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Towards Inclusive Gender in Transitional Justice: Gaps, Blind-Spots and Opportunities

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Introduction

In this paper, I put forward a more inclusive understanding of gender in the context of transitional justice, that is attentive to numerous gendered blind-spots and that includes attention to women's, men's and sexual and gender minorities' conflict-related harms and experiences. Broadly referring 'to the set of measures implemented [...] to deal with the legacies of massive human rights abuses' (de Greiff 2012: 34) in the aftermath of armed conflicts or authoritarian regimes, the study and implementation of transitional justice (TJ) significantly globalized since the end of the Cold War (Teitel 2015).¹ Although the field was traditionally silent on gender, the past decade witnessed the increasing utilization of gender lenses – and in particular feminist curiosities and theories (Enloe 2004) – to elucidate the gendered workings of post-conflict transitions (Buckley-Zistel and Stanley 2012; Ní Aoláin et al. 2011). Not at least since Bell and O'Rourke (2007) have posed the critical questions of 'where are women, where is gender and where is feminism in transitional justice?', considerations around gender and sex have increasingly gained traction in the growing literature, to the extent that gender now constitutes 'a burgeoning focus of investigation within TJ scholarship and practice globally' (O'Rourke 2017: 1).

Despite this increasing engagement with gender, however, a 'feminist presence in transitional justice is complex, multilayered and still in the process of engagement' (Ní Aoláin 2012: 205). In fact, a little over a decade since Bell and O'Rourke's (2007) call for feminist TJ theorizing, 'gender parity remains elusive in transitional justice implementation' (Ní Aoláin 2016: 1). While numerous gender blind-spots persist, various gendered experiences remain unaccounted for, and existing TJ processes have largely fallen short in advancing transformations for women. In this article, I argue that – while the utilization of existing gender lenses to TJ processes is certainly important and continues to be much needed – the persisting narrow approaches – both within TJ praxis and scholarship – imply a number of gaps, blind-spots and shortcomings, to be uncovered in this article.

On the one hand, I argue that extant gender perspectives in TJ often fall into a tendency of neglecting the many possible locally-contingent meanings of 'gender' and 'justice' in different geo-political regions across the world, thereby (re)producing and exporting neo-colonial assumptions about these two categories. At the same time, the thriving discussion about gender and TJ is largely one about

whether or not, and how, transitional processes (can) do 'gender justice' for female victims of violence (Boesten and Wilding 2015). The model of gender underpinning such analyses, however, is effectively an exclusive one: According to the prevailing understandings, conflict-related experiences and harms are only regarded as 'gendered' when they represent or reinforce 'the unequal position of women in society' (Pillay 2007: 317). This has in many cases resulted in severely limited, dichotomous and reductionist accounts of gendered victimhood, founded on women as (ever-vulnerable) victims in need of external (white, patriarchal) protection, men as naturally violent perpetrators, and the silencing of the experiences of those who fall outside this hetero-normative binary.

These gendered tensions and blind-spots ultimately signify the importance of a more inclusive conception of gender in TJ – to be advanced in this article. This requires us to (un)learn and (re)consider the multiple ways in which gender norms and understandings affect women, men and those outside the gender binary differently. With this article, I therefore seek to contribute towards critical debates on gender in the context of dealing with the past, while recognizing TJ as a contested field and concept. I argue that we must let go of simplistic and static hierarchies of gender, vulnerability and privilege that operate in IR scholarship and peacebuilding practice in general, including in TJ literature and praxis. Instead, we need to replace these essentialist representations with the recognition that power and vulnerability – and privilege and oppression as associated with normative gender constructs – are contextually-dependent, as well as potentially malleable through political, socio-economic and policy approaches. While nevertheless recognizing and remedying the widespread and structurally-embedded victimization and discrimination of women, thriving towards inclusive gender requires us to challenge and let go of prevailing notions about gendered victimhood. In addition to a focus on women as victims of these social constructs, we also need to recognize different structural levels of discrimination, as well as a number of additional categories of victims, including sexual and gender minorities or male sexual violence survivors, alongside women and girls as active agents during times of wars.

While previous research has slowly begun to call for attention to masculinities (Hamber 2016) or LGBT(Q)I rights (Bueno-Hansen 2017) in TJ, these few studies thus far exist primarily in silos, and are characterized by an often unitary focus on *either* masculinities *or* sexual and gender minorities. By bringing different critical approaches to gender in TJ into conversation, this article begins to contribute towards a more inclusive and holistic understanding of gender in transitional spaces, which both challenges as well as contributes to current approaches and practices, thereby moving forward the field, study and implementation of post-conflict processes of dealing with the past.

To this end, in this article I outline my proposal for how inclusive gender in TJ *can* look like: First, this requires a masculinities lens (Hamber 2016), by paying attention to how men's gendered conflict-related experiences can be engaged with in transitional spaces. Importantly, this necessitates an inclusive engagement with both militarized masculinities as well as with masculine vulnerabilities. At the same time, however, it is crucial to ensure that increased attention to men's gender-specific justice

conceptions within the framework of an inclusive conception of gender in TJ does not translate into 'masculinity nostalgia' (MacKenzie and Foster, 2017) that reinstates unequal and hetero-patriarchal status quos, which in turn imply negative consequences for women's equality and gender justice more broadly. Furthermore, caution is required that a masculinities perspective does not reinforce binary understandings of gender. Instead, careful consideration for the continuously silenced experiences of people with diverse sexual orientation and gender identities (SOGI) during wars and post-conflict transitions is needed. This would ultimately facilitate a more inclusive understanding of gender that pays attention to the experiences and harms of women, men and those outside binary hetero-normative frameworks. To put these conceptual considerations into praxis, I argue that a shift from the macro- to the micro-level implies opportunities to circumvent some of the hetero-patriarchal blind-spots of top-down TJ measures, and to open up space for more creative and inclusive engagements with gender in post-conflict processes, including the incorporation of masculinities and/or queer perspectives. At the same time, however, challenges persist when situating TJ processes on the micro-level within often highly unequal gendered contexts (Baines, 2010), which in turn reveals frictions between global gender norms and local realities.

