering the specific experiences of women. Particularly, several authors, including Fionnula Ní Aoláin (2000, 2020), Kelly Dawn Askin (1997), Hilly Moodrick Even-Khen and Alona Hagay-Frey (2013), and Geoffrey Robertson (2012) have analysed how female experiences were largely left out of “treaty formulations, prosecutorial strategy, and narratives” in the Nuremberg process (Ní Aoláin, 2020, p. 288). In turn, LGBTQI+ or queer approaches allow to better understand how “gender worked” in this historical context. Moreover, they seek to deconstruct the heterosexually framed accounts of the genocide, which exclude narratives of certain victims stigmatized for their deviant sexuality or gender expression. In shedding light on stigma and marginalized victims, they also further the aims of truth and social justice (Hájková, 2020, p. 20) relevant to transitional justice. Such perspectives have been adopted for instance by Claudia Schoppmann (1991, 1993, 1999), Elizabeth D. Heineman (2002), Angelika Von Wahl (2012), Christiane Wilke (2013), Jake Newsome (2016), Juan José Verhelst López (2018), Arnaud Kurze (2019), Laurie Marhoefer (2016, 2019) and Samuel Clowes Huneke (2021). Finally, masculinities perspectives in transitional justice scholarship seek to engage with men’s gendered conflict-related experiences, such as “militarized masculinities” and “masculine vulnerabilities”. The aim is to understand how masculine gender norms shape men’s and boy’s experiences (Schulz, 2020). Relevant research, that considers experiences of men and boys as victims of sexual violence not necessarily in relation to sexual orientation, have been published by Dorota Glowacka (2021) and Tommy J. Curry (2021).

It is important to note that most of the literature adopting a gender perspective on this topic refers to the categories of women and of homosexual or gay men. Nevertheless, certain aspects of feminist perspectives on issues present in transitional justice, for instance regarding sexual and gender-based violence, can often be relevant more broadly than for only the category of women. Regarding the homosexual or gay category, it must be kept in mind that Nazi persecution on grounds of sexuality was based on sexual behavior and not sexual orientation as a part of identity, which is why certain authors have at times referred to same-sex desiring men when writing about this aspect of Nazi persecution (Newsome, 2016). Same-sex relationships do not

historically entail a “gay male identity”. The modern gay identity formed after World War II and in particular with the modern LGBTQI+ rights movement, which brought about a closer overlap between gay identity and behavior and allowed for greater mobilization (Von Wahl, 2012, p. 195).

As this paper undertakes a literature review, it will for the sake of accurately reproducing arguments generally remain within the boundaries of the categories used by authors. Nevertheless, literature on this topic should show awareness that the binarity of these categories is not self-evident. While not obscuring the particular experiences of certain groups, gender perspectives would gain in being inclusive of all persons with diverse sexual orientation and gender identities and take into account the intersectionality of persons’ identities (Schulz, 2020).

2. Sexual and Gender-Based Violence in the Holocaust

Sexual and gender-based violence (SGBV) consists of “crimes” that reflect and reinforce socially constructed gender norms” (Grey & Chappell, 2019, p. 209). Sexual violence refers to acts of a sexual nature without consent and/or using force or coercion (International Federation for Human Rights, 2021). SGBV also encompasses “non-sexualized gender-based crimes” (International Federation for Human Rights, 2021, p. 209). Gender-based violence thus also includes a large range of acts that can be of different nature, including “physical, psychological, emotional, administrative, economic and structural” (International Federation for Human Rights, 2021, p. 87). While such acts are committed against persons of all genders, the primary victims of SGBV are women and girls (Jurasz, 2013; International Federation for Human Rights, 2021). Existing literature on SGBV during the Holocaust thus stems mainly from a feminist perspective.

Askin (1997) notes that this type of violence was perpetrated, mostly against women, in addition to non-gender specific crimes. Ní Aoláin (2000) rather emphasizes the fact that victims’ gender led to different forms of violation, but not necessarily greater victimization for women. While this question may depend on the particular circumstances, it is important to note that sexism was of major importance in Nazi ideology. Nazis viewed women solely as having the quality of being child bearers. Jewish women were also reduced to their femaleness, consisting in their reproductive capacity from this point of view, and they were despised precisely for this attribute. For this reason, Moodrick-Even Khen and Hagay-Frey (2013) underline that Jewish women faced persecution on grounds of both ethnicity and gender. Gender analyses have sought to shed light on the effects for victims of presenting such double factors of persecution. For instance, it has been found that more women were immediately killed upon arrival to camps than men, given that men were considered more useful to work (Moodrick-Even Khen & Hagay-Frey, 2013; Welch, 2020).

Furthermore, a large range of SGBV acts were perpetrated during the Holocaust, both sexual and non-sexual. Firstly, acts of sexual violence that are reported by Jewish survivors of camps include sexual harassment (Levenkron, 2010) and rape (Halbmayer, 2010) as well as forced prostitution (Reinharz, 2010) and “sex for survival”, a term that refers to the performance of sexual services in order to obtain a commodity or advantage (Levenkron, 2010, p. 15). Forced prostitution took place through the establishment of brothels and it is estimated that about two hundred women were exploited in this context (Sommer, 2010). The brothels were established as a special privilege for “top-notch” workers (Sommer, 2010, p. 59), as well as for SS

guards. German regulations prohibited that Jewish women work in brothels for German military and SS and of the two hundred women recorded to have been exploited in concentration camp brothels, none were Jewish (Schneider, 2019). Nevertheless, there is evidence that in ghettos Jewish women were also enslaved in these types of institutions (Sinnreich, 2010). Even when no “official brothels” were organized, such as in the Warsaw ghetto, forced prostitution occurred for instance in cafés and bars (Person, 2015). In camps, Jewish women have also been forced to become sex slaves to guards or more powerful fellow inmates, both female and male (Person, 2015).

In addition to this, sexual humiliation took place often in the form of imposed public nakedness such as forcing women to strip naked before guards, to undergo humiliating physical examinations, to remain naked for long periods of time, to be whipped naked and made to dance naked (Sommer, 2010). Forced nudity, in particular in public, is recognized as an act of sexual violence independently of whether there has also been physical contact or not (International Federation for Human Rights, 2021). The obligation to shave all head and bodily hair can also be considered a form of humiliation which enters the category of SGBV (Halbmayr, 2010; Ní Aoláin, 2000), as we will see below (see section 4.1). In addition, untended menstruation was experienced as a degrading situation (Ephgrave, 2016).

Moreover, “medical” acts which aimed at preventing reproduction, such as forced sterilization, forced abortion and other medical experiments, were perpetrated and found to particularly impact women (Halbmayr, 2010). Moreover, due to starvation many women ceased menstruation, which in some testimonies has also been associated to the fear of sterility (Ephgrave, 2016).

Notably, even when most often women and girls were the ones singled out for rape and sexual slavery, these acts were not uncommon against men and boys (Glowacka, 2021). Most accounts of rape and sexual violence during the Holocaust and their theorization in scholarship are female-specific. The recognition of sexual violence perpetrated during the Holocaust has come late for women, and even later for men (Curry, 2021). Many reports exist of acts of sexual brutality against homosexual men in camps, such as torture of the sexual organs (Chalmers, 2015). Often, sexual violence against men has only been depicted as being committed against homosexual camp inmates because of their sexual orientation. Nevertheless, it was also commonly perpetrated against boys and men irrespective of that. The agents of violence were German SS, but also kapos, Blockälteste (inmates appointed to be the leaders of a barrack), and sometimes pipls (boys that were favoured by more powerful inmates in exchange of services, including sexual). Sex for survival of young men and boys, whether with other inmates or German SS, has been described in several survivors’ testimonies as common in the camps (Curry, 2021). Crimes such as forced sterilization, sexual humiliation and forced nudity also were commonly perpetrated against men (Askin, 2003).

