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Slow Motion Democratization: How the Gay Movement Transformed Human Rights in West Germany after 1945

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Abstract:

Democracy and human rights are intrinsically linked. Democracies protect and foster the state of law through the provision of constitutions, and enhancement of basic personal rights, fair voting, and justice. The process of democratization therefore increases civil, political, and social rights for all citizens. As appealing such a standard characterization of the relationship of democracy and human rights is it often does not reflect the experiences of victims of former authoritarian regimes in the new democracy. How do former victims experience the process of democratization? What do they expect from the new democratic regime and how are their specific interests and identities represented and accounted for in the new state? What role does agency play for the articulation and recognition of claimants' identities and interests? To better understand the surprisingly ambivalent and even arbitrary relation between former victims and a new democratic regime, this paper analyzes the different stages of articulation and recognition of the identities and interests of gay men after the National Socialism in Germany (between 1945 and 2010). The paper focuses theoretically on the importance of the construction of new identities, social movements, and on norm diffusion. The findings indicate that despite expectations regarding the functioning of liberal democratic rules and institutions, historical justice is neither an immediate nor automatic outcome of democratization but rather just a potential result of long-term social transformations of identities, mobilization, and norms.

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Slow Motion Democratization: How the Gay Movement Transformed Human Rights in West Germany after 1945

“For the Homosexuals the Third Reich has not yet ended.”
Theologian Hans-Joachim Schoeps, West Germany, 1963

Research on transitional justice looks at how newly established democracies come to terms with their authoritarian or totalitarian pasts and the often severe human rights abuses of such regimes. In this chapter I focus on the ineffectual mobilization of homosexual men after National Socialism and contrast their case with that of the Jewish community. While other research concentrates on the question of transitional justice and gender, this chapter specifically investigates some of the issues surrounding transitional justice, democracy, and *sexuality* (although gender remains a factor as well). Gender issues have only recently emerged as an area of concern for transitional justice studies; sexuality is a very new subject in the field. However, by paying attention to sexuality-related issues we usefully expand the boundaries of traditional transitional justice studies, adding important new insights.

The goal of the following chapter is to better understand the specific political, social, and legal situation of gay men as victims of human rights abuses and to shed light on how the question of transitional justice changes when we talk about *sexuality and sexual identity*. Under what circumstances do gay men become victims of state sponsored crime? If or how do they achieve justice and what forms does justice take (public apologies, restitution, or reparations) once the oppressive regime or its laws have been dismantled? What particular political, social, and discursive hurdles and/or opportunities exist for this minority and under what circumstances can the obstacles be overcome? To begin the investigation of this as yet under-researched area I will analyze the transitional justice process through *social movement research*, utilizing concepts such as political opportunity structures, social mobilization, and framing to demonstrate why the struggle for symbolic and material reparations for gay men *failed* even while that struggle was successful (relatively speaking) for the Jewish community. What can we learn from

feminist research in trying to understand the political and social situation of gay men in post-war Germany?

Analyzing Claims for Reparations

This study applies social movement research to the study of transitional justice, specifically to the struggle for symbolic and material reparations such as governmental apologies and restitution. Both are forms of transitional justice. I will compare governmental attempts to provide *symbolic and material reparations* for cases of severe human rights abuse. While many states have participated at some time in the infliction of injustice and atrocities it seems that relatively few cases of human rights abuse have produced reparations. Some states have publicly apologized, paid compensations, or returned lost property, while other states quite literally ‘got away with murder.’ It becomes increasingly important to ask what factors lead governments to grant reparations and to examine what specific reparations are made and to whom. Why do some categories of victims seem more likely to gain necessary legal and/or organizational resources and receive at least some kind of reparation? Why do other groups fail? And what role does gender, sexuality, and sexual identity play in the process of transitional justice?

The focus lies on the question of how and why the *same* state – in this case Germany – has treated claimants *differently*. Using this comparative intra-state framework, I apply social movement theory to the articulation and development of reparations claims in two cases: German Jews and homosexual men in post-war West Germany. As Rucht has shown, *situational* circumstances can produce *different* opportunities for *different* social movements in the *same* state (Rucht, 1998). This finding goes a long way towards emphasizing the most relevant factors in intra-state comparisons of mobilization for transitional justice issues. I argue that the *specific political opportunity structure* available to each group, the *organization of claimants*, and the *framing of demands*, explains the profoundly different outcomes.

In term of the specific cases discussed here, it should be stated explicitly and from the start that the human rights violations during World War II against Jews and homosexuals were different in scope and extent. On the one hand, the Nazis aimed at the

total and complete mass-annihilation of millions of Jewish people—men, women, and children—through industrial style killings, while a much smaller group of homosexual men was severely persecuted, imprisoned, tortured, or killed in concentration camps. Thus, the extent and nature of the atrocities must also be taken into account to explain the willingness of governments to recognize and attempt to rectify human rights abuse. However, even when these differences are taken into account, both cases clearly constitute severe human rights violations at the exact *same historic time* and by the *same state*. It is the sameness of place and time that is of particular interest to this project. While one side has received broad symbolic and material reparations and became a focus of the political culture, the other side was first criminalized and then became what has been described as ‘forgotten victims’ (Grau, 1995; Lautmann, 1977). Given the contextual similarities, what factors explain the radical differences in terms of outcomes? Why has the democratically elected government of West Germany responded so differently to the past human rights abuses of these two groups? And what does this tell us about transitional justice and *sexuality*?