The article proceeds in the order of these main arguments. Whilst this article is primarily conceptual, my observations and proposals are in part also grounded in findings of field-based research, undertaken predominantly in Northern Uganda since 2011. More specifically, I have primarily conducted empirical research with groups of male sexual violence survivors in northern Uganda, focused on their perspectives on justice, following a participatory and relational approach in collaboration with the Refugee Law Project (RLP) (see Schulz 2019a). These previous research experiences enabled me to engage with sexual violence survivors affected by different post-conflict processes directly and in an inclusive manner, and to immediately capture their conceptions of justice, broadly through frames of gendered vulnerabilities.

Integrating a Masculinities Lens in Transitional Justice

Above all, there is a need to critically complexify the dominant understandings of gender that operate in the context of TJ, to incorporate a masculinities perspective that holistically engages with militarized masculinities as well as with masculine vulnerabilities. Despite an increasingly critical engagement with gender throughout scholarship and praxis (Duriesmith 2016; Wright 2014), in much of the literature on conflict and peacebuilding in general, and on TJ in particular, employing a 'gender perspective' has long meant, and continues to translate into, highlighting the roles, needs, rights and vulnerabilities of women. As argued by feminist anthropologist Kimberly Theidon in the context of TJ, 'from gender hearings to gender units and gender-sensitive truth commissions, "adding gender" is policy-speak for "adding women"' (2009: 4). Owing to the pervasive and structural marginalization of women and female experiences throughout TJ scholarship and praxis, such a focus is indeed urgently needed (O'Rourke 2017). Despite this importance, however, Dolan attests that 'if gender is a potentially powerful analytical, practical and political engine' to understand and explain violence,

conflict and transitions – which it certainly is – 'it is one with is currently firing on only half its cylinders' (2015: 2). As a result, specific masculinities perspectives and careful consideration for men's and boys' gender-specific experiences often is omitted from the prevailing foci, and thus remains missing from most gendered TJ analyses.

In their broadest sense, masculinities are socially constructed gender norms, referring to the multiple ways of 'doing male' within and across societies. The seminal work by Connell (1995) provides particularly applicable theoretical frameworks for understanding the multiplicities and variations of masculinities (in plural) as well as for conceptualizing the inherent power relations within and between masculinities and gender hierarchies more widely. Over the past decades, a growing body of literature begun to pay critical attention to masculinities and their relations to and positioning in the global gender order (Connell and Messerschmidt, 2005). Although still under-researched, the study of masculinities in recent years also increasingly extended towards analyses of international relations and specifically of armed conflicts (Duriesmith 2016).

However, while a 'fairly substantial amount of literature has been generated over the years regarding the forms of masculinity that emerge in times of armed conflict and war' (Haynes, Ní Aoláin and Cahn 2011: 104), this has not yet sufficiently travelled towards post-conflict and transitional contexts, with only few exceptions (Hamber 2016; Theidon 2009; Ashe 2012). Tracing the marginalization of these intersections over a decade, Hamber (2007, 2016) attests that masculinities perspectives in TJ scholarship presently find themselves in an embryonic state, and are only gradually emerging.² Societies transitioning out of conflict thus 'present a unique and under-analyzed site of examination for masculinities' (Haynes, Ní Aolain and Cahn 2011: 105). This is not to suggest, however, that TJ scholarship does not incorporate the voices and views of men. On the contrary, and as convincingly argued by feminist scholars, TJ can largely be seen as inherently dominated by masculine values and actors (O'Rourke 2017; Ní Aoláin 2016). What remains under-developed, however, is careful consideration for men's experiences as *gendered*, shaped by the socially constructed masculinities.

If and when there is engagement with masculinities in relation to TJ, the focus primarily rests on militarized masculinities and their linkages to violence (Ashe 2012), thereby excluding other masculinities conceptions as well as masculine vulnerabilities. Existing TJ research on masculinities – however limited – is primarily concerned with questions of how to disarm and transform violent masculinities in post-conflict and transitional periods (Cahn and Ní Aoláin 2010), for instance through disarmament demobilization, and reintegration (DDR) programming. These debates are underpinned by the argument that facilitating transitions from conflict to peace necessitates that militarized masculinities – embodied by (former) combatants – are successfully transformed. Seminal research by Theidon (2009), for instance, identifies the importance of sustainably mobilizing former combatants to explicitly respond to the security challenges posed by them, as well as to the perceived loss of masculine privilege that often attends such processes. She argues that 'transforming the hegemonic, militarized masculinities that characterize former combatants can help further the goals of both DDR

and transitional justice processes [...] to contribute to building peace on both the battlefield and the home front' (2009: 34). This focus of TJ scholarship on militarized masculinities is reflective of dominant research on men and masculinities within the context of war and insecurities more broadly, which mostly focuses on the 'violences of men' (Hearn 1998) and the linkages between certain forms of masculinities and the various forms of violence associated with them (Myrttinen et al. 2016).