Finally, gender-based violence and discrimination is also used to define violence which “affects a gender group disproportionately” (International Federation for Human Rights, 2021, p. 87). In this regard, it has been held that account must be taken of certain harms associated with the burden specifically resting upon women of caring for children (Reinharz 2010), for instance maternal separation (Ní Aoláin, 2000).

Persecution, discrimination, and gender-based violence were also perpetrated against LGBTQI+ persons in specific ways. The Nazi crackdown on gay organizations, meeting places and publications and general ostracization impacted all LGBTQI+ population. The infamous Section 175 of the Criminal Code for the German Empire of 1871 (§ 175 StGB) prohibiting

same-sex relationships only applied to men, thus only men were arrested on this basis. Persecution took many forms: amongst men arrested and convicted following Section 175, many were tried in civilian courts and imprisoned (Von Wahl, 2012) or deported to concentration camps (Newsome, 2016). Others were tried in military courts and executed or else sent to the front line as cannon fodder. Some were categorized as mentally ill and were institutionalized or murdered as part of the “euthanasia” program by which the Nazis targeted persons considered as sick or degenerate (Heineman, 2002). Some men detained in concentration camps on the basis of Section 175 were victims of medical experiments, forced sterilization and castration (Von Wahl, 2012).

It is important to note that persecution of gay men did not seem to have the primary aim to eliminate them physically, but rather to eradicate homosexual acts, and thus the arrest, conviction and deportations to concentration camps supposedly had a primary goal of re-education. Nevertheless, this should not obscure the fact that gay men were in fact intentionally murdered in concentration camps. While there seems to not have been an explicit, coordinated policy of genocide against gay men, there has been systematic murder of this population in what can be described as amounting to “indirect mass annihilation” (Newsome, 2016, p. 62). Other LGBTQI+ persons were not persecuted in the same way as men engaging in same-sex relationships. Lesbian sexual relationships were not criminalized in Germany, given that Nazis did not view them as a threat to the reproduction of the German race and running of the German nation, as they did same-sex relations between men. All in all, the lack of criminalization pertained to the fact that women could easily become pregnant no matter their sexual orientation, and that there was doubt as to even the existence of lesbian desire (Newsome, 2016). Diverse sexual orientation and gender identities or expressions did remain factors of increased risk and grounds for specifically harmful handling by Nazi authorities (Marhoefer, 2019). Moreover, Austria’s law criminalizing homosexuality which existed before its annexation by Germany in 1938 did apply to women, and there were convictions on this basis (Huneke, 2021). When lesbian women were arrested and detained in concentration camps, it was more often as members of other groups, including “asocials” or “criminals”. In some cases, their sexuality was included in their paperwork. While it did not necessarily play a role in their arrest, it may have been significant in some cases, for instance when they were victims of denunciations as these often-targeted persons seen as social outsiders (Holocaust Encyclopedia, 2021; Marhoefer, 2019). The work of Claudia Schoppmann, who focused on the experience of lesbian women under the Nazis, called for a more complex understanding of persecution, demonstrating that they did face “ostracization and terrorization” despite the fact that they were not targeted by Section 175 (Schoppmann, 1999).

Another relevant aspect is the suspicion directed towards, and persecution against transgender persons. Section 183 of the Criminal Code for the German Empire of 1871 was used since before the Nazi regime to prosecute persons that cross-dressed (§ 183 StGB). Laurie Marhoefer (2019) has researched the case of H. Bode, a person assigned male at birth who identified as a woman. Following her encounter with German soldiers, she was arrested on suspicions of espionage and on grounds of being dressed in woman’s clothing. Police records show that she had several convictions on the basis of both Sections 183 and 175. A doctor classified her as degenerate, describing her as a “homosexual psychopath (a term used at the time to refer to persons with mental deficiencies) with transvestite tendencies”, which supposedly impaired her judgement about “gender morality”. Because of this diagnosis, she was taken out of the penal system and sent to Buchenwald where she was murdered. Marhoefer (2016, 2019) documents how what

was perceived as cross-dressing, even if it was simply the expression of a persons' gender identity, created suspicions of espionage and sabotage. This ultimately drew attention on and made vulnerable transgender persons or persons whose gender expression was non-conforming. Moreover, she shows how sexual orientation and gender identity provided a ground for being diagnosed as mentally ill and thus considered at higher risk of reoffending in breaches of "gender morality", often further entrapping discriminated persons into the institutions that policed them (Marhoefer, 2019, n. p.).

3. Sexual and Gender-Based Violence in the Post-Holocaust Transitional Justice Process

Rape has been prohibited in customary international law since at least the 15th century (Koenig & Askin, 2000), and is included as a crime in the Lieber Code codifying international customary law of wars (Art. 44, Lieber Code, 1863). Nevertheless, SGBV has never received much attention in international humanitarian law and practice. At the time of World War II and in its aftermath, there were provisions on rape in international instruments, however their enforcement had always been "minimal or non-existent" (Askin, 2003, p. 294). Article 46 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War of 1907 does indirectly prohibit rape, by providing that "Family honors and rights, the lives of persons, and private property [...] must be respected". The Geneva Convention (IV) relative to the protection of civilian persons in times of war of 1949 prohibited rape in article 27 by defining it as a crime against honour, which translates the fact that it was recognized as a harm for male status rather than as an individual harm for victims (Ní Aoláin, 2012). This perspective not only mischaracterizes the crime but also invisibilizes the sexual and violent nature of the offense (Askin, 2003). The severity of rape is minimized, and it is reduced to an inferior crime, comparable to offenses against property (Moodrick-Even Khen & Hagay-Frey, 2013). Moreover, article 27 only has the value of a moral statement which signals that rape is seen as a crime (Wolfe, 2014), but does not qualify it as a "grave breach" of international law and thus does not impose upon state parties to penally sanction it (Ní Aoláin, 2012). One reason advanced for this lack of attention is that victims of these acts are women and girls, who have often been invisibilized in international law. Recognition of SGBV crimes has also been found to be undermined because of the public-private divide which relegates such acts to the private sphere (Grey & Chappell, 2019).

As held by Ní Aoláin (2000), most of the acts that were experienced as and intended by perpetrators to constitute SGBV were not defined as harms in the law. SGBV crimes were not mentioned in the Charter of the International Military Tribunal of Nuremberg (IMT) of August 8, 1945. The only exception to the silence regarding rape in the Nuremberg process was article II(1)(c) of the Control Council Law United No. 10 of December 20, 1945, on the punishment of persons guilty of war crimes, crimes against peace and against humanity which lists rape as a crime against humanity (Nuremberg Military Tribunals, 1949).

Askin (1997) has found that rape and forced prostitution could have been explicitly prosecuted as a war crime under article 6(b) of the IMT Charter, as a violation of customary law or as "ill-treatment"; or as a crime against humanity under article 6(c), as part of "other inhumane acts". Nevertheless, IMT Prosecutors decided against it. Moodrick-Even Khen and Hagay-Frey (2013, p. 64) give an account of a prosecutor backing away from referring to the details of an

instance of mass rape, as if considering it too “distasteful” to be mentioned in court. Both Robertson (2012) and Askin (1997) have held that rape was not explicitly prosecuted in the Nuremberg process because Allied powers did not want to try crimes for which they were also guilty: the worst instance of systematic rape during the war was even committed by the Russian army as it advanced on Germany, with an estimated two million women being abused by soldiers with Stalin’s blessing.