Gender, Sexuality and the Problem of Agency

One of the main problems for homosexuals in modern history has been organizing politically and developing effective agency. This is where I think we can fruitfully utilize some of the insights of feminist theory. Simone de Beauvoir offers a seminal explanation to help understand women’s lack of agency. As Beauvoir has famously shown, women did not historically form a common identity based on their gender *as women*, but rather understood themselves as members of the different religious, ethnic, and social groups to which they belonged (Beauvoir, 1952). Identification with various non-gender-based social categories and classes keeps women separated from each other, even if they suffer the same gender-based oppressions or share similar interests in protecting themselves and/or seeking equality, liberty, or justice. This fact has a myriad of social effects on women’s ability to identify socially with each other and to organize politically. Women have not typically formed regional, national and/or politically relevant communities *as women*, as many ethnic or religious groups have done (and, notably, neither have men). But because regional or national communities have been dominated by masculine values,

interests and structures, women have often had difficulty forming associations and cooperating outside of traditional family ties or acting autonomously relative to state-prescribed functions and interests. Only with the extension of citizenship to women in the late 19th and early 20th centuries has their ability to organize for their own interests become attainable. As a result of this shift, women's movements have emerged in nearly all industrializing and democratizing states.

In terms of many large-scale human rights violations, like expulsions, massacres, and genocide, women have been victimized *as members* of their religious or ethnic groups. However, women have also been victims of mass violence *as women*, through molestation, rape, mutilation, sterilizations, forced pregnancies, and infanticides (Peters and Wolper 1995; Rubio-Marin, 2006; Duggan and Abusharaf, 2006). My earlier research on reparations claims made by Korean sex slaves (so called "Comfort Women") has shown that the hurdles to mobilization were initially extremely high for women in that context. Reparations claims made by Korean women were mostly ineffective until the 1980s when the modern women's movement galvanized new identities and enabled social agency. Guilt, shame, and trauma are also factors often influencing victims of sexual violence so that survivors are effectively silenced. Another challenge faced by Korean women was their double erasure as both individual victims and as a recognizable social group. As a result, female claimants were not addressed by either individual-level or community-level transitional justice measures (von Wahl, 2007). I argue here that *homosexual men* (and lesbians) have historically faced similar challenges to (heterosexual) women in terms of the lack of a unified group identity and subsequent problems in mobilizing after human rights abuses.

Obviously, there are clear differences between the experiences of women and gay men. Prominent among these are the issues of *visibility* (women do not 'come out' and cannot/do not typically hide their gender identity) and the continued *criminalization* of gay sex. Men, regardless of their own sexual orientation, benefit to some degree from the privileges of masculinity and patriarchy and might gain privileges from social ideas that are otherwise at odds their sexuality. At the same time they can also become the victims of a variety of homophobic policies and sexual assault. In short, while there are differences between the mobilization and organization of interests on the grounds of

gender and sexuality, gay men and women have sometimes been both disadvantaged through the multiple and sometimes contradictory social identities to which they belong.

Before we turn to the next section, there needs to be some clarification on the terminology and time-specific relevance of the central factors at work, i.e. sexuality and sexual identity. Same-sex behavior historically does not imply a gay male identity, as Foucault has demonstrated (Foucault, 1978). Only in the nineteenth and twentieth centuries has a politically relevant, modern gay identity emerged. Thus, it is important to delineate the differences and overlaps between the categories of sexuality and sexual identity as they develop over time and for the group under consideration. This essay focuses on the persecution and lack of exoneration of men on the grounds of their sexuality, here defined as sexual *behavior*. However with the formation of the modern *gay identity* after World War II, particularly after 1968 and with the end of outright criminalization of homosexual acts, identity politics become an increasingly important and useful factor in demanding justice (Pretzel, 2002; Jensen, 2002). It is after this solidification of the modern gay rights movement in Germany that *gay identity* and *behavior* overlap much more closely, resulting in what I argue is a more successful push for some forms of reparations.

Reparations are the outcome of ‘politics,’ i.e. the distribution of power between victims and the state and among competing groups. The formulation of identities, interests, strategies, and the usage of political pressure are crucial in receiving governmental recognition and reparations. Governments do not act on the issue of transitional justice without being prompted, because what is morally and politically just is contested after human rights abuses have stopped. The focus of my analysis here is on the conditions and form of *agency*, in particular on the organization of the interests and identities of survivors through social mobilization in West Germany. The analysis shows that claimants are neither universally able to make their experience and demands heard, nor able to develop a resonating and salient ‘injustice frame’ (Gamson et al, 1982). Thus a patterned hierarchy among similarly situated claimants emerges.

Of particular interest are timing (when the government began to respond), the number of the people affected by reparations, and the quality and extent of the state concessions (material and/or symbolic). What factors have an effect on the level and

timing of governmental response? In order to address this question, I employ three key analytical concepts: 1. the existing or emerging political opportunity structures, 2. the identity and social mobilization of victims and 3. the framing of reparations demands by claimants.

Social Movement Theory:

Social movement theory has developed a number of useful concepts and tools for the analysis of agency in a political context. We can apply these concepts to the description and analysis of agency in general, and also to analyses of mobilization for reparations, specifically.

I. The Political Opportunity Structure:

The first social movement concept that can facilitate an analysis of agency relative to claims-making for restorative justice is called Political Opportunity Structures (POS). Social scientists have developed the concept of POS especially to understand the *differences* in movement mobilization. Instead of focusing on the resources and the ideology of the movement itself, this approach shifts perspective to the *external* and contextual factors, such as political and economic structures, institutions, opponents, potential allies and the mass media. These contextual or institutional factors can have an effect on the strategies of social movements, in particular the *channels of access* to political power they use (Della Porta and Diani, 1999; Pierson, 1994, 2000).