While this is certainly much needed work to be done, however, this focus has all too often (re-)produced an unreconstructed view of men as universal aggressors and women as universal victims during armed conflicts, resulting in dichotomous categorizations of 'all the men are in the militias, all the women are victims' (Enloe 2000). Problematically, the literature's focus on militarized masculinities omits attention from the gendered experiences of non-violent and non-combatants males, who arguably constitute the majority of men during most armed conflicts globally (Wright 2014), as well as from non-heterosexual masculinities, which are largely rendered invisible by hetero-normative gendered narratives of war (Myrttinen et al. 2016). To facilitate a more inclusive conception of gender in TJ, however, the experiences of men embodying and performing alternative non-militarized masculinities must likewise be integrated into our analyses. Furthermore, as a result of these essentialist representations, masculine vulnerabilities and men as victims are only insufficiently addressed (Dolan 2014), while women's agency during times of war is obscured (MacKenzie 2012). Only recently have studies begun to complicate notions of gendered victimhood and to bring attention to female agency (Baines 2017; Björkdahl and Selimovic 2015), focusing on how women and girls resist, subvert and navigate the opportunities and constraints which characterize their everyday lived realities of war.

Male vulnerabilities in theatres of war are also frequently overlooked, largely due to stereotypical gender assumptions of men's roles in society, to the extent that 'we do not really have any idea of the full extent of male vulnerability' (Dolan 2011: 135) in (post-)conflict scenarios. Although vulnerability 'is universal and constant, inherent in the human condition [...] and arising from our embodiment, which carries with it the ever-present possibility of harm, injury and misfortune' (Fineman 2008: 9), hetero-patriarchal assumptions of gender nevertheless presume masculinities to be incompatible with victimhood (Connell 1995), thereby expecting men to be invulnerable. To obtain a realistic, holistic and inclusive understanding of the workings of gender in conflict-affected and transitional societies, however, 'the scope of studying masculinities in these situations must be broadened to go beyond merely examining the violences of men' (Myrttinen et al. 2016: 1), to also include men's experiences of victimization.

One scholarly and politically-relevant entry point for analyzing male vulnerabilities in (post-)conflict settings – and thus for a more inclusive conception of gender in TJ – is conflict-related SGBV against men and boys. Although consistently under-researched, a growing body of scholarship has begun to examine the dynamics surrounding these crimes, which are immediately underpinned by masculinities, and to explore male survivors' gendered harms. Yet, while in the past two decades,

significant political attention has been generated for sexual violence against women, tailored intervention to address male-centred sexual harms remains elusive and marginalized' (Ní Aoláin, O'Rourke and Swaine 2015: 109). With the exception of a handful of cases involving sexual violence against men in the international criminal justice arena – especially at the International Criminal Tribunal for the former Yugoslavia (ICTY) and more recently at the International Criminal Court (ICC) – TJ instruments have thus far almost entirely turned a blind eye to the experiences of sexually violated men in conflict zones.

Buckley-Zistel and Stanley (2012) thus observe a tendency of excluding sexual violence against men from the gendered analytical frames of TJ processes. Integrating the viewpoints and experiences of male sexual violence survivors into debates about dealing with the past, and working towards accountability for male sexual harms, can thus bring attention to masculine vulnerabilities in (transitional settings, and thereby facilitate a more inclusive conception of gender in TJ processes. These intersecting gendered gaps and blind-spots hence require us to broaden our understanding of gender, and to explicitly incorporate a masculinities perspective and attention to men and boys' gendered experiences during wars and transitions – including militarized masculinities as well as masculine vulnerabilities.

Nonetheless, caution is required: Interrogating armed conflicts through a masculinities lens and paying attention to men's gendered lived realities must not be misappropriated towards diverting attention away from women's experiences and feminist approaches (Ward 2017). Analyses of masculinities can therefore not be decoupled from examinations of femininities (as well as other non-binary gender identities; see further below) and patriarchal gender hierarchies more broadly. Rather, studies of men's roles and experiences in (post-)conflict contexts must maintain a holistic and relational focus and must complement examinations of gendered experiences more broadly (). To ultimately understand and address the complexities of gender and violence during and after conflict, it is important to emphasize that men's, women's and non-binary identities' experiences cannot exist but in relation to each other. In TJ contexts, this is important because a relational perspective 'draws attention to the wider web of social entanglements through which power circulates and is contested' (Aijazi and Baines 2017: 468).

Avoiding 'Masculinity Nostalgia' and the Risks of Reinforcing Patriarchy

While it is thus undoubtedly crucial that men's experiences must be addressed, caution is nevertheless needed that applying a masculinities perspective and seeking to remedy masculine vulnerabilities does not in turn imply compromises for women and for gender justice more broadly. I therefore argue that we must be careful that in practice, male-centric TJ can often involve demands for a reparation and restoration of a hetero-patriarchal status-quo, implying further benefits for hegemonic masculinities in contrast to subordinated masculinities, femininities as well as sexual and gender minorities.

Drawing on empirical research in Israel/Palestine, Meghan MacKenzie and Alana Foster argue that for men who feel impacted in their masculine identities, 'the struggle for peace, security and order can

become a struggle to 'return' men to a supremacy status in the home and in the nation' (2017: 14). I argue that quests for justice in transition can frequently take on a similar character. MacKenzie and Foster theorize these dynamics as 'masculinity nostalgia', 'associated with a romanticized 'return to normal' that included men as heads of household, economic breadwinners, primary decision-makers and sovereigns of the family' (Ibid.: 15). Masculinities perspective in post-conflict settings, or male-centric TJ, thus carry the risk of being closely inter-woven with restorations of patriarchal gender regimes, or yearnings for a patriarchal golden-age, implying unintended drawbacks for gender justice more broadly. To illustrate, empirical research in Northern Uganda demonstrates that for many male survivors, justice (in parts) depends on their regained ability to provide for their families and thereby live up to hegemonic expectations of manhood (Schulz 2019). In this reading, justice is perceived to be attained if survivors' sense of hegemonic masculinity within a hetero-patriarchal gender ordering is re-constituted. Quests for stability, security and justice, however, inevitably remain fraught if 'dependent on, or intertwined with, a commitment to restoring oppressive gender norms' (MacKenzie and Foster 2017: 15).