In general, rape and other SGBV crimes were thus not seriously addressed in the proceedings of the Nuremberg Tribunal (Wolfe, 2014). The Tribunal did however hear evidence both of crimes of sexual violence against women and of the persecution of gay men. There was an implicit recognition that sexual violence was torture, since transcripts hold account of women being “subjected to particularly outrageous forms of torture”, with the act of rape included in this category (International Military Tribunal, 1947, p. 494). It can thus be said that sexual violence was implicitly prosecuted. Nevertheless, the final judgement of the tribunal does not refer explicitly to these crimes.

After the Nuremberg trials before the International Military Tribunal, subsequent trials were conducted before US military courts under the auspices of Control Council Law No. 10 (Nuremberg Military Tribunals, 1949). Even though rape was listed as a crime under this law, it was given only “cursory” treatment in these trials (Askin, 2003, p. 302). The only specifically gendered violation that was thoroughly examined was sexual medical experimentation performed in camps (Ní Aoláin, 2000). Crimes addressed include forced sterilization and castration, forced abortion, and sexual mutilation (Askin, 2003).

It can thus be said that in the context of the Nuremberg trials, the law was structurally incapable to bring about full legal accountability for SGBV during the Holocaust (Ní Aoláin, 2020). Even though the IMT heard evidence of SGBV and “considered it in support of charges of other inhumane acts as crimes against humanity”, neither rape nor enforced prostitution were explicitly included in its Charter or in its final judgement (Plesch et al., 2014, p. 350). As held by Ní Aoláin (2000), most of the acts that were experienced as and intended by perpetrators to constitute SGBV were not defined as harms in the law. Because legal accountability is limited to certain rigid legal categories, acts that fall out of these definitions are invisible for legal processes. This invisibilization relates to the larger “capture problem” of law with regard to gendered harms. Examples include the “historical failure of the law to account for and address sexual harassment, marital rape, pornography, emotional harms and domestic violence” (Ní Aoláin, 2012, p. 224). Because there are instances of SGBV being considered as inhumane acts, it has been said that despite them being explicitly included in the IMT Charter, several forms of SGBV were indeed prosecuted at Nuremberg (Koenig & Askin, 2000). Bassiouni (1992, p. 186) has also held that rape was implicitly included as crime in the Nuremberg Charter, but simply “subsumed within the words ‘or other inhumane acts’”. Nevertheless, as we will see in section 4, it can be contested that such “implicit prosecution” satisfies the aims of legal processes and more generally, of transitional justice.

In turn, Dan Plesch, Susana SáCouto and Chante Lasco (2014), relayed by other authors (Grey & Chappell, 2019), have brought a new perspective on the place of SGBV crimes in transitional justice after World War II and the Holocaust. Indeed, in the last years it has become better known to researchers that prosecutions for conflict-related sexual violence crimes did take place in national jurisdiction after World War II, including for acts perpetrated in the context of the Holocaust (Plesch, 2017). This information has primarily become known through the archives of the United Nations War Crimes Commission, which was created in

1943 with the aim to gather evidence about war crimes and their perpetrators (United Nations War Crimes Commission, 1948). Scholarly research on the topic is recent because of the fact that in 1949, given the Cold War context, the United States ensured that the archive was made secret (Plesch, 2017). In 2014, the United States government decided to make the UNWCC record open and accessible (United States Holocaust Memorial Museum, 2014), while in parallel member states started declassifying and digitalizing archives on the topic.

Whether such trials are significant for the post-Holocaust transitional justice process is nevertheless unclear. The UNWCC has supported cases of SGBV concerning Holocaust victims, for instance, for crimes of forced sterilization. Other cases also hold evidence of sex-selective violence such as specifically targeting men, to be murdered, or women, to be sent to camps (Plesch, 2017). Plesch (2017) does not however report that UNWCC supported cases led to individuals being charged with rape or enforced prostitution perpetrated in the context of camps. A large part of the cases documented do not concern the specific case of the Holocaust. All in all, it is clear that the number of prosecutions is largely inferior to the number of crimes that have been committed (Plesch et al., 2014). There is also little information on whether, if at all, and how victims have benefited from the process.

Finally, the legal and political continuity of persecution of gay men after the war was a crucial obstacle to transitional justice. Section 175 criminalizing homosexuality existed before Hitler's arrival to power. However, it was modified under the Nazi regime in order to broaden its scope and include harsher punishments (Newsome, 2016). The denazification process at the end of the war included the aim formulated in Article II of Law No. 1 of August 30, 1945, of the Control Council on the repealing of Nazi Laws to disapply any law the application of which "would cause injustice or inequality". However, the list of laws to be abolished in the new Penal code decided upon by the US Military Council did not include Section 175. As a consequence, the oppression of gay men was implicitly legalized in the aftermath of the war. The law was upheld by courts despite challenges in the 1950s, including based on the claim that it should be struck down as a "realization of national socialistic goals or thoughts" (Newsome, 2016, p. 84). As a consequence, not only were gay men not given a voice in the Nuremberg process, but also Section 175 outlived the Nazi regime and homosexuality remained illegal in post-war Germany (Newsome, 2016; Verhelst López, 2018).

In West Germany, around 100 000 men were arrested on the basis of Section 175 between 1945 and 1969 and more than half of them were convicted of a fine or imprisonment, thus no significant break with the past occurred. Continuity existed in terms of "law, social attitudes, and even police and judicial personnel" (Newsome, 2016, p. 68). In East Germany, there was the view that Section 175 and prosecution on its basis presented a continuity with the Nazi regime, and thus the number of arrests and prosecutions was way lower. After the East German Criminal Code was amended in 1957, its authorities stopped prosecuting on the basis of Section 175. Other groups persecuted by the Nazis lobbied to be recognized and obtain reparations, while gay men who had been persecuted were forced to silence given the continued criminalization of homosexual acts. Newsome (2016) has found that in West Germany, the judicial system was prominent in determining who was to be recognized as a victim of the Nazi regime. Given the continued criminalization of homosexual acts, this juridical lead in memorialization worked against the recognition of persecution of gay men (Newsome, 2016). Despite the different voices present in the 1950s discussion about the past in West Germany, including government, media, and organizations of survivors, the West German courts had the crucial role in deciding

who was to be officially considered a victim of the Nazis, using the law in this endeavor. Moreover, the Nuremberg process was obviously not inclusive of LGBTQI+ survivors, and their testimonies and personal memories were not included in its archive. Nuremberg thus participated in building a “unidirectional approach to the Holocaust”, where memories of non-Jewish and non-German persons were ignored (Verhelst López, 2018, p. 15).

All of the above shows that structural discrimination against sexual and gender minorities not only provided a ground for increased violence but also conditioned post-conflict responses, in this case by perpetuating violence, invisibilization and continued criminalization against the group concerned even in transitional justice mechanisms (Verhelst López, 2018). Memories of persecution of gay men were shaped by the public conceptions and law in the aftermath of the war. Because homosexual acts remained prohibited by Section 175 and continued to be prosecuted, there could be no public recognition of the unfair treatment of gay men by Nazis. This would have evidenced an uncomfortable continuity between Nazis and the government of the time (Newsome, 2016).