The majority of comparative studies applying the POS approach in the study of social movements are cross-national or diachronic (Kitschelt 1985, Rucht 1990). In contrast, this paper compares two groups in the *same* state and in the *same* time period: West Germany between 1945-2008. Both of the groups analyzed were earlier victims of the Nazi regime and some survived concentration camps or incarceration, although the level of harm directed at the Jewish population was more systemic and designed for mass killing. While there are significant differences, we can assume that many of the demands put forward after 1945 by claimants, the political channels used, and the strategies developed would be very similar since individuals (and their supporters) *both* acted

within the same West German state, confronted the same democratic institutions, the same laws, and stood before the same public – or so it would seem.

Theoretically my larger research project and this particular chapter demonstrates that an intra-state comparison of social movements illuminates the different forms the POS can take *even* when approached by relatively similarly situated social actors in the same polity. Empirically this shifts our attention to the more subtle political, legal, cultural, and social differences *among victims of the Nazi regime* in their negotiations with the Federal Republic of Germany. It also demonstrates their ability or inability to secure symbolic or material reparations for past suffering, loss of property, health, and life. Theoretically, it cautions us against relying too heavily on the idea of monolithic *national* POS as explanatory variables, which is how they are characterized in the comparative literature (open/closed, centralized/decentralized, two-party/multi-party etc.). Instead the present study shows that the POS can be quite different for groups even if they share substantially overlapping claims. Social movement research and the theories proposed on POS have been relatively limited on the influence of cultural aspects. The neglect of culture is particularly problematic in an analysis of struggles for recognition and reparations. Fortunately recent research has begun to include cultural dimensions into the debate (Rucht, 1998; Koopmans and Kriesi, 1997; Ferree et.al, 2002; Hobson, 2003).

II. Social Mobilization:

The second conceptual approach for analyzing agency deals with the issue and intricacies of actual mobilization of political actors. Canonical social movement theory reveals an important bundle of factors relating to the mobilization of people. Within this body of literature two related concepts are relevant: one being *identity formation* and the other *organization and resources*.

While the definition and analysis of ‘identity’ cannot, of course, not be discussed here in its detail, post-modernism has contributed much to identity studies through its assertion of identity’s fragmented, situated nature (Foucault, 1978; Young, 1990). Postmodern approaches have criticized the false universalism of liberalism that has excluded the experiences and needs of marginal groups and allowed for the emergence of new identities as discourses change and old centers of powers weaken. Taylor was one of

the first to address modern struggles over recognition as opposed to older struggles over redistribution (Taylor, 1994; Honneth and Fraser, 2003). Recognition implies the public acknowledgement of historic devaluation of individuals or groups and can be a sign of respect, citizenship, membership or atonement. Both state recognition of a group as political victims (or the denial of this status) and self-recognition by survivors themselves are important aspects of counteracting social stigma and building a collective identity on which claims can be formulated. A minimal degree of collective identity constitutes a *precondition* in order to utilize robust political agency as a social movement. The resources available to the movement and its participants influence the degree of mobilization deeply (McAdam, McCarthy, and Zald, 1996). Specifically, one should ask: What organizational, legal, and material resources were available to claimants, and in what context were demands made? And do older social bonds and networks exist which could be utilized in the mobilization efforts?

III. Framing the Debate:

The struggle for reparations also occurs in the realm of *symbolic* politics. Symbolic politics rests on the transportation of compelling ideas, subsequent transformation of discourse, and governmental response to changes in public opinion. Snow and Benford developed the important idea of framing for social movements (1988, 1992). The way social movement organizers frame their demands to the public allows them to attribute a specific meaning to events that can, in return, mobilize affected individuals or groups, changing the identity of those affected. Characteristics of the human rights abuse suffered by a group, and how those characteristics are presented to the public, strongly influences how successful groups will be when seeking reparations (Howard-Hassmann and Lombardo, 2007).

The development of an ‘injustice frame’ that supports the conclusion that the government violated shared moral standards is important. A crucial hurdle that reparations movements need to jump is constructing a community by building social bonds that can focus mobilizing potential and articulate a compelling frame of interpretation for reparations demands. Especially in the case of transitional justice issues, salient framing of the experience of persecution is important. These interpretative

frames not only enable communities of claimants and supporters to strengthen the group itself, but also help facilitate and direct interactions with the state and media.

Differentiating the Levels of Reparations

To grasp the shades of empowerment and agency achieved by claimants I have developed distinctions between *categorical, individual and collective reparations* (von Wahl, 2007). This differentiation helps us to come to grips with the specific outcomes of mobilization for restorative justice and is particularly useful for this analysis of sexuality and transitional justice.

Categorical reparations only involve the acknowledgement that victims exist or have existed. This is a form of minimal recognition since it only extends to an abstract category of victims. It is abstract because specific survivors are not known but remain both nameless and faceless. We know of their existence but not their individual stories. And, importantly, they do not know each other in a way that would enable communication, mobilization, and agency. When survivors are too intimidated to come forward, even though historical documentation demonstrates their existence, then the public neither knows them neither as individuals nor a group. As a result, symbolic and material reparations are highly unlikely. This was the situation for homosexuals after the end of National Socialism: they were known as an abstract category of victims only. As we will see later homosexuals were easily pushed into secrecy by continuing public taboos and institutionalized homophobia.

The next level of reparations is *individual* restitution, rehabilitation, or apologies to survivors. Individual claimants are publicly known and have asserted their civil, political, and/or social rights. The instance of individual reparations entails material reparations (through restitution, etc.) and/or symbolic reparations (through public apologies, etc.) to individual victims.