In many ways, these concerns resonate with feminist critiques regarding the reparative and transformative potential of justice processes, and in particular of reparations. Critical scholars in particular have previously pointed that out that if reparative justice conceptually aims to, quite literally, *repair* conflict-related harms (Hamber 2008), and if restorative justice aims to restore relationships (Bell and O'Rourke 2007), then this can translate into a reconstitution of an unequal societal pre-conflict status quo (de Greiff and Rubio-Marin, 2007). In transitional settings, this can frequently imply reparation or restoration of, and return to, hetero-patriarchal societal structures, characterized by vast gendered inequalities and systematic discrimination of women and girls. Reparative justice specifically for men can thus entail desires for a restitution of hetero-patriarchy and male privilege, where men embodying hegemonic masculinities benefit in comparison to women, as well as to subordinate men, let alone sexual and gender minorities. While reparations would thus imply a sense of justice for some men, such measures can at the same time carry negative implications for gender justice more broadly.

Deriving from these dynamics, processes of repairing pre-conflict structures can often translate into a return to an unequal gendered *status quo* for women and to inferior female subject positioning. At times, women in conflict zones take on traditionally male-dominated roles and responsibilities – including active combat roles or positions as heads of households – thereby (at least temporarily) gaining some sort of autonomy or economic independence (Coulter 2009; Ní Aoláin et al. 2011). If reparative justice aims to repair a pre-conflict *status quo* in the literal sense, however, then these relative gains can often be undone again in the post-conflict phase, implying negative consequences for women's equality. Rubio-Marin and de Greiff (2007) therefore urge that reparation programs need to ensure that they do 'not conform to or contribute to the entrenchment of pre-existing patterns of female land tenure, education or employment' (325). Further, most reparations programs globally

primarily concentrate on civil and political rights, at the expense of other violations, including socio-economic or cultural rights, many of which are heavily gendered (Rubio-Marin, 2009), thereby mirroring gendered TJ trends and shortcomings more broadly (O'Rourke 2013).

In response to some of these limitations, transformative justice has recently gained increasing traction in the TJ literature (Ketelaars 2018), and is theorized to go an extra step by additionally addressing structural socio-economic injustices and inequalities in transitional settings, including root causes of conflicts. Many of the underpinning components of transformative justice – such as a commitment to challenge structural gendered inequalities as well as a prioritization of socio-economic rights (Sharp 2013) – have long been advocated for by feminist scholars (Enloe 2004). In particular, feminists have previously argued that 'for women, periods of societal transformation have to aim for the transformation of the underlying inequalities that provided the conditions in which [their] specifically gendered harms were possible' (Boesten and Wilding 2015: 1). As outlined by Ní Aoláin, transformative gender justice thus 'depends on the redistribution of formal and informal power' and a feminist 'commitment to profoundly recalibrate power relations' (2016: 1).

Despite its promises, however, transformative justice also raises particular challenges, such as the question of how to implement this ambitious project. Emerging critique also highlights the difficulties of further stretching and over-burdening the conceptual boundaries of transitional to transformative justice, and of incorporating socio-economic violations and injustices under this umbrella-concept (Sharp 2013). Applying a gender lens to transformative justice reveals additional tensions, mirroring many of the complications observed in relation to reparative justice, as discussed above. In particular, addressing structural gendered inequalities affecting women arguably requires significant compromises for and by men, who often have to give up power, privileges and resources for these transformations to materialize. Such compromises (or perceived losses) for men, however, can often result in a backlash with negative implications for women. Empirical research across a diversity of case sites evidences that some men who (perceive to) give up power and dominance may often try to re-gain their sense of (hegemonic) masculinities through other means, including by reverting to violence (Cahn and Ní Aoláin 2010;). Processes of transformative gender justice – while initially aiming to transform unequal gender relations and redistribute gendered resources (Boesten and Wiling 2015) – can thus imply unintended consequences that do not challenge and transform, but may rather reinforce patriarchal power relationships. To eventually overcome these tensions, and thus to facilitate an inclusive idea of gender in TJ, a holistic and sustainable engagement with militarized masculinities in post-conflict contexts is inevitably needed, as argued above.

On the other hand, and as problematized above, transformative justice for conflict-affected men, including for male sexual violence survivors, is likely to imply demands for a cementation of (or a return to) hetero-patriarchal positions (MacKenzie and Foster 2017). For TJ processes to be truly transformative, these gendered dynamics and implications need to be addressed and resolved, or else

the benefits of transformative justice for gender equality and in response to gendered experiences will inevitably remain muted (Ní Aoláin, 2016).

To circumvent these tensions, limitations and shortcomings and to avoid reinforcing patriarchy and fueling 'masculinity nostalgia' (MacKenzie and Foster 2017), further below I argue that a broadened idea of justice can potentially open up space for more creative and inclusive processes that move beyond the confines of standardized, masculine and hetero-normative practices and transcend some of the gendered barriers. Although not coming without its challenges either, as indicated below, this implies the potential to address diverse gendered conflict-related experiences in a more dynamic and fluid capacity.

Beyond the Gender Binary

Although necessary to challenge essentialist representations of gender in TJ, a masculinities perspective can also imply risks of reinforcing an exclusive understanding of gender as only referring to men and women, and masculinities and femininities. Caution is required, therefore, not to reproduce gender binaries, which 'have been remarkably consistent across time, place and culture in human social and political relations' (Sjoberg 2016: 4). Consequently, careful consideration for gender and sexualities as fluid spectrums, for the elasticity of gender as well as the inclusive recognition of people with diverse sexual orientations and gender identities (SOGI) is needed to fully comprehend understandings of wars and transitions (Bueno-Hansen 2017; Hagen 2016a).