4. Feminist, LGBTQI+ or Queer, and Masculinities Perspectives on the Post-Holocaust Transitional Justice Process

Feminist, LGBTQI+ or queer, and masculinities perspectives have brought various insights on the post-Holocaust transitional justice process. These can be examined through the framework of the concept of transitional justice and in particular some of its crucial components: justice through prosecution initiatives, both material and symbolic reparations, as well as memorialization (United Nations Secretary-General, 2010).

4.1 Justice

One of the main feminist approaches with regard to the prosecution of the crimes of the Holocaust has to do with the challenging of the legal categories, both current conceptualizations and those used during the Nuremberg process. There is an understanding that “for law to be effective it must co-relate sanction to the experience of the victim”. Ní Aoláin (2000) argues that SGBV is not simply corollary to war and international crimes but is intentionally employed to further their purposes. In this sense, the intentions behind SGBV as well as the harms caused must be fully understood and named for law to facilitate accountability for these crimes (Ní Aoláin, 2000, p. 44). Banwell (2015) has argued that a gendered perspective on violence perpetrated during the Holocaust was of importance to understand the forms it has taken. Certain factors distinguish it from SGBV in other contexts. Unlike other occurrences of rape in the context of genocides, there was no organized mass rape nor the aim to “contaminate the bloodline” through this act. To the contrary, by raping Jewish women, Germans made themselves guilty of the crime of “Rassenschande”, according to which relations between Germans and Jews were prohibited (Banwell, 2015, p. 215; Mühlhäuser, 2021). This even led some to believe that rape was rare during the Holocaust. Following Banwell (2015), rape was nevertheless often perpetrated, as well as other forms of SGBV, because the victims were attacked not only as Jews but also as Jewish women and (potentially) mothers. Attention should also be given to the gendered aspect of sexual violence perpetrated against men and boys during the Holocaust.

There have been very few efforts to theorize sex-specific violence against men in its connection to genocidal violence in this context. Curry (2021) has argued that antisemitism and its racist dehumanization have attached a particular sexual stigma to Jewish men, similar to the one imposed upon other racialized men in colonial and neo-colonial contexts. Antisemitism disseminated a racist stereotype of Jewish men which simultaneously hypersexualized them and depicted them as sexually inferior and feminine. Subjugation and racialization made them sexually vulnerable to the dominant group, which used violence to assert its position. Rape also achieved the feminization process that participated in subjugating Jewish men (Curry, 2021). With regard to the Nuremberg proceedings, subsuming the account of SGBV in categories such as inhumane acts or torture thus does not satisfy the requirements of understanding and naming intentions and harms. Moreover, human rights and humanitarian law standards after World War II were developed considering the events of this period. Thus, if certain experiences were not taken into account in this norm-setting, then it can be assumed that accountability mechanisms set up in the aftermath of World War II were not appropriate. Ní Aoláin (2012, p. 225) calls for the crucial strategy of feminist scholarship which is “woman-centeredness”: transitional justice should take into account the “subjective sense of injustice” of victims.

Furthermore, the human rights regime protects the right to bodily integrity, while the humanitarian law regime prohibits certain sexual acts such as rape, enforced prostitution, and acts that seek to prevent birth within a group. This is a limited catalogue that arguably does not include all SGBV. One harm that has been theorized by Ní Aoláin (2000) is the harm of maternal separation. Considering this a harm that particularly affects women would be based on the notion that in practice care for children was and continues to be disproportionately attributed to women. Moreover, the Holocaust has brought about experiences of women and children being separated from men and specific harms occurring to women that had infants under their care. In both camps and ghettos, pregnant women and women who refused to surrender their infants to death were often killed. This led women to have unwanted abortions and even commit infanticide, faced with the absence of other options to survive (Ephgrave, 2016). While laws of war do emphasize the protection of children and their caretakers, and human rights law recognizes the right to family life, this harm is not recognized as SGBV nor as a crime constitutive of genocide. Such a conceptualization could be dismissed from a feminist perspective because of its essentialist view of women (Ní Aoláin, 2000). Approaches to transitional justice that focus on the experiences of women have been criticized for introducing an essentialist image of women which also plays a role in presenting women as victims, thus undermining their agency. Nevertheless, “strategic essentialism” has been defended by feminist scholars as a way to be politically visible. This should be done without denying that there is no “unitary female identity” (Ní Aoláin, 2012, p. 228).

The other unattended crime exposed by Ní Aoláin (2000) is forcing women to remove their clothes and to undergo shaving of all their bodily hair, often before and by male guards. She defines it as “sexual erasure” (Ní Aoláin, 2000, p. 62). With regard to the shaving of hair, Halbmayr (2010, p. 37) has also found this to constitute a gender-based harm, as for many, hair is considered a symbol of femininity and shaving it as a negation of “individual and gender-specific identity”. Moreover, Moodrick-Even Khen and Hagay-Frey (2013) have reported that forced nakedness, while also impacting men, was understood by women in a different way than by male prisoners. Indeed, it was perceived as a form of gender-specific sexual abasement (Moodrick-Even Khen & Hagay-Frey, 2013).

Secondly, the prominent recourse to the legal system in transitional justice processes has been criticized from a feminist perspective for several reasons. First, it tends to reproduce structural gender bias (Buckley-Zistel & Zolkos, 2012). As described above, this is evident with regard to the qualification of crimes used in the Nuremberg process. If the experiences of victims did not fall within legal categories, then they had no legal recognition for the harm caused to them. This was the case of many harms that particularly impacted women, as seen above, as well as SGBV harms in general (Ní Aoláin, 2020). Another feminist criticism of a legalistic approach to transitional justice concerns the lack of effectiveness of criminal law and legal proceedings. In this regard, it has been held that the focus of criminal law on individual accountability stops short of enabling the structural changes in society necessary to eradicate gender discrimination and discrimination against sexual and gender minorities (Ní Aoláin, 2012).

An additional aspect brought by feminist perspectives has to do with the presence of women in the transitional justice process. This field, as many others, emerged as a male-dominated one both in terms of actors as of themes, which did not refer to the particular experiences of women. As a consequence, the entry of women in the field of transitional justice was initiated as a politics of presence. Presence alone does not entail a feminist engagement nor a drastic change in outcomes of transitional justice processes for women. Nevertheless, it can be considered a necessary prelude to a more gender-sensitive development of transitional justice (Ní Aoláin, 2012). It must therefore be noted about the Nuremberg process that its major actors, in other words all prosecutors and judges (Moodrick-Even Khen & Hagay-Frey, 2013), were men (Koenig & Askin, 2000). Moreover, witness selection for trials against Nazis also privileged men, as shown by the Eichmann trial and other trials of Nazi soldiers and commanders. The only case where many women were heard is the “Doctors’ trial” on medical experiments (Nuremberg Military Tribunals, 1949; Moodrick-Even Khen & Hagay-Frey, 2013). Finally, assumptions about gender roles, in particular the vision of women as passive objects devoid of agency lead to women often being framed as solely victims, rather than as perpetrators (Buckley-Zistel & Zolkos, 2012). This is of relevance regarding the post-Holocaust transitional justice process. Indeed, as the Nuremberg trials focused on the highest-placed Nazi officials, not a single woman was among the accused. Only two women were accused in the subsequent Nuremberg trials. Many however were charged in trials on concentration camps. Nevertheless, this was not retained as a significant element in the collective memory and Nazi criminality continues to be seen as mostly male. This can also be explained by the low number of women working as camp guards, in comparison to men (Wieviorka, 2014).