The final and most comprehensive level is *collective* reparation. These reparations view claimants as members of social groups, who may have lost collective goods, such as community property (churches, libraries, meeting places, etc), common land, as well as businesses that belonged or catered to a recognizable community. In the case of collective

reparations a community would receive reparations for the destruction of these collectively held entities.

The relationship among these three levels is important to understand: Categorical reparations are highly static and little is known about the victims. It is basically a situation of victimization without claimants. It is not sufficient as a meaningful form of reparations. A combination of apologies and material reparations holds the most promise for the claimants in the cases presented here.

Two Cases Regarding Agency and Transitional Justice

German Jewish Victims and the Holocaust:

Nazi anti-Semitic politics took effect immediately in Germany after the National Socialists gained power in 1933. These policies were aimed at removing Jews from their professions, seizing their property, drastically cutting civil, political, social rights, threatening and ending lives and livelihoods in an unprecedented and systematic way. Anti-Semitic politics peaked with the planned extermination and subsequent mass slaughter of European Jewry in concentration camps, resulting in the murder of about six million Jews. What kind of restitution and reparations did Jews receive after the defeat of Germany by Allied Forces? What role did the social mobilization of the Jewish community and individual claimants play in this process? And what the articulation of specific injustice-frames?

During World War II, German Jewish refugees were in cooperation with international and American Jewish groups, working on the formulation of restitution claims (Goschler, 1992). At the pan-American conference of the Jewish World Congress in Baltimore in 1941, three basic arguments about future restitution were put forward: 1. Jewish claims should have priority over all demands on Germany, 2. not only German but also European Jews should have access to redress and 3. Jewish demands for restitution were part of the larger reparations issue (Goschler, 1992:40). It was clear to these Jewish organizations that these questions could not be solved through law alone and that political means were crucial. Since the full extent of the Holocaust was not yet publicly known, these early claims seemed premature to many (Barkan, 2000:4).

In addition, Jewish identity had so far been a matter of religious, ethnic and/or cultural affiliation, and reparations for such groups had never been claimed via international politics. In 1943, the former Viennese lawyer Ernest Munz wrote that the collective attack on European Jews necessitated a collective reaction. (Munz, 1943; Goschler, 1992:41) The development of these claims was also helped forward by one branch of Judaism, Zionism, which argued for a new Jewish homeland with the goal of establishing a nation-state. Barkan argues that “[t]his formulation constructed a fundamental connection between all Jews and Zionist ideology, thereby creating a modern identity that had not existed previously” (ibid:5). It can be argued that the active connection of a religious/ethnic identity to an emerging national identity powerfully and effectively advanced Jewish claims for reparations.

In the 1940’s Jewish campaigning was at best recognized as pressure from a sub-national group, i.e., a group that had little legal standing in international politics and law. Hence, it is not surprising that Jewish representatives were not even invited to the Paris Reparations conference in 1945. However, material restitution is an established aspect of international law. Thus the military governments occupying Germany supported restitution and quickly enacted legislation to return or, if that was impossible, give identifiable property to victims of Nazi persecution, a policy that went against the desires of the emerging German regional governments. The dominant American occupying forces in the West designated the Jewish Restitution Successor Organization (JRSO) as the legal successor to heirless property. Over the years Jewish efforts regarding broader forms of reparations intensified. The emerging official definition of a Nazi victim embraced persons persecuted because of race, religion or political beliefs (so called ‘Opfer des Faschismus’, OdF, or Victims of Fascism). Non-German victims and groups outside the particular definition of race, religion or political beliefs, such as homosexual men, were excluded (Grau, 1995).

An important turn of events occurred in 1949 when Jewish groups united in the fight for reparations, despite deep ideological disagreement and political fragmentation, and formed an organization comprised of twenty-two Jewish organizations called the Conference of Jewish Material Claims (later known as the Claims Conference) (Zweig, 1987). The founding of the Claims Conference indicates the emergence of three features:

1. the formation of a social movement organization for reparations, 2. the articulation of a unified Jewish identity that could speak with one voice during negotiations with West Germany and, 3. the emergence of a political and discursive strategy in response to the political opportunity structures, in particular, the legal requirements of international negotiations.

Through agreements with the West German government signed in 1952, reparation in the form of assistance was provided to the newly established state of Israel and to Jewish communities throughout the world. In 1956 these reparations payments comprised over 80% of the budget of the new state of Israel. By July 1971, the combined total payments from the Federal Law for Compensation of the Victims of National Socialist Persecution (BEG), the Federal Restitution Law (AKG), the Luxembourg Agreement with Israel, and other global agreements amounted to 40.91 billion Marks (Schwerin, 1972). In October 1980, after a number of lobbying attempts from victim's organizations, 400 million German Marks were transferred to the Claims Conference, and in 1981 100 million were earmarked for non-Jewish victims of persecution (Pross, 1998). Although Pross points out that many claims were stymied by the German bureaucracy and dragged on for years, the current total of reparations in the late 1990's was about 115 billion Marks (about 70 billion dollars) and payments are continuing.

Interestingly, the FRG moved more slowly on the level of symbolic reparations. The climate towards reparations for Jews was unquestionably hostile in the first 10 years after 1945. Germans saw themselves as victims of the war, especially of the Soviet Union, and were reluctant to pay reparations to the Jewish community or admit guilt for genocide (Moeller, 1995; Schissler, 2000; Goschler, 1992). After the founding of the Federal Republic of Germany, the first Chancellor, Konrad Adenauer--leader of the newly established Christian-Democratic Party (CDU)--became an important ally for the demands by the Jewish community. Historians disagree about Adenauer's motivations for taking a leading role in negotiations with Israel and the Claims Conference but Kurt Schumacher, the leader of the social-democratic opposition party (SPD), also supported reparations (Schrafstetter, 2003).