Indeed, the dichotomous and binary categorizations of gender that operate in TJ also actively exclude sexual and gender minorities as well as non-binary and gender-non-conforming identities alike, leaving the experiences of people with diverse sexual orientation and gender identities (SOGI) and LGBTQI+ survivors out of debates about gender and justice. As summarized by McQuaid, 'on the subject of the particular justice needs and harms experienced by sexual minorities, much current transitional justice scholarship remains silent' (2017: 1). Yet, sexual and gender minorities are often specifically targeted precisely *because* of their identities (Myrntinen et al. 2016) and thus face a myriad of gender-specific harms and experiences – including structural discrimination as well as sexual and gender-based violence – that ought to be addressed post-conflict.

Before proceeding with the argumentation, a note on terminology is needed: Throughout much of the academic and policy discourses around gender and sexualities, the LGBTQI+ (lesbian, gay, bisexual, transgender, queer and intersex) acronym prevails – either with or without explicit inclusion of 'Q' for queer (Bueno-Hansen 2017). While variations of the acronym are typically employed in the West, however, they are not necessarily used universally, and thus make for a Western-centric representation of gender and sexuality that 'is limited in its capacity to represent sexual and gender minorities across the globe' (Hagen 2016a: 315). At the same time, LGBTQI+ is an aggregate category that implies the

risk of universalizing and glossing over diverse experiences within and between different groups included under this umbrella-acronym (Daigle and Myrntinen 2018: 18). In contrast, the alternative reference to 'diverse sexual orientations and gender identities' (SOGI) does 'not indicate any particular group, as all human beings have sexual orientations and gender identities' (*Ibid.*). Following Daigle and Myrntinen, I therefore primarily employ the SOGI terminology, 'in an attempt to express the variation that exists between individuals, as well as to avoid privileging 'normative' (i.e. heteronormative) identities and groups' (*Ibid.*). In addition, reference will be made to 'sexual and gender minorities', referring to individuals and communities that do not neatly fit into the cis-gender and/or heterosexual majorities or norms (Picq and Thiel 2015).³

The application of binary gender lenses and the silencing of sexual and gender minorities' experiences is not exclusive to TJ debates and practices, but rather applies more wholly to global politics, international relations (IR) (Weber 2016; Sjoberg 2012) and security studies (McEvoy 2015). In asking 'why is there no Queer International Theory?', Cynthia Weber (2016: 29) argues that global queer studies – although having significantly contributed to questions of war and peace, international political economy and state formation (Cruz-Malave and Manalansam 2002; Peterson 2013; Shepherd and Sjoberg 2012) – have thus far largely bypassed the discipline of IR.

Applied more concretely to global political developments, Hagen (2016a) warns that the marginalization of queer experiences from the United Nations Security Council's (UN SC) Women Peace and Security (WPS) agenda – setting the normative policy framework for gendered engagements with TJ (O'Rourke 2017) – is alarming. 'Those vulnerable to insecurity and violence because of their sexual orientation and gender identity', Hagen criticizes, 'remain largely neglected by the international peace and security community' (2016a: 313). Hagen attributes this marginalization of sexual and gender minorities to the hetero-normative assumptions and cis-privileges that frame not only the WPS agenda, but global politics more broadly (see Peterson 2013; Weber 2016). Daigle and Myrntinen similarly demonstrate that 'the needs and experiences of people with diverse sexual orientations and gender identities (SOGI) have been notably absent from peacebuilding research, policy and practice' (2018: 103), as a field of scholarship and praxis in which TJ is firmly rooted.

Given this neglect of individuals with diverse SOGI in global politics more broadly, it therefore comes as no particular surprise that transitional justice – as one sub-field within, or concern of, international studies and peacebuilding – has also not yet paid sufficient enough attention to violence perpetrated against individuals with diverse SOGI. Yet, violations and discrimination based upon sexual (and/or gender) orientation have been documented historically across different contexts of conflict and oppression (Bueno-Hansen 2017; Myrntinen and Daigle 2017). This includes the (attempted) extermination of homosexuals during the Holocaust in Germany, human rights violations against people with diverse SOGI during apartheid in South Africa and during the armed conflicts in Colombia (PRIO 2016), as well as structural exclusion and discrimination across a variety of geo-political contexts. Bueno-Hansen attributes this lack of consideration for violence against

sexual/gender minorities to an 'adhesion to a narrow construction of gender-based violence anchored in the normative male-female binary and its corresponding assumptions of heterosexuality' (2017: 2).

As a result of these overarching blind-spots and gaps, only very recently and slowly has there been emerging traction within TJ scholarship and practice to highlight and engage with SOGI issues and LGBTQI rights. Many of these developments can be observed in relation to truth commissions (Fobear 2014) and/or to processes of dealing with the past in Latin American contexts, some of which have expanded their purview to include human rights investigations of violence against sexual and gender minorities (Bueno-Hansen 2017). Queer scholar Katherine Foebar, for instance, specifically focuses on truth commissions, as one prominent aspect of TJ, by asking 'what would the incorporation of sexual and gender minority experiences in transitional justice mechanisms, such as truth commissions, mean for sexual and gender minorities?' (2014: 52).

