

The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America

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ABSTRACT[∞]

Latin American truth commissions have recently expanded their purview to include cases of violence against gender and sexual minorities as human rights violations worthy of investigation. This article proposes that grappling with this emerging LGBTI (lesbian, gay, bisexual, transgender and intersex) rights challenge requires a queer, intersectional and decolonial analytical lens that underscores the relevance of global LGBTI politics, and critiques transitional justice foundational assumptions regarding temporality and binary logics. In practical terms, this analytical lens 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 LGBTI people's full citizenship.

KEYWORDS: LGBTI, gender, sexual orientation, colonial legacy, Latin America

Over the last several decades, the search for truth following an internal armed conflict or an authoritarian regime has mainstreamed attention to gender difference. More recently, Latin American truth commissions have expanded their purview to include cases of violence against gender and sexual minorities as human rights violations worthy of examination. The goals of transitional justice are to redress abuses and dispense justice, facilitate truth and reconciliation, and restore rule of law and democracy for countries that have suffered massive human rights violations under armed conflict and/or authoritarian regimes. The emerging visibility of LGBTI rights challenges the field and practice of transitional justice to develop relevant philosophical, theoretical and conceptual approaches to address cases of violence against gender and sexual minorities. This article proposes that grappling with this challenge requires a queer, intersectional and decolonial analytical lens that underscores the relevance of global LGBTI politics, and critiques transitional justice foundational

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∞ I deeply appreciate a generative conversation with Fionnuala Ní Aoláin that inspired the writing of this article. Carlos Beristain and Alejandro Valencia Villa brought my attention to the truth commissions in Ecuador and Paraguay and provided critical information and insights. The University of Delaware Institute for Global Studies' Global Exchange Program and the University of Delaware Center for Global and Area Studies supported research in Colombia. Sylvanna Falcón and two anonymous reviewers offered generous feedback and suggestions. All translations from Spanish to English are the responsibility of the author.

assumptions regarding temporality and binary logics. In practical terms, this analytical lens 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 LGBTI people's full citizenship.

LGBTI stands for lesbian, gay, bisexual, transgender and intersex. The I for intersex is typically included in Latin American contexts. While the Q for queer is typically included in the US context, in the Latin American context its usage is inconsistent and has been the subject of polarizing debate.¹ This article utilizes LGBTI unless the source cited specifies otherwise. Gender and sexual minorities refers to individuals that do not fit into the cisgender and/or heterosexual majorities or norms. Cisgender indicates those individuals that identify with their sex assigned at birth and fit into the normative male and female binary of gender identity and expression. In contrast, transgender names those individuals that do not identify with their sex assignment at birth. Transgender individuals may or may not fit, or care to fit, the normative male–female binary.

Violence against gender and sexual minorities remains largely unexamined in the practice and scholarship of transitional justice because of an adherence to a narrow construction of gender-based violence anchored in the normative male–female binary and its corresponding assumption of heterosexuality. International nongovernmental organizations such as Amnesty International² and foundations such as the Astraea Lesbian Foundation have issued reports about violence against gender and sexual minorities,³ thereby evidencing how nonacademic researchers, advocates and activists have taken the lead in addressing this issue. Recognizing the work already being done outside of academia democratizes knowledge production and is central to the field of transitional justice given its attention to practice.

Queer scholar and activist Katherine Fobear identifies the scholarly gap with regard to the experiences of gender and sexual minorities, focusing specifically on truth commissions. She asks, 'what would the incorporation of sexual and gender minority experiences in transitional justice mechanisms, such as truth commissions, mean for sexual and gender minorities?'⁴ Fobear suggests utilizing queer legal theory to examine transitional justice mechanisms to reevaluate norms and chip away at the modern liberal foundation of transitional justice. Expanding upon Fobear's approach, this intervention incites an analysis of how the male–female binary and its corresponding assumption of heterosexuality function within the full range of transitional justice concerns. The four areas of transitional justice include truth seeking/truth telling, criminal justice/prosecutions, reparations and institutional reform/governance. This exploratory article provokes new questions by drawing from US women

1 Pascha Bueno-Hansen, 'Queer/Lesbiana Dialogues among Feminist Movements in the Américas,' in *Translocalities/Translocalidades: Feminist Politics of Translation in the Latin/a Américas*, ed. Sonia E. Alvarez, Claudia de Lima Costa, Veronica Feliu, Rebecca Hester, Norma Klahn and Millie Thayer (Durham, NC: Duke University Press, 2014).