The German population and elite showed much sympathy for expellees, refugees, and POW's but had little to say about its own involvement or even 'Kristallnacht' of

1938. As the poet and song-writer Wolf Biermann put it ironically: ‘the Germans will never forgive the Jews for the fact that they murdered them’ (cited in: Kugelmann, 1989:136). The debate about the involvement and the guilt of the ‘average’ German regarding the persecution of Jewish Germans and other victims of National Socialism did only begin in the 1960s. As a result of the Auschwitz trials in 1964, and the social and generational changes of ‘1968,’ public perception in the Federal Republic shifted towards a more sympathetic view of Nazi victims. Since then the idea and contested process of ‘Vergangenheitsbewältigung,’ or ‘coming to terms with the past,’ has produced a political culture of atonement in Germany that is reflected in repeated apologies by public leaders, such as the Chancellors and Presidents, in school textbooks, the media, in the spread of Holocaust memorials, and a more open and self-critical public discourse.

The attainment of symbolic and economic reparations is largely the outcome of the successful organization and mobilization of Jewish interests through the Jewish Claims Conference, supported by the American policies on restitution and a sense of compromise from the new West German Chancellor. This was combined with the construction of a new *national* identity—Israel—that fit into the traditional framework of international negotiations and rendered the campaign for reparations so effective. In a sense, the individual religious identity of Jews in Europe (and elsewhere) expanded through Zionism to include a recognizable and common national identity. The construction of this new identity and the framing of the issue in national terms had a tremendous impact on the perception of reparations. The Jewish community became visible and relevant as both an ethnicity/religion *and* a nation, which in turn gave reparation claims a much stronger political standing. From the onset, the Claims Conference and the newly established Federal Republic of Germany (FRG) employed a two-pronged approach to reparations: both individuals and the community (Jewish communities in Germany and the state of Israel) are recipients of reparations.

Some claim that the West German record in terms of accepting legal and financial responsibility (restoring properties and indemnification for material damage) for the Holocaust and human rights abuses ‘is a favorable one,’ especially when compared to East Germany and Austria (Schwerin, 1972:47; Kim, 1999). Colonomos and Armstrong characterize it as the most comprehensive reparations program ever instituted

(Colonomos and Armstrong, 2006). Others are more critical of the German reparations process itself (Pross, 1998). For the purposes of this chapter, the process of reparations to Jewish victims of National Socialism is understood in a relative sense, that is, in comparison to the case of other victims of Nazi violence, in particular homosexual men.

Germany and Male Homosexuals

The Nazis condemned homosexuals as ‘socially aberrant’ and banned all male homosexual and lesbian associations, clubs, and publishing houses. They ransacked Magnus Hirschfeld’s progressive Institute for Sexual Science, burning thousands of books from that institute’s library as part of a larger book burning in Berlin in 1933. Since the founding of the Second German Reich in 1871, anti-homosexual laws existed in the Criminal Code as Paragraph 175, and the Nazis amended paragraph 175 in 1935, very broadly criminalizing ‘lewd and lascivious’ behavior. In addition, Nazi leader Heinrich Himmler created the ‘Reich Central Office for Combating Homosexuality and Abortion’, a sub-department of the Gestapo (Mosse, 1985). The police stepped up raids on homosexual meeting places, seized address books, and created networks of informers. Between 1933 and 1945, an estimated 100,000 men were arrested as homosexuals, and some 37,490 were officially defined as homosexuals and sentenced. Most of them spent time in regular prison, but between 5,000 and 15,000 men were incarcerated in concentration camps.^{iv} In the camps some became victims of medical experiments, sterilization, and castration (Deutscher Bundestag, 14/2619, 27.01.2000). About sixty percent of these concentration camp inmates died, although exact numbers are not available. Some lesbians were probably incarcerated under the Nazi regime as ‘asocials’ or ‘prostitutes’ but their numbers were extremely low (Schoppmann, 1991; Schikorra, 1998).

Research on homosexual victims and their circumstances after the war began relatively late and there was very little information. Most of the recent studies focus on the larger cities or on certain regions and consist of historical micro-studies of individual cases collected in history archives. The goal of these studies is to understand the individual situation of survivors in the political and legal context of the locality and the

Federal Republic (Pretzel and Rossbach, 2000; M[ue]ller and Sternweiler, 2000; Pretzel, 2002; Rosenkranz, Bollmann and Lorenz, 2005, 2009; zur Nieden, 2009).

Continuation of Anti-Homosexual Policies in West-Germany (1945-1969)

After the war ended, political opportunity structures (i.e. access to parties and organizations and restoration of civil, political and social rights and privileges) did not open up again for all citizens: under Allied Military Government Germany, Paragraph 175 remained unchanged. This particular legal continuity was permitted and enforced, even though the Allies did not otherwise allow the retention of laws that had increased drastically in severity under the Nazis. Some homosexuals were even forced to serve out terms of imprisonment set under the Nazi regime.