4.2 Reparations

As stated above, given the continued criminalization of homosexual relationships there was a late recognition of persecution against gay men. This in turn impacted their possibilities to obtain reparations. In the early fifties, gays in West Germany started to create alternative spaces for themselves and had their own publications where testimonies of survivors were published. Nevertheless, these were repressed by the 1953 Law against the Distribution of Written Material Endangering Youth. This had a major effect on the recognition of persecution of gay men, since this was the only medium through which their experiences had been publicly expressed. Again, this law barred access of gay men to the public sphere and thus to recognition, and for the next twenty years no publications held account of these experiences.

While the continued persecution of gay men did reduce possibilities of speaking out, multiple attempts of gay men to be considered as victims of persecution show that the lack of recognition stemmed not from their silence but from an active rejection of their claims by the Allies, the West German government, and survivors' organizations. Gay men did not have the right to associate nor to freedom of the press and thus could not create their own organizations to lobby in order to obtain recognition and compensation (Newsome, 2016).

It is only in the 1970s that the topic of persecution of LGBTQI+ persons and in particular of gay men came to the fore, brought about by mobilizations of the gay liberation movement and civil rights movements (Verhelst López, 2018). This was facilitated by amendments to Section 175 allowing same-sex acts for men above 21 (Newsome, 2016). On the 40th anniversary of the end of World War II, the then incumbent president Richard von Weizsäcker made the groundbreaking announcement that gay victims would from then on be commemorated (Kurze, 2019). It was activist groups advocating for recognition of gay victims of the Holocaust that raised awareness on this issue. Gay rights activists started integrating the narratives of past Nazi persecution in the gay rights movements and began using the pink triangle in protests in the 1970s (Newsome, 2016). In 1994, Section 175 was completely repealed. Newsome (2016) underlines the reciprocal relationship between queer human rights and memory in the 1970s leading to a new understanding of the persecution of gays under the Nazis. One result was for instance the National Memorial to Homosexuals Persecuted under the National Socialist Regime created in 2008 in Berlin.

While mobilization has led to symbolical reparations for gay victims, material reparations have not followed. The Federal Compensation Law passed in 1956 by the West German Bundestag provided that those still living in West Germany who had been persecuted on the basis of race, religion or political/ideological belief could claim compensation. These criteria were chosen by relying upon the definitions of crime against humanity as established during the Nuremberg process, of genocide in the Genocide Convention, as well as on the provisions on compensation contained in the Treaty of Transition of 1952 signed between West Germany and the Allies (Kurze, 2019). Therefore, persons persecuted on the basis of their sexual orientation were not eligible for compensation.

They could only apply for compensation under the 1957 Federal Restitution Law. Most persons did not dare to, given the risk of stigmatization. Only 20 gay men received money under this law, but none received reparations from the fund for victims of the National Socialist Regime under the Federal Compensation Law (Von Wahl, 2012).

It is only in 2000 that the Federal Parliament of Germany officially apologized to gay victims of the Nazis and their criminal sentences were annulled in 2002 (Art. 1 NS-AufhGÄndG). In 2017, the sentences of those convicted after 1945 were annulled as well and the persons concerned received a small amount of compensation (§ 1-3, 5 StrRehaHomG). Nevertheless, gay men persecuted during the war have until now not received any material reparations as victims of the Nazis. One reason given is that at the time, criminal law allowed for prosecution of persons engaging in same-sex behavior. Moreover, no compensations have been paid either for the LGBTQI+ organizations, meeting places and publishing houses that were eliminated by the Nazis (Von Wahl, 2012).

The late recognition of the categories of "asocials" and "criminals" as victims of the Nazis also has been underlined from a feminist perspective. Women were often included as part of this category on grounds that hold a gender dimension, for instance prostitution, adultery in times of war, or conviction for abortion. In general, they could be classified as "asocials" for cause of

“sexual depravation”, a term that was only used to designate women and in general encompassed any way in which they could have departed from norms of accepted female sexual behavior (Braun, 2021). This shows how being of female gender created a risk factor for being targeted by the Nazi regime. Persons sent to concentration camps as “asocials” or “criminals” did not obtain recognition nor reparations after the war, for instance under the Federal Compensation Law passed in 1956 by the West German Bundestag. Victims classified as “asocials” had to wait until the end of the 1980s to be able to obtain reparations, following extralegal regulations for instances of hardship (Sommer, 2010). Only in 2020 did the Bundestag adopt a declaration to acknowledge “asocials” and “habitual criminals” as victims of the Nazis (Deutscher Bundestag, 2020).

This is of particular relevance with regard to forced prostitution. Given the bureaucratic precision with which the concentration camps brothels were organized, precise facts have been ascertained with regard to the women concerned, showing that most of them were registered as “asocials”, while others were registered as political prisoners or criminals. There is no evidence of Jewish women being exploited in these brothels, which can be explained by the enforcement of ethnic segregation laws (Sommer, 2010) (this is not to obscure the fact that as seen above, Jewish women were nevertheless victims of forced prostitution in ghettos as well as *de facto* relationships of forced prostitution in camps; Person, 2015). The lifelong stigma attached to sexual exploitation for these women coupled with their late and insufficient recognition as victims can be seen as a failure of the transitional justice process.

4.3 Memorialization

Feminist and LGBTQI+ perspectives have shed light on various factors impacting memorialization of the Holocaust with regard to the experiences of women and sexual minorities. Firstly, the hurdles to the development of feminist perspectives on the Holocaust can be underlined. In fact, this was actively resisted by several scholars (Levenkron, 2010), under the idea that these would trivialize the atrocities committed: the oppression of women was seen as subsidiary to the matter of Nazi persecution of Jews. There was the understanding that the Nazi machinery had targeted persons without consideration for their gender, but simply because they were Jews. This vision, which permeated the legal processes seeking accountability for the Holocaust, nevertheless failed to consider the differential experiences of victims depending on their gender (Mühlhäuser, 2021). For example, the fact that women were more often dismissed to the gas chambers in the selection processes (Moodrick-Even Khen & Hagay-Frey, 2013). Testimonies and memoirs of survivors were also shadowed by social norms of shame and guilt surrounding SGBV. Women victims of sexual violence were and still are shamed, and were also commonly considered prostitutes (Levenkron, 2010). With regard to SGBV committed against men and boys, Glowacka (2021) underlines how narratives of the Holocaust are impacted by dominant gender conceptions. Female bodies have always been seen as inherently violable and sexual violence against women is normalized. It is thus considered as not upsetting the social order. To the contrary, the same acts committed against men are often out of common understanding and considered to target the very foundations of the heteronormative social order. As a result, such narratives have often been silenced as they do not fit within socially acceptable frameworks of meaning (Glowacka, 2021). When acknowledged, sexual violence against males during the Holocaust is often perceived as exceptional or associated with sexual orientation,

rather than a form of sex-specific violence that takes place in the context of racist violence targeting Jewish males (Curry, 2021).