2 Amnesty International, *Crimes of Hate, Conspiracy of Silence: Torture and Ill-Treatment Based on Sexual Identity* (2001).

3 Astraea Lesbian Foundation for Justice, *Colombia LGBTI: Landscape Analysis of Political, Economic and Social Conditions* (2015).

4 Katherine Fobear, 'Queering Truth Commissions,' *Journal of Human Rights Practice* 6(1) (2014): 52.

of color feminisms, queer of color critique, feminist and queer decolonial theory and queer international relations, while locating this new research area within existing scholarship regarding sexual and gender politics in other fields.⁵ As the scholarship and practice of transitional justice stretches to include this emerging LGBTI rights challenge, this article aims to highlight existing pitfalls and offer generative theoretical, philosophical and conceptual approaches that both expose criminal patterns and impunity and apprehend the full citizenship of LGBTI people.

This article begins by explicating the Latin American regional emergence of the LGBTI rights challenge to transitional justice and then offers the conceptual coordinates for a queer and intersectional analysis. The remainder of the article underscores three main pitfalls and their corresponding promising approaches based on a queer, intersectional and decolonial analytical lens. The first pitfall comes to light through the lessons learned from two decades of headway around women's rights and recognition of gender-based violence, including the homogenization of the victim subject, the 'add-on' approach to gender analysis and the reduction of gender to women. Inclusive conceptions of citizenship and reparations offer pathways to counteract this pitfall. The second pitfall surfaces by placing the study of Latin American gender and sexual minority experiences in a global context. Western notions of sexuality and gender have become the default metric of modernity. Dominant frameworks utilized to comprehend LGBTI struggles globally are riddled with false dichotomies, such as modern LGBTI-friendly countries versus uncivilized homo- and transphobic countries. A call for attention to local versions of gender and sexual diversity guards against this pitfall. The third pitfall presents itself in relation to the limited conception of temporality within transitional justice. Given the temporally bounded nature of transitional justice and the short-term mandate of transitional justice mechanisms, scholars and practitioners struggle with the vexing problem of accounting for structural and historic violence and ongoing impunity. Taken with queer and intersectional approaches, a decolonial approach denaturalizes linear temporality and accentuates the continuity and connections across patterns of abuse and facilitates an ontological capaciousness in which the recognition of the full humanity of LGBTI populations becomes possible.

LATIN AMERICAN INITIATIVES

Peru, Paraguay, Ecuador and Brazil offer a snapshot of Latin American truth commissions that span a decade and a half (2001–2014) and mark an initial effort to attend to harms committed against gender and sexual minorities. Colombia is in the process of implementing a truth commission and its peace process included attention to LGBTI political and civil rights. This article highlights the precedent-setting work currently taking place in Colombia. Although advances in South Africa stand out as an important reference, in comparison to other regions of the world, Latin America is leading in the recognition of LGBTI human rights. Given that same-sex marriage has become the global metric for LGBTI rights, half of South American countries (six of 12) recognize some type of same-sex union. While acceptance is uneven,

5 sexuality/queer studies, law, history, anthropology, international relations and geography.

LGBTI rights have been gaining ground over the last decade despite high levels of violence against sexual and gender minorities.

The Peruvian Truth and Reconciliation Commission (TRC) (2001–2003) was mandated to investigate the causes and consequences of the internal armed conflict (1980–2000). The investigation documented human rights violations, including kidnapping, torture, disappearance, extrajudicial executions, assassinations and sexual violence. The TRC conducted 17,000 interviews, held public hearings, prepared legal cases and published a final report that included recommendations for institutional reform and reparations. The case of the social extermination of gay and trans people in the Peruvian Amazon by both the armed forces and the subversive group Túpac Amaru Revolutionary Movement appeared as a small side note in the TRC's final report. Social extermination describes the effort to eliminate 'undesirable' sectors of society, including sex workers, drug users, the homeless, sexual and gender minorities and street children. According to the International Center for Transitional Justice's (ICTJ's) Gender Justice program director, Kelli Muddell, the issue was discussed within the TRC and widely acknowledged both within the Commission and among human rights advocates, yet little came of these discussions.⁶ This article returns to develop a queer, intersectional and decolonial analysis of social extermination given its purposeful targeting of gender and sexual minorities and its direct relationship to forced displacement.