After 1949 the conservative Christian Democratic government of the newly founded Federal Republic also defended the continued use of Paragraph 175 and the severe criminalization of homosexual activity and relationships. The arguments centered on the 'biological differences of the sexes' and the 'natural order of life' and were supported by conservative rulings of the Federal Constitutional Court in 1957 (Moeller, 1994). Between 1950 and 1969, in the continually homophobic climate of West Germany, over 100,000 legal investigations were opened and 59,316 gay men were again sentenced. Neither homosexual individuals nor the vibrant gay community that existed during the Weimar Republic were recognized as 'persecuted' by the Nazi regime in the legal sense, because they did not belong to 'political, racial, or religious groups' as designated by the Nuremberg Laws (Hoffschildt, 2000; zur Nieden, 1999; Gerlach 2002). Because of the continued criminalization, and the attendant lack of recognition and political support, homosexuals were not included in the aforementioned BEG (Bundesentschädigungsgesetz) which regulated (among other things) the restitution and reparation claims of former victims of the Nazi regime. In the repressive political and social climate, homosexuals, who were theoretically included in the 1957 Federal Restitution Law (Allgemeines Kriegsfolgenesetz, or AKG), did not dare to apply for compensation as such an application would risk of attracting further stigmatization or persecution.

Failed Social Mobilization and Resignation (1946-1960)

Who could represent the interests of homosexual claimants? In 1945, a group of concentration camp survivors in Berlin organized under the official 'Victims of Fascism' (or 'Opfer des Faschismus,' shortened to OdF). This umbrella group became part of the city's social administration, representing claimants and deciding who was a recognized victim. Survivors who could demonstrate that they had suffered in concentration camps and belonged to the aforementioned recognized groups could receive an OdF-Identification card, which enabled them to gain access to much-needed food, housing and jobs, as well as a certain kind of social recognition. A committee of former victims, which included lawyers and prominent individuals, decided over the validity of the applications. In 1946, the organization included about 9,000 people, excluding Jews and Sinti and Roma, whose cases were represented by a division dealing with victims of the Nuremberg Laws. Homosexuals, 'Asocials', criminals, victims of euthanasia or forced sterilization, displaced persons and other groups were not eligible.

When Germany was divided, the OdF group also split and in 1948 the Association of the Persecuted of the Naziregime (Vereinigung der Verfolgten des Naziregimes, VVN) was founded in the West. This association stated that anti-fascist activity as the cause for incarceration was a *precondition* for membership and that the mere fact of prosecution for homosexual behavior did not suffice (zur Nieden, 2009). While some courageous individuals, like the medical doctor Rudolf Klimmer, actively petitioned the VVN to recognize homosexual victims and allow for compensation, a wider level of mobilization for the inclusion of homosexuals was non-existent. Some individual legal cases were brought forward and a few cautious scientific studies emerged stating that homosexuality was not aberrant. But more was not possible, a fact that both frustrated survivors and silenced further efforts.

The repressive effects of Nazi rule continued to have a devastating effect on homosexuals in post-war West Germany. Among the most important were: registration with the police, loss of employment and degrees, convictions or sentencing, health problems, financial penalties, responsibility for court and prison costs and after the release a variety of restrictions, such as loss of passports or restriction to a specific locality. Sentencing for Paragraph 175 often lead to individual social decline because of

the resulting exclusion from professional organizations, the university, and political and social organizations even after 1945 (Ro[ss]bach, 2002).

Failed denazification and continued criminalization discouraged claimants from coming forward, despite the fact that many paths back into a normal existence as citizens were painfully blocked. Homosexuals met in small private circles where some of these issues were discussed but even those dwindled in the 1950's. Because of continued censorship of gay media, communication among a larger group of individuals and the development of a common identity was severely hampered. Social groups that formed were afraid of police surveillance, public shaming, and loss of jobs. By the general compensation deadline of December 31, 1959, only fourteen gay men dared to disclose both their past and their sexual orientation and petition the government.^v

Despite the state's willingness to pay for a number of non-Jewish abuses during the Holocaust, much of the difficulties faced by gay men are explained by: the invisibility of homosexuals, continued criminalization, the absence of corresponding social pressure because of the difficulty in organizing legally, and the impossibility of articulating a convincing 'injustice frame' during the sexually repressive Adenauer era. Allied forces did nothing to support claims by homosexuals, and the new republic even got away with the continued use of the identical Nazi criminalization law. Social mobilization and framing of demands were all stuck in a dead end as there were no political allies neither among the political leaders, parties, other state institutions nor was there solidarity from other victims of National Socialism organized in the VNN. Gay men found all aspects of the political opportunity structure closed to them and fell into the 'empty' class of categorical victims.

The Gay Liberation Movement and the Beginning of Reform

The continued silencing, criminalization, and prosecution of gay citizens finally came under criticism in the late 1960s and early 1970s, when a modern gay liberation movement emerged in Germany, along with students' and women's movements. The more radical gay liberation movement politicized through gay publications, demonstrations, and films by Rosa von Praunheim; the 'Homosexuelle Aktion Westberlin' (HAW) was formed and demanded an end to societal and governmental

oppression. When the Social Democratic Party came to power in an alliance with the Liberals in 1969, Paragraph 175 was reformed, and reformed again in 1973 to introduce the quasi-legality (Straflosigkeit) of homosexual acts between men over the age of eighteen.

However, no act of apology or broad reparation was connected with that reform. Out of a special fund four gay men received regular money from the Federal Restitution Law Hardship Fund and sixteen survivors received a one-time payment of 5,000 German Marks. No homosexuals received funds from the more generous fund for victims of the National Socialist regime (BEG). And, while a general liberalization began during the 1970's, the police continued to keep so called 'pink lists' with the names and meeting places of homosexuals.