Moreover, feminist perspectives hold that transitional justice processes should avoid the trap of essentializing women's livelihoods during conflict to the experience of victimhood. On the contrary, it should be recognized how women have made use of their agency in conflict settings (Ní Aoláin, 2020). For instance, there has been research carried out on Jewish women's survival strategies and networks (e. g. Milton, 1984). Kaplan (2019) has called for more research adopting a gendered analysis on the Holocaust, examining gender roles, differential experiences, imbalances of power as well as the breakdown of gender norms in extreme situations. In this regard, it must be noted that resistance of women during the war, including in ghettos and in concentration camps, has remained an under-researched and silenced topic in Holocaust scholarship. This can be demonstrated by the fact that the first conference focused on women's resistance will take place only in June 2022. By sharing knowledge on this topic, it aims to "create a new narrative around (female) agency in the Shoah and other genocides, which may inspire transformative activism today" (Wagner College Holocaust Center, n. d.). In her book on "women fighters of the Jewish resistance", Judy Batalion (2021) addresses the diverse political and personal reasons for the silencing of this dimension of Holocaust history. Not only did the majority of women fighters and couriers die before the end of the war, but survivors also had a hard time telling their stories. One reason for not mentioning Jewish resistance in general is the fear that such a focus on agency create confusion in the clear victim-aggressor dichotomy, leading to the perception that survival was not only a matter of luck and that those who did not resist were to blame. Moreover, resistance in the form of physical combat was emphasized more than other actions. While women did take up arms, they also often carried out the role of courier, which has been minimized even though it was an essential and risk-laden enterprise. Women also often carried out the role of documenting the resistance and downplayed their own participation in comparison to the one of men.

Later accounts of these events by men did not remedy this. This downplaying can also be linked to women's self-silencing, for several reasons including the attempt to cope with trauma and survivor's guilt. They were also silenced by persons around them, caused for instance by censorship of some of their writings for political motives, as well as disbelief or indifference (Batalion, 2021).

Finally, issues of collective identity and intersectionality in memorialization are salient regarding Nazi persecution of LGBTQI+ persons. Angelika von Wahl (2012) has underlined the role of politics and sexuality in transitional justice by comparing claims for recognition and reparations from Jewish persons and from persecuted same-sex desiring men. Collective identity is a precondition to using political agency in order to create a movement to obtain restorative justice. In the case of persecuted gay men, forming a community around sexuality was difficult. Firstly, common identity has historically more often been built around belonging to a religious, ethnic or social group, rather than around sexuality. Secondly, the legal and political continuity in persecution after the war in any case hindered the construction of such a common identity. Thirdly, in this historical context, there was less visibility of gay men than of Jewish persons. Many lived their sexuality in secret and continued to hold their normal role in Nazi society (Von Wahl, 2012). A large proportion of men convicted of homosexuality joined the Wehrmacht upon their release from prison, thus participating in the war and in persecution (Wilke, 2013). The distinction between perpetrators and victims was therefore less clear than in the case of Jewish persons (Von Wahl, 2012).

Wilke (2013) has further researched the difficulty to develop a collective identity in order to obtain recognition for persecution against LGBTQI+ persons, as well as intersectionality of identities. The search for recognition has led to the establishment of narratives of persecution that to a certain extent mirror the experience of the Jews, to benefit from the recognition of victimhood granted to this group. This has been done despite the differences in how Nazis targeted these different groups. Thus, the main focus through which persecution against LGBTQI+ persons has been acknowledged is the deportation of gay men to concentration camps, despite the fact that persecution of gay men and LGBTQI+ persons in general was manifold, as mentioned above.

While the memory of Nazi persecution has had an influence on the political consciousness of LGBTQI+ persons beyond gay men, there is nevertheless no uniform collective memory (Jensen, 2002). The tensions in memorialization became most apparent during the process of establishing the National Memorial to Homosexuals Persecuted under the National Socialist Regime. The original initiative was to build a monument to commemorate only the persecution of gay men by the Nazi regime. Requests were made to include the perspectives of lesbians, which stirred disagreement in the face of arguments that lesbians had not been persecuted by the Nazis. In the end, the memorial was established under a compromise position which was to honor both gay men and lesbian women without nevertheless giving precise accounts of numbers or circumstances of persecutions. Wilke (2013) underlines the difficulty of such debates. Firstly, the evidence of lesbians' experiences under the Nazis is scant, which can also be explained by the invisibilization of female homosexuality in general. Moreover, memorialization takes little account of the intersectionality of identities (Wilke, 2013). Claudia Schoppman (1993) has written about several lesbian women that were detained in concentration camps. However, they often were detained based on other grounds of persecution, such as being a political prisoner or being Jewish (Schoppman, 1993). Classifying victimhood in strictly separated groups thus has had the effect of invisibilizing certain dimensions of victims' identity and simplified the history of persecution they have faced, thus inadequately recognizing their experience (Wilke, 2013). Finally, the memorial does not mention other sexual minorities such as bisexual or transgender persons, despite the fact that they have also been victims of Nazis, as described earlier in the paper.

5. Conclusion and Paths for Further Research

This paper has sought to take stock of the existing literature adopting a gender perspective on the post-Holocaust transitional justice process. This literature has embraced a diversity of topics, often focusing on certain social groups in particular women or gay men, but also lesbian women and transgender persons. By adopting the framework of the concept of transitional justice to organize this knowledge, the paper has outlined salient issues with regard to gender perspectives on the post-Holocaust transitional justice process. The impact of the embeddedness of structural discrimination in the law in excluding certain categories from this process has been evidenced in many ways. Outside of legal processes, the silencing of women's experiences is also clearly illustrated by the lack of sufficient attention and research on women's resistance and of recognition for women categorized as "asocials" or "criminals".

The paper has thus reviewed the scholarship evidencing the lack of attention for SGBV in the Nuremberg process, as well as the invisibilization of LGBTQI+ persons. This obviously demonstrates the effects of structural discrimination against women and LGBTQI+ as well as the impact of the public-private divide and heteronormativity in silencing sexual violence. It also belongs to a larger trend of paying little attention to victims in this process: they had only the role of witnesses, but their needs were not taken into account. There even was no mention of victims in the Nuremberg Charter (Kurze, 2019).

Sources on the United Nations War Crimes Commission paint a different picture of the treatment of SGBV in cases supported by this organization. Nevertheless, current research does not allow to say that these cases were significant from a gender perspective for the post-Holocaust transitional justice process. It must be noted that at the time Plesch et al. wrote the first article in 2014, only a small fraction of the archives of the UNWCC had been made public. Greater access to these trial records and further research on the topic, in particular with a focus on its significance for transitional justice, is necessary (Plesch et al., 2014).

This paper demonstrates that in order to include a feminist perspective within the post-Holocaust transitional justice process, a greater attention should be given to sexual and gender-based harms that were perpetrated during the war. The Bundestag's late declaration of victimhood of the category of "asocials" shows that there is still the need to adequately recognize how gender norms were at play in the treatment of women persecuted under this category. Official efforts should be undertaken to include a feminist perspective in the transitional justice process, for instance by mentioning women's resistance in the narratives and documentation of the German Resistance Memorial Center.

In addition, there is the need for further research on sex-specific violence targeting Jewish men and boys during the Holocaust independently of their sexual orientation, and how it is connected to antisemitic and genocidal violence.

Finally, the treatment of LGBTQI+ persons and in particular gay men persecuted during the Holocaust demonstrates how the continued legal and political persecution against these persons hindered their efforts to obtain recognition in the post-Holocaust transitional justice process. The field would nevertheless benefit from further research that better takes into account the intersectionality of identities. When addressing persecution faced by persons with diverse sexual orientation and gender identity, Marhoefer (2019) has called for a better understanding of "risk, complexity and intersectionality", while still acknowledging the atrocities committed against them.