In particular Colombia serves as a contemporary example of precedent-setting work for the inclusion of individuals with diverse SOGI and their experiences into TJ processes. The country's 2011 *Victims' and Land Restitution Law* and its *Unit for the Service to and Reparation of Victims* (or 'Victims' Unit') includes 'a differential approach that recognizes sexual orientation and gender identity' (Bueno-Hansen 2017: 5). As the PRIO Centre on Gender, Peace and Security notes, 'recognition that LGBTI individuals have been impacted differently by the conflict is reflected in the peace agreement' in Colombia (2016: 3). For instance, the country's peace negotiations between 2012 and 2016 explicitly included gay and lesbian advocates. Interestingly, however, the surprising failure of the first referendum of the negotiated peace agreement in 2016 is often also attributed to this very inclusion of sexual and gender minorities, which by many conservatives was viewed as an impediment to the agreement (Krystalli and Theidon, 2016), as one amongst many factors leading to its interim failure. As noted by Hagen, 'disagreements over sexual orientation and gender identity ultimately played a key role in the social perception of the peace deal' (2016b: 2). Since then, however, a re-negotiated and revised agreement has been signed, which although toned down on some of the gender aspects nevertheless contains strong provisions for communities with diverse SOGI.

Despite this increasing problematization of the marginalization of sexual and gender minorities from TJ analyses, concrete progress and a sustained understanding of how these pitfalls can be avoided, addressed and mitigated remains arguably limited. To ultimately facilitate a more inclusive conception of gender in TJ – as approached in this article – the experiences and viewpoints of conflict-affected individuals with diverse SOGI must therefore be integrated into and remedied by dealing with the past processes in an inclusive and holistic manner. To this end – while seeking to engage with these shortcomings– Fobear (2014) suggests applying queer legal theory to TJ processes, to circumvent the modern liberal foundations of transitional justice. Building upon this premise, Bueno-Hansen (2017) further argues that a queer, intersectional and decolonial analytical lens is required (see Ní Aoláin and Rooney, 2007). According to Bueno-Hansen, this approach 'enacts a double move by unearthing the

deeply tangled and life-extinguishing roots of impunity surrounding violence against gender and sexual minorities while advocating for the realization of LGBTQI people's full citizenship' (2017: 1).

In this reading, the process of queering TJ would have to begin with posing the critical question of how 'heteronormative representations of family, community, nation and state' (Lind, 2010: 15) are represented and reproduced in TJ processes. By unearthing and critiquing overlapping systems of domination, subordination and oppression (Crenshaw, 1991), queer and intersectional theories imply the potential to contribute to the study of TJ 'by making visible historic erasure and structural violence within the legal system and political institutions' that 'validates the existence of gender and sexual minorities in all their heterogeneity and legitimizes their subject positioning within the body politic' (Bueno-Hansen 2017: 7). As further argued by Ní Aoláin and Rooney (2007), intersectional analyses raise critical questions about gendered forms of violence, discrimination and marginalization 'that are otherwise hidden from view or absent in academic analyses' (340) on TJ. This includes, amongst others, violations against sexual and gender minorities. In addition, a decolonial lens assists in grappling with the colonial and modern fragmentation of temporality that assumes linearity but that is blind to historic patterns of violence and abuse (Bueno-Hansen 2015; McLeod 2013). In combination, this triangulation of queer, intersectional and decolonial analytical lenses to examine the experiences of sexual and gender minorities can challenge the hetero- and cis-normativity of the field (Bueno-Hansen 2017; Hansen 2016a), and can thus contribute towards a more inclusive understanding of gender in the context of TJ.

Drawing from these considerations, I therefore emphasize that future research and policy-making on gender in the context of TJ must begin to pay greater attention to the gendered violations, harms and experiences of communities with diverse SOGI. Further excluding these already hidden or silenced experiences from debates about gender and justice reinforces their continuous marginalization, and thus proves counter-productive towards an inclusive operationalization of gender in post-conflict spheres. If we want to utilize the full potential of gender as a powerful analytical lens to understand, dismantle and critique questions broadly surrounding war and peace (Enloe 2004), we need to move beyond the gender binary and actively and inclusively incorporate queer and non-binary gender identities into our understandings of gender.

From the Macro- to the Micro-Level of Transitional Justice: Opportunities and Challenges

As argued thus far, the multiple and intersecting gendered gaps and blind-spots of extant TJ processes necessitate the incorporation of masculinities and queer perspectives in concert with critical feminist investigations. But how can this be implemented and realized in practice? In this section, I argue that a move from the macro- to the micro-level of TJ can imply the potential to put into practice some of the conceptual inclusions of masculinities and queer perspectives, as well as to mitigate and/or circumvent at least some of the identified limitations of existing processes, although nevertheless also implying challenges regarding frictions between local and global gender norms. On the one hand, a move to 'the

local' in practice often translates into situating these processes in highly unequal hetero-patriarchal gender relations – which has implications for their potential to inclusively remedy gendered harms, and for the practical inclusion of women and sexual and gender minorities (Baines, 2010). On the other hand, however, an embrace of the micro-level and of participatory measures can also open up space for more creative and inclusive engagements with gendered harms in transitional settings (Lundy and McGovern 2008) beyond the gendered constraints of institutionalized measures, and enable survivors to negotiate a sense of justice on their own terms.

Over the past decade, a wealth of victim-centric scholarship has demonstrated that formalized macro-level processes of dealing with the past – focused on institutions such as the ICC or formal Truth (and Reconciliation) Commissions – are often ill-equipped to deal with the range of conflict-related experiences that survivors on a local-level are subjected to (Kent, 2011). Largely as a result of a growing disconnection between international norms and processes with local needs, priorities and justice conceptions, the TJ field has been increasingly 'localized' in recent years (Shaw and Waldorf, 2010). Local customary justice systems are thereby often portrayed as better accessible and more culturally and socially legitimate for community-based or rural populations. In addition to traditional rituals such as *mato oput* in Uganda (Baines 2010), the *gacaca* processes in Rwanda or localized truth-telling and/or memorialization initiatives (Kent 2011), locally-grounded processes can also entail other participatory means outside the standardized TJ toolbox (Lundy and McGovern 2008). As noted by Waldorf and Shaw (2010), however, local justice processes recently received 'increasing attention as *complements* to national or international processes' (4) [emphasis added], and as a result are often treated as subordinate to processes at other levels.