Into the 1980s, the dominant legal position was that while homosexuals were indeed political enemies of Nazi Germany and sent to concentration camps, this was done for reasons of 'order' and 'security' (Giessler, 1981:13-14). In a famous 1985 speech commemorating the fortieth anniversary of the end of World War II, German President von Weizsäcker became the first high representative to publicly name homosexuals as victims of National Socialism. However, official apologies from then-Chancellor Helmut Kohl were not offered. And in 1986 the West German parliament reaffirmed the Federal Constitutional Court's view that that prosecution for violations of paragraph 175 did not constitute 'National Socialist injustice' (Moeller, 1994). Only with increased pressure from the gay liberation movement and the Green party in the later 1980s were homosexuals included among the category of the 'forgotten victims'--although material compensation or reparations was severely limited. Of nine homosexual men who applied only one was approved (Schoppmann, 257-258, in Moeller, p. 427).

In 1994 and 1996, the conservative German government still maintained a position that the incarceration of gay men was neither typical Nazi injustice nor 'rechtsstaatswidrig,' i.e. against the law. However, due to German unification and changing public views, Paragraph 175 was at last abolished. When the Social Democratic-Green coalition formed a more progressive government in 1996, other important changes followed: On December 7th, 2000, the Federal Parliament of Germany officially apologized to the homosexual victims of the Nazi regime and annulled their

related criminal sentences.^{vii} Also included was an apology for the fact that the laws of the Federal Republic of Germany supported continued harassment and ongoing criminalization of homosexuals until 1969.

Despite these changes, gay men sentenced under the Nazi regime did not receive financial compensation as Nazi victims. The reason given is that prosecution of homosexuals was legal under standard German criminal law, the dominant discursive frame. Additionally, the eradication of homosexual and lesbian publishing houses, stores, restaurants, and infrastructure, as well as the destruction of the Institute for Sexual Science and the ownership of the land on which it stood, has not been adequately addressed. Collective compensation is not an issue since the existence of a gay ‘community’ has not been acknowledged. The initial difficulty of organizing homosexuals as a community is clearly mirrored by the longstanding refusal of the West German state to decriminalize male homosexual activity and continue censorship and police surveillance. The results of the failure to decriminalize male homosexuality generated further individual and community related losses.

Symbolic Reparations: The Berlin Memorial for Gays Persecuted by the Nazis

Over the last decade, beginning with the Red-Green coalition in Germany (1998-2005), important but sometimes ambiguous reforms have occurred in terms of symbolic reparations. The political opportunity structure has opened up for gay interests and rights, public opinion has shifted, and there is more goodwill in the representation of homosexual distress under the Nazi regime. The Red-Green coalition expanded the scope of gay/lesbian rights (the introduction of same-sex civil unions, for example) and discussed the recognition and possible reparation of homosexual victims in parliament. The government also supported the long-standing demand by some members of the gay rights movement to build a memorial for homosexual victims of the Nazi regime.

With the establishment of a strong culture of atonement in Germany, gay and lesbian groups in a variety of larger cities also began to establish a variety of small and local memorials, such as plaques, statues, and ‘Stolpersteine’ (small sidewalk memorial stones). The politics of memory culminated on May 27, 2008, when a public monument (Gedenkort) for homosexuals persecuted under the Nazis opened to the Berlin public.

This memorial was the end result of mobilization from the German Lesbian and Gay Association, which began an initiative for building a memorial for the homosexual victims of the NS regime in 1993. On December 12, 2003, during its deliberation on the large memorial for the Jewish Holocaust, the German Parliament agreed to also build a small site for gay victims across the street. The mission of that memorial was to remember the oppression of homosexuals and educate the public. Unfortunately the memorial came into the crosshairs of current identity politics and the competing interests of various groups of Nazi victims. Trying to simultaneously address both the past and the present, i.e. the Nazi persecution *and* the continued discrimination of gays and lesbians in the Federal Republic, turned out to be extremely complex. The high and diverse expectations led to a series of conflicts among constituents and supporters.

First, the actual the monument (a single, hollow, grey block of concrete) is both very similar in form and very close in physical proximity to the 2711 concrete stelae of the Holocaust memorial. Israel Gutman, the former head of Yad-Vashem in Israel, stated that the placement of this new memorial so close to the Holocaust memorial was a ‘scandal’ and declared that many Nazis were themselves homosexuals, which is a not uncommonly held belief (Israel Gutman, 30.5.2008). Gay activists were disappointed when Gutman lumped together Nazis and homosexual survivors.

Secondly, the memorial divided even its supporters. A small but vocal group of feminists associated with the feminist magazine EMMA and the leading figure of German feminism, Alice Schwarzer, argued that lesbians should have also been represented in the memorial (EMMA, 2007). Historical records are clear, however, that lesbians were *not* persecuted in any comparable fashion to men under the Nazis or after 1945 (Schoppmann, 1991). If, however, the memorial is also intended to educate the public about the post-war bigotry against homosexuals, then lesbians would be another group to actively recognize. This protest by the small group of influential feminists was able to successfully claim gender-specific ‘*exclusion*’ from the memorial. As a result of this debate the artistic video shown inside the memorial was changed to include images of women for the same amount of time.

As a consequence of this exclusion/inclusion debate historians and representatives of the association of museums of National Socialism and concentration camps feared

that various groups were instrumentalizing the new monument. The concern was that present identity politics were equalizing the representation of men and women to an absurd degree. To sum up, while the construction of the Berlin memorial with the support of the German parliament (and numerous other smaller local monuments) is a success of symbolic recognition for the persecuted gay community, the debate illustrates the long legacy of some of the intense competition among claimant groups. It also demonstrates the dangers of identity politics in transitional justice debates at the intersection of gender and sexuality.

Sexuality, Agency, and Transitional Justice

One factor explaining the differential outcomes in the politics of reparations is the ability of claimants' to organize interests vis-à-vis *political opportunity structures*. After the end of National Socialism homosexual victims did not enjoy political support by the Allies, the West and East German governments, the courts, mass media or society. Continued criminalization of male homosexuality through Paragraph 175 and censorship of gay newsletters and communication until 1969 severely undermined any organization for material or symbolic reparations.