References

- Andrews, S. (2003). Remembering the Holocaust: Gender Matters. *Social Alternatives*, 22(2), 16-21. <https://search.informit.org/doi/abs/10.3316/ielapa.200308974>
- Askin, K.D. (1997). *War crimes against women: prosecution in international war crimes tribunals*. Martinus Nijhoff Publishers.
- Askin, K.D. (2003). Prosecuting wartime rape and other gender-related crimes under international law: extraordinary advances, enduring obstacles. *Berkeley Journal of International Law*, 21(2), 288-349. <https://doi.org/10.15779/Z384D2S>
- Banwell, S. (2015). Rassenschande, Genocide and the Reproductive Jewish Body: examining the use of rape and sexualized violence against Jewish women during the Holocaust? *Journal of Modern Jewish Studies*, 15(2), 208-227. <https://doi.org/10.1080/14725886.2015.1049853>

- Bassiouni, M.C. (1992). *Crimes against humanity in international criminal law*. Martinus Nijhoff Publishers.
- Batalion, J. (2021). *The Light of Days: Women Fighters of the Jewish Resistance*. Virago.
- Braun, K. (2021). *Biopolitics and historic justice. Coming to terms with the injuries of normality*. Transcript Verlag.
- Buckley-Zistel, S., & Zolkos, M. (2012). Introduction: gender in transitional justice. In S. Buckley-Zistel, & S. Stanley (Eds.), *Gender in transitional justice* (pp. 1-33). Palgrave Macmillan.
- Chalmers, B. (2015). Jewish women's sexual behaviour and sexualized abuse during the Nazi era. *The Canadian Journal of Human Sexuality*, 24(2), 184-196. <https://doi.org/10.3138/CJHS.242-A10>
- Curry, T.J. (2021). Thinking through the silence: theorizing the rape of Jewish males during the Holocaust through survivor testimonies. *Holocaust Studies: A Journal of Culture and History*, 27(4), 447-472. <https://doi.org/10.1080/17504902.2020.1843824>
- Deutscher Bundestag (2020, 28. Januar). *Anerkennung der von den Nationalsozialisten als „Asoziale“ und „Berufsverbrecher“ Verfolgten*. <https://dserver.bundestag.de/btd/19/168/1916826.pdf>
- Ephgrave, N. (2016). On Women's Bodies: Experiences of Dehumanization during the Holocaust. *Journal of Women's History*, 28(2), 12-32. <https://doi.org/10.1353/jowh.2016.0014>
- General Orders No. 100 (Lieber Code). (1863). <https://ihl-databases.icrc.org/ihl/INTRO/110>
- Glowacka, D. (2021). Sexual violence against men and boys during the Holocaust: a genealogy of (not-so-silent) silence. *German History*, 39(1), 78-99. <https://doi.org/10.1093/gerhis/ghaa032>
- Goldenberg, M. (1990). Different Horrors, Same Hell: Women Remembering the Holocaust. In R. Gottlieb (Ed.), *Thinking the Unthinkable: Meanings of the Holocaust* (pp. 150-166). Paulist.
- Grey, R., & Chappell, L. (2019). Prosecuting sexual and gender-based crimes in the International Criminal Court: inching towards gender justice. In S. Mouthaan, & O. Jurasz (Eds.), *Gender and war. International and transitional justice perspectives* (pp. 209-234). Intersentia.
- Hájková, A. (2020). Between love and coercion: queer desire, sexual barter and the Holocaust. *German History*, 39(1), 112-133. <https://doi.org/10.1093/gerhis/ghaa047>
- Halbmayr, B. (2010). Sexualized violence against women during Nazi "racial" persecution. In S.M. Hedgepeth, & G.S. Rochelle (Eds.), *Sexual violence against Jewish women during the Holocaust* (pp. 29-44). Brandeis University Press.
- Harthausen, W. (1967). Der Massenmord an Homosexuellen im Dritten Reich. In W. Schlegel (Hrsg.), *Das große Tabu: Zeugnisse und Dokumente zum Problem der Homosexualität* (S. 7-37). Rütten & Loening.
- Hedgepeth, S.M., Rochelle, G.S. (2010). Introduction. In S.M. Hedgepeth, & G.S. Rochelle (Eds.), *Sexual violence against Jewish women during the Holocaust* (pp. 1-10). Brandeis University Press.
- Heineman, E.D. (2002). Sexuality and Nazism: The Doubly Unspeakable? *Journal of the History of Sexuality*, 11(1/2), 22-66. <https://doi.org/10.1353/sex.2002.0006>
- Herrn, R. (2013). Transvestitismus in der NS-Zeit – Ein Forschungsdesiderat", *Zeitschrift für Sexualforschung*, 4(26), 305-404. <https://doi.org/10.1055/s-0033-1356172>
- Holocaust Encyclopedia (2021, March 31). *Lesbians under the Nazi regime*. <https://encyclopedia.ushmm.org/content/en/article/lesbians-under-the-nazi-regime>
- Huneke, S.C. (2021). Heterogeneous persecution: lesbianism and the Nazi State. *Central European History*, 54(2), 297-325. <https://doi.org/10.1017/S0008938920000795>
- International Military Tribunal (1947). *Trial of the Major War Criminals before the International Military Tribunal: Proceedings Volumes (The Blue Set), Volume 7*. https://avalon.law.yale.edu/subject_menus/imtproc_v7menu.asp
- Jacobs, J. (2008). Gender and collective memory: Women and representation at Auschwitz. *Memory Studies*, 1(2), 211-225. <https://doi.org/10.1177/1750698007088387>
- Jensen, E. N. (2002). The pink triangle and political consciousness: gays, lesbians, and the memory of Nazi persecution. *Journal of the History of Sexuality*, 11(1), 319-349. <https://doi.org/10.1353/sex.2002.0008>