Goodale (2006) as well as Shaw and Waldorf (2010) criticize that in this context, the 'local' is situated at the bottom of a hierarchy of different spatial levels. Through such a hierarchical level-based definition of the 'local', Shaw and Waldorf (2010) argue, we risk de-politicizing locality and 'constructing it as a residual category characterized by separation [from the global, national, regional, etc.]' (6). As a result of this de-politicization, locality is often equated with the absence of modernity and is consequentially downplayed in terms of its value and importance. The infantilization of the local therefore results in a marginalization of the experiences and perspectives of the people within this residual category, which most often constitute the vast majority of conflict-affected communities. . Rather than referring only to local and/or customary justice processes, I therefore instead concentrate more broadly on processes at the *micro-level*, which primarily focuses on survivors' needs and is concerned with relationships between individuals.

With regards to gender, feminist scholarship has likewise demonstrated that formalized measures are frequently characterized by different legal, political and technical shortcomings, resulting in numerous gendered blind-spots. This critique applies to the entire TJ toolbox in all its variety, but appears particularly pronounced in relation to criminal accountability in judicial courts (Mertus, 2004), which throughout TJ scholarship is still often pitched as the imperative from which other notions of justice

merely follow (McEvoy, 2007). For instance, a wealth of empirical research demonstrates victims' dissatisfaction with criminal justice processes, in which many survivors feel footnoted in the proceedings, silenced, deprived of any agency or re-victimized (Franke 2006; Mertus 2004). This critique prominently applies to judicial processes specifically for sexual violence, leading feminist scholars to critically question whether criminal tribunals can constitute adequate means to deal with gender-based violence during wars and transitions (Henry 2009).

Critical legal feminism has previously also evidenced the masculine character of the law and of retributive justice processes more broadly, which largely excludes women while privileging the interests of men (Smart 1989). Catherine O'Rourke argues for instance that the international criminal justice arena 'rest[s] upon and reproduces the public/private divide of the domestic legal order and privilege[s] the state over individuals' (2013: 26). The predominant focus of judicial proceedings to primarily redress civil and political rights also obscures other, often heavily gendered conflict-related economic, social and cultural rights and harms. At the same time, retributive justice systems are also inherently centered around notions of hetero-normativity (Bueno-Hansen 2015), often precluding an engagement with violations falling outside this framework, including the experiences of persons with diverse SOGI or sexual violations against men. This marginalization is evidenced by the fact that 67 states around the world criminalize sexually violated men, and that '90 per cent of men in conflict-affected countries are in situations where the law provides no protection for them if they become victims of sexual violence' (Dolan, 2014: 6). Numerous judicial systems around the world also define sexual violence in gender-exclusive terms, solely recognizing men as perpetrators, women as victims and thereby marginalizing male survivors. The hetero-normative and masculine domination of formalized justice systems therefore primarily privileges certain men and their (hetero-normative) experiences, thereby marginalizing women alongside subordinated men as well as gender minorities, standing in the way of an inclusive engagement with gender in these contexts.

In light of these tensions, and concurring with the growing literature on localizing transitional justice (Shaw and Waldorf 2010), I argue that a thickened notion of TJ beyond legalism (McEvoy 2007) implies the potential to open up spaces to better address certain gendered conflict experiences in more fluid and inclusive capacities. Indeed, within a vacuum of gender-sensitive redress mechanisms at the formal-level, justice for gendered conflict-related experiences often has to take place at the micro-level, outside the purview of the state and formal institutions – which are often characterized by heavily masculine and hetero-patriarchal norms – and carried out by conflict-affected communities themselves (Baines 2010; Kent 2011).

Despite the importance of locally-based mechanisms (Shaw and Waldorf 2010), however, this increasing embrace of the local and the micro-level does not come without its challenges, especially when taking into account gender. In many conflict-affected societies – frequently characterized by masculine and hetero-patriarchal constructions of gender – a turn to the local can simultaneously imply a move to masculinized, often homo-phobic and sexually conservative societal contexts. This

can carry negative implications for the potential of micro-level practices to inclusively engage with certain marginalized gendered experiences – such as violations against sexual and gender minorities or sexual violence, both against women and men. At the same time, the localization of TJ often raises challenges for the participation of and roles played by women (Baines 2010). Boege describes how women and girls are often excluded from the administration and decision-making of these measures, and only ‘become the subjects of these decisions’ (2006: 16). In Northern Uganda, for instance, the most visible participants in local/traditional justice ceremonies are male elders, who commonly represent a particularly dominant form of normative hegemonic masculinity (Dolan 2011), which in turn carries implications for what kinds of gendered conflict-related experiences are dealt with and in what ways. A move towards the micro-level therefore evidences potential frictions between global gender norms vis-à-vis local lived realities.