This finding demonstrates that we have to caution against the overemphasis of a national political opportunity structure as a totalizing explanatory variable for movement failure or success. Instead, different social groups experience very different opportunities in transitional justice even if they share some similar experiences in the same state and at the same time. Therefore, the cultural aspects of social movements needs to be taken into account when analyzing claims related to reparations. Claims coming from individuals who are seen as 'morally degraded,' 'aberrant,' or 'criminal' by both the majority of the population and core state institutions, face an uphill battle to find legal venues, strong political allies, or resonant media to even enter the political system. The unequal access of different victim groups to the German state reflects two facts: First, 'there has never been an all-comprising identity of Nazi victims,' and, consequently, different groups have been treated disparately (Goschler, 1992). Secondly, the diversity and original categorization of victims *by* the Nazis themselves reveals a dark political legacy for decades afterwards.

Social mobilization was severely restricted until 1969 and as a result limited public claims-making for reparations by homosexuals in fundamental ways. The continued criminalization of homosexuality until the late 1960's had a profound effect on the ability to share experiences and stories, pool resources, organize, and self-identify as homosexual individuals vis-à-vis social services, bureaucracies, and the courts. Under these circumstances, social mobilization and the development of a cohesive *identity* and a shared narrative of survival and oppression were hindered. The maintenance of invisibility and secrecy that functioned to protect homosexuals from continued state suppression also made reparation claims basically unattainable.

The *mobilization* of the modern gay and lesbian movement in the 1970's, the slow erosion of stigmatizing laws, and the highly dynamic, complex, and interactive 'identity politics' of the following decades have enabled homosexual men to describe their victimization during the Nazi regime and build a bridge between current gay aspirations and the past. The politics regarding the Berlin memorial show that the representations of a collective 'homosexual' identity is difficult to maintain and can pit different groups against each other in a competition among Nazi victims or disadvantaged groups. The social mobilization of the last decades has led to symbolic reparations while material reparations have basically been a failure, partly because of the inability to organize an effective lobby organization or movement in time.

Movements for reparations also need to develop an effective *injustice frame*. Here one could imagine frames that would benefit *both* groups of Nazi victims—Jews and homosexuals. Instead one interpretative frame—the Holocaust – has become the global reference point for all kinds of groups. Framing the persecution of homosexuals for a short time as a 'Homocaust' shows the strategic appeal of the dominant injustice frame 'Holocaust', but it does not capture the historical reality of the Shoa. While the gay community has only partially been able to utilize the specific injustice frame of the Holocaust, it has nevertheless become accepted as another victim of the Nazi ideology.

My concluding comments are directed at two issues: first, the problems of mobilizing for reparations on the grounds of sexuality in comparison to gender, religion, or ethnicity and, secondly, the issue of intersectionality already hinted at by Beauvoir. First, the comparison of the two cases shows that if claims based on ethnic and religious

identity can be powerfully framed in terms of the assumed characteristics of a *national* identity, or attached to a national project, they are likely to be more successful—success being defined as having a higher likelihood of 1.) earlier acknowledgment of crime and 2.) governmental willingness to consider material and symbolic reparations. It is worthwhile to note how the ethnic/national framing of the reparations issue has played out: many of the Jewish survivors became part of a new nation state - Israel. Others left for the USA, Canada or other states. In the instance of the majority of the surviving Jewish population a profound *separation* between perpetrators and victims has taken place, while homosexual men continued living in Germany under a cloud of *secrecy* for several more decades, trying to fit in.

Second, intersectionality—the overlapping simultaneity of multiple points of identification—complicates the status and identity of victimhood, survivors, and claimants. Some homosexuals were Jewish – where does this leave these individuals? And the vast majority of homosexuals was non-Jewish and did not become victims of direct Nazi persecution, continuing their (albeit secretive) lives after the war. Many of them fought in the war and possibly supported the policies and ideology of the Nazi government. At the same time scholars have argued that the situation of Jews and homosexuals and sometimes their historic circumstances have been similar: when one group was persecuted, the other also did badly. Historically, Jews and homosexuals might have been targets of conservative and Fascist ideologies, but their fate has been different in many important ways—including the success of demands for reparations by the Jewish community and the relative failure by homosexual men to garner any comparable forms of restitution and recognition.

^{iv} The assessment on how many homosexuals died due to Nazi persecution varies dramatically. Considered reliable are the numbers of 5.000 to 15.000 (Lautmann, 1977) James Steakley (2002) gives a self-critical assessment about the inflated numbers (between 200.000 and 300.000) that were picked up from unsubstantiated press releases and then circulated in the gay and mainstream press in the US. The American

gay movement also picked up the use of the pink triangle as symbol of the movement and often equated the fate of homosexuals under National Socialism to the Jews.

^v Antrag auf Unrechtserklärung der nationalsozialistischen Paragraphen 175 und 175a Nr. 4 Reichsstrafgesetzbuch sowie Rehabilitierung und Entschädigung für die schwulen und lesbischen Opfer des NS-Regimes, Deutscher Bundestag, 14/2619, 27.01.2000, 1-7.

^{vii} A debate over other forms of symbolic reparations such as memorials commemorating the persecution of homosexuals has been ongoing since the 1980's. An excellent introduction and overview over this debate can be found in: Heinrich-Böll Stiftung, (ed.), *Der homosexuellen NS-Opfer gedenken* (Berlin: Heinrich-Böll Stiftung, 1999).