- Jurasz, O. (2013). About justice that is yet to come: a few remarks about the international pursuit of post-conflict gender justice. *Journal of Gender Studies*, 24(1), 56-69. <https://doi.org/10.1080/09589236.2013.810146>
- Kaplan, M. (2019). Did Gender Matter during the Holocaust? *Jewish Social Studies*, 24(2). 37-56. <https://doi.org/10.2979/jewisocistud.24.2.05>
- Koenig, D.M., & Askin, K.D (2000). International criminal law and the International Criminal Court statute: crimes against women. In K.D. Askin, & D.M. Koenig (Eds.), *Women and international human rights law, Vol. 2* (pp. 3-30). Transnational Publishers Inc.
- Kokula, I. (1986). *Jahre des Glücks, Jahre des Leids: Gespräche mit älteren lesbischen Frauen*. Frühlings Erwachen.
- Kurze, A. (2019). The coming out of memory: the Holocaust, homosexuality, and dealing with the past. *Kritika Kultura*, 33(2), 1-34. <https://doi.org/10.13185/KK2020.03339>
- Levenkron, N. (2010). Death and the maidens: “prostitution”, rape, and sexual slavery during World War II. In S.M. Hedgepeth, & G.S. Rochelle (Eds.), *Sexual violence against Jewish women during the Holocaust* (pp. 13-28). Brandeis University Press.
- Marhoefer, L. (2016). Lesbianism, transvestitism, and the Nazi State: a microhistory of a Gestapo investigation. *The American Historical Review*, 121(4), 1167-1195. <https://doi.org/10.1093/ahr/121.4.1167>
- Marhoefer, L. (2019, May 2). *Transgender Identities and the Police in Nazi Germany* [Video]. YouTube. <https://www.youtube.com/watch?v=-NhJVtMGONk> (2022, March 29).
- Milton, S. (1984). Women and the Holocaust: The Case of German and German-Jewish Women. In R. Bridenthal, A. Grossmann, & M. Kaplan (Eds.), *When Biology Became Destiny: Women in Weimar and Nazi Germany* (pp. 297-333). Monthly Review Press.
- Moodrick-Even Khen, H., Hagay-Frey, A. (2013). Silence at the Nuremberg trials: the International Military Tribunal at Nuremberg and sexual crimes against women in the Holocaust. *Women’s Rights Law Reporter*, 35(1), 43-66. ssrn.com/abstract=3407213 (2022, March 29).
- Mühlhäuser, R. (2021). Understanding sexual violence during the Holocaust: a reconsideration of research and sources. *German History*, 39(1), 15-36. <https://doi.org/10.1093/gerhis/ghaa037>
- Newsome, J. (2016, May 6). *Homosexuals after the Holocaust: sexual citizenship and the politics of memory in Germany and the US, 1945-2008*. une.edu. https://www.une.edu/sites/default/files/homosexuals_after_the_holocaust.pdf.
- Ní Aoláin, F. (2000). Sex-based violence and the Holocaust: a reevaluation of harms and rights in international law. *Yale Journal of Law and Feminism*, 12(1), 43-84. <https://digitalcommons.law.yale.edu/yjlf/vol12/iss1/3/> (2022, March 29).
- Ní Aoláin, F. (2012). Advancing feminist positioning in the field of transitional justice. *The International Journal of Transitional Justice*, 6(2), 205-228. <https://doi.org/10.1093/ijtj/ijso13>
- Ní Aoláin, F. (2020). Advancing a feminist analysis of transitional justice. In M. Albertson Fineman, & E. Zinsstag (Eds.), *Feminist perspectives on transitional justice* (pp. 43-62). Intersentia.
- Nuremberg Military Tribunals. (1949). *Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (“Green Series”): Volume 1*. U. S. Government Printing Office. https://tile.loc.gov/storage-services/service/ll/llmlp/2011525364_NT_war-criminals_Vol-I/2011525364_NT_war-criminals_Vol-I.pdf
- Person, K. (2015). Sexual Violence during the Holocaust – The Case of Forced Prostitution in the Warsaw Ghetto. *Shofar: An Interdisciplinary Journal of Jewish Studies*, 33(2), 103-121. <https://doi.org/10.1353/sho.2015.0005>
- Plesch, D. (2017). *The lost history of prosecuting Axis war crimes. Human rights after Hitler*. Georgetown University Press.
- Plesch, D., SáCouto, S., Lasco, C. (2014). The relevance of the United Nations War Crimes Commission to the prosecution of sexual and gender-based crimes today. *Criminal Law Forum*, 25(1-2), 349-381. <https://doi.org/10.1007/s10609-014-9232-1>

- Reinharz, S. (2010). Foreword. In S.M. Hedgepeth, & G.S. Rochelle (Eds.), *Sexual violence against Jewish women during the Holocaust* (pp. ix-x). Brandeis University Press.
- Ringelheim, J. (1984). The unethical and the unspeakable: women and the Holocaust. *Simon Wiesenthal Center Annual*, 1(1), 69-87. <https://www.museumoftolerance.com/education/archives-and-reference-library/online-resources/simon-wiesenthal-center-annual-volume-1/annual-1-chapter-4.html> (2022, March 29).
- Ringelheim, J. (1985). Women and the Holocaust: a reconsideration of research. *Signs*, 10(4), 741-761. <https://www.jstor.org/stable/3174312> (2022, March 29).
- Robertson, G. (2012). *Crimes against humanity: the struggle for global justice* (4th ed.). The New Press.
- Schneider, V. (2019). The Negation of Suffering: Forced Sex Labor in Concentration Camp Brothels in Remembrance and Research. In S.K. Danielsson (Ed.), *War and Sexual Violence: New Perspectives in a New Era* (pp. 131-145). Ferdinand Schöningh.
- Schoeps, H.-J. (1963). Überlegungen zum Problem der Homosexualität. In H. Bianchi (Hrsg.), *Der homosexuelle Nächste: ein Symposium* (S. 74-114). Furche-Verlag.
- Schoppmann, C. (1991). *Nationalsozialistische Sexualpolitik und weibliche Homosexualität*. Centaurus Verlag.
- Schoppmann, C. (1993). *Zeit der Maskierung. Zur Situation lesbischer Frauen im Nationalsozialismus*. Orlanda Frauenverlag.
- Schoppmann, C. (1999). *Verbotene Verhältnisse: Frauenliebe 1938-1945*. Quer Verlag.
- Schulz, P. (2020). Towards inclusive gender in transitional justice: gaps, blind-spots and opportunities. *Journal of Intervention and Statebuilding*, 14(5), 691-710. <https://doi.org/10.1080/17502977.2019.1663984>
- Sinnreich, H.J. (2010). The Rape of Jewish Women during the Holocaust. In S.M. Hedgepeth, & G.S. Rochelle (Eds.), *Sexual violence against Jewish women during the Holocaust* (pp. 108-123). Brandeis University Press.
- Sommer, R. (2010). Sexual exploitation of women in Nazi concentration camp brothels. In S.M. Hedgepeth, & G.S. Rochelle (Eds.), *Sexual violence against Jewish women during the Holocaust* (pp. 45-60). Brandeis University Press.
- Stein, A. (1998). Whose memories? Whose victimhood? Contests for the Holocaust frame in recent social movement discourse, *Sociological Perspectives*, 41(3), 519-540. <https://doi.org/10.2307/1389562>
- United States Holocaust Memorial Museum (2014, July 14). *Museum makes United Nations War-Crimes Archives Public*. ushmm.org. <https://www.ushmm.org/information/press/press-releases/museum-makes-united-nations-war-crimes-archive-public> (2022, March 29).
- United Nations Secretary-General (2010, April 19). *Guidance note of the Secretary-General: UN approach to transitional justice*. https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf
- United Nations War Crimes Commission (1948). *History of the United Nations War Crimes Commission and the Development of the Laws of War*. His Majesty's Stationery Office.
- Verhelst López, J.J. (2018, June 15). *Voices from the margins: an analysis of the emerging LGBTQIQ-subject of truth commissions*. academia.eu. https://www.academia.edu/37005945/Voices_from_the_Margins_An_Analysis_of_the_Emerging_LGBTIQ-subject_of_Truth_Commissions (2022, March 29).
- Von Wahl, A. (2012). How sexuality changes agency: gay men, jews, and transitional justice. In S. Buckley-Zistel, & S. Stanley (Eds.), *Gender in transitional justice* (pp. 191-218). Palgrave Macmillan.
- Wagner College Holocaust Center. (n. d.). *Heroines of the Holocaust: new frameworks of resistance*. An international symposium. <https://sites.google.com/wagner.edu/heroines/home> (2022, March 29).
- Welch, S. (2020). Gender and selection during the Holocaust: transports of Western European Jews to the East. *Journal of Genocide Research*, 22(4), 459-478. <https://doi.org/10.1080/14623528.2020.1764743>

- Wieviorka, A. (2014). Women and the post-war Nazi trials. *Clio. Women, Gender, History*, 39, 146-151. <https://doi.org/10.4000/cliowgh.527>
- Wilde, H. (1969). *Das Schicksal der Verfeimten: die Verfolgung der Homosexuellen im „Dritten Reich“ und ihre Stellung in der heutigen Gesellschaft*. Katzmann.
- Wilke, C. (2013). Remembering complexity? Memorials for Nazi victims in Berlin. *The International Journal of Transitional Justice*, 7(1), 136-156. <https://doi.org/10.1093/ijtj/ijso35>
- Wolfe, S. (2014). *The politics of reparations and apologies*. Springer.

Kontakt | Contact

Naomi Ramos (LL.M.) | University of Antwerp | naomiramos28@gmail.com