At the same time, however, a move to the micro-level can also imply the potential to better address certain gendered conflict experiences in a more fluid and inclusive capacity. To illustrate: In Northern Uganda, the country's diverse TJ laboratory is characterized by numerous political, societal and gendered blind-spots with regards to SGBV in general, and sexual violence against men (Schulz 2019) as well as sexual minorities (McQuaid 2017) in particular. Within this vacuum of redress, different support groups for male sexual violence survivors – including the *Men of Peace, Hope and Courage* groups – as well as for sexual minorities – such as the *Angels Refugee Support Group Association* – exist. For some groups of survivors, their engagement in the groups seems to contribute towards a sense of justice on the micro-level and on their own terms. According to some male survivors, these groups address their most pressing sexual and gendered harms in different ways – including by aiding survivors to re-negotiate their impacted gender identities; re-build relationships and obtain recognition of their marginalized experiences – in a capacity that mimetic and prescriptive processes often cannot. In particular ‘the collective consciousness-raising within the group has begun to challenge many members’ stereotypical ideas around masculinity and manhood, as well as gender equality and their views on women’ (Edström Dolan et al., 2016: 40). The groups’ activities, as one aspect of broader processes of dealing with the past, ‘can [therefore] potentially lead to a more open-ended (re)building of [...] new identities, communities and norms. They may well prove more gender-equitable than those from which the victims were excised’ (Edström and Dolan 2018: 14). This, in turn, would circumvent the danger of ‘masculinity nostalgia’ and a re-installment of hetero-patriarchy. Likewise, the groups embody a participatory approach to justice, focused on finding solutions for survivors on their own terms, which in turn helps to avoid re-creating neo-colonial and/or racial power dynamics that often accompany TJ processes at other levels.

Survivors’ groups therefore offer spaces for marginalized populaces of gender-based violence survivors in contexts where formalized processes do not incorporate their voices and do not remedy their harms, and thus imply the potential to facilitate a more inclusive engagement with gendered experiences, including male vulnerabilities and diverse SOGI. These insights not only challenge the

legalistic-institutionalized pre-occupation of TJ, but also show that processes situated at the micro-level can potentially circumvent the gendered barriers of formalized justice measures, and thus facilitate a more inclusive engagement with gender in transitional settings.

These observations ultimately lead me to propose that – despite potential frictions between local norms and global expectations on the local level – to eventually transcend the gendered barriers of top-down measures, the study and practice of TJ must include a myriad of non-institutionalized and non-formalized means, composed of everyday processes, situated on the micro-level and driven participatory by conflict-affected communities directly. This does not necessarily (or only) have to include an embrace of traditional and/or indigenous rituals or processes – which as argued above are characterized by certain limitations – but instead means to imaginatively think outside the prevailing standardized TJ toolkit, instead considering autonomously-driven processes that can address survivors' needs and facilitate agency (Lundy and McGovern 2008), outside the purview of masculine and hetero-normative institutions. Such an understanding of TJ can facilitate a more inclusive and holistic engagement with gender and justice in the context of transitions. While it is important to emphasize that these micro-level processes cannot (and should not) ultimately replace institutionalized means for conflict-affected societies, they nevertheless imply the potential to circumvent some of the gendered barriers of these formalized measures, and thus to deliver a sense of justice within a vacuum of gender-sensitive processes at other residual levels. Ultimately, this can pave the way for facilitating spaces which allow for a more inclusive and holistic engagement of gender, inclusive of feminist, masculinities and queer perspectives. As demonstrated by the empirical material underpinning my argumentation, this can include support groups where male sexual violence survivors and sexual minorities begin to engage with their experiences on their own terms, and thus achieve a sense of justice in a participatory manner.

Conclusion

In this article, I have shown and critiqued how gender in the context of transitional justice is often approached and operationalized in narrow, limiting and exclusionary terms. The currently dominating conceptualization of gender in TJ effectively re-produces exclusive gender justice debates that essentialize women as ever-vulnerable victims in need of patriarchal protection, and that exclude consideration for the roles of masculinities (Hamber 2016) as well as sexual and gender minorities.

To circumvent and remedy these blind-spots, I instead propose a more inclusive engagement with gender in TJ. This includes the incorporation of masculinities perspectives and sustained attention to the gendered experiences of men, including an engagement with both militarized masculinities as well as masculine vulnerabilities during theatres of war. Caution is required, however, that shedding light on men's conflict-related experiences and seeking to remedy their gendered vulnerabilities does not catalyze a form of 'masculinity nostalgia' (MacKenzie and Foster 2017) that reinforces hetero-patriarchal status quos. Furthermore, caution is required that a masculinities lens (in addition to a

focus on women's experiences) does not in turn reinforce a gender binary that omits attention from individuals with diverse sexual orientation and gender identities. Therefore, an inclusive conceptualization of gender needs to actively incorporate the voices and remedy the experiences of sexual and gender minorities.

To circumvent some of the gendered barriers and blind-spots of many TJ processes, I argue that a conceptual and empirical move from the macro- to the micro-level implies the potential to facilitate a more inclusive conception of gender in TJ. While certainly not remedying all of the above identified gendered tensions – and even though possibly unearthing frictions between local norms and global expectations – such a move to the micro-level can potentially open up spaces for more creative and inclusive engagements with gendered harms and conflict-related experiences in transitional spaces, and can provide a survivor-centric alternative within a vacuum of gender-sensitive processes. An inclusive conception of gender thereby challenges currently dominating practices, moving forward the field, study and implementation of TJ while at the same time critically reflecting on gender in the context of dealing with the past, as a pertinent contemporary security issue.

Notes

¹ In theory and praxis, TJ includes a combination of different mechanisms, most prominently including criminal justice processes, truth commissions, reparations and/or memorialization initiatives.

² Hamber shows that only about 6.3 percent of all articles in the *International Journal of Transitional Justice* between 2007 and 2016 make mention of 'masculinities' (Hamber 2016: 10). In the journal *Men and Masculinities* - one of the leading journals in masculinities studies - the term 'transitional justice' is not used once since 1998, while the related concept of 'peacebuilding' appears only five times (*Ibid.*). While only providing an illustrative snapshot into the marginality of these intersections, these numbers highlight that the relationships between masculinities and TJ is only of minor concern to scholars across disciplines.

³ When discussing or referring to other authors' work, in some instances I include their language of the LGBT(Q)I acronym, where relevant.

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