The Paraguayan Truth and Justice Commission's (2004–2008) final report presented findings from its investigation spanning from 1954 to 2003, with a focus on the human rights violations during the dictatorship of Alfredo Stroessner (1954–1989). Two cases are considered emblematic of the social repression and illegal and arbitrary police persecution, raids, detention and torture against gay, lesbian and transgender individuals under the Stroessner dictatorship. While homosexuality was not considered a criminal act and not mentioned in the penal code, homosexuals lived clandestine lives due to social rejection, as did transgender people. Persecutions occurred under the guise of the defense of social morality.⁷ In 1959, Bernardo Aranda was burned to death in his home because of his sexual preference. In 1982, Mario Luis Palmieri, only 14 years old, was kidnapped from school and disappeared because he had been identified as a homosexual.⁸ While the Truth and Justice Commission did not have reliable statistical records regarding the repression of gays, lesbians and transgender individuals, these two cases demonstrate the efforts of the Commission to denounce the Stroessner regime's intolerance towards gender and sexual minorities.⁹

6 Kelli Muddell, 'Sexual Minorities Study: LGBT Issues and Transitional Justice' (paper presented at the Open Society Institute Forum: Gender and Transitional Justice, New York City, 7 February 2007). Also see, J. Montalvo, 'Crímenes de homofobia en el contexto de la violencia política en el Perú (1980–2000),' in *Jóvenes en movimiento. Juventud y diversidad sexual en el Foro Social Mundial*, ed. J. Montalvo (Lima: Instituto Runa, Raíz Diversidad, 2005).

7 Informe Final Comisión Verdad y Justicia Paraguay, Tomo 7.

8 'Persecución a personas de elección sexual diferente,' 1 November 2012, <http://www.abc.com.py/especiales/memorias-del-stroessner/dictadura-persiguió-a-personas-de-elección-sexual-diferente-472498.html> (accessed 1 November 2017).

9 'Informe Final Comisión Verdad y Justicia Paraguay, Capítulo Conclusiones y Recomendaciones,' http://www.derechoshumanos.net/lesahumanidad/informes/paraguay/Informe_Comision_Verdad_y_Justicia_Paraguay_Conclusiones_y_Recomendaciones.pdf (accessed 1 November 2017).

The Ecuadorian Truth Commission (2008–2009) was mandated to investigate human rights violations and related impunity between 1984 and 2008, with a focus on the presidency of León Febres Cordero (1984–1988). The investigation included human rights violations against LGBTI populations and, to that end, Commission staff conducted focus groups as well as in-depth interviews with activist leaders.¹⁰ In contrast to Paraguay, homosexuality was considered a crime until 1997. The penal code condemned homosexuals to prison sentences of four to eight years. While the 1998 constitution recognized LGBTI equality, this equality has not translated into everyday lived experience, as police continue to mistreat, discriminate against, detain and torture LGBTI individuals. Gender and sexual minorities experience social condemnation and prejudice in all political and cultural spheres. The Commission investigated the Municipality of Guayaquil's 'More Security' plan, implemented in 2000, which subjected LGBTI individuals and groups to detentions, torture and cruel treatment by state agents.¹¹ Amnesty International relates this ill treatment, particularly the targeting of transgender sex workers, to social extermination campaigns.¹² The Commission included this case to address ongoing impunity and invisibility.

The Brazilian Truth Commission (2012–2014) investigated the grave human rights violations that occurred between 1946 and 1988, the period between democratic regimes in Brazil. Most importantly, the investigation focused on the intense violence and repression under the Brazilian dictatorship (1964–1985). Among its innovations, it held a public hearing on dictatorship and homosexuality in Brazil, which provided an interdisciplinary analysis of both the politics of repression and social control and the LGBTI population's ongoing resistance. The final report placed significant attention on the impact of the repression against the LGBTI population.¹³

In the case of Colombia, efforts for and by LGBTI populations to document violence against gender and sexual minorities have been ongoing during the past 50 or so years of armed conflict. The 1991 constitution, which included language that LGBTI activists and advocates could utilize to frame their claims to citizenship rights, bolstered the strength and visibility of LGBTI social actors and movements. The 2011 Victims' and Land Restitution Law mandated the Unit for the Service to and Reparation of Victims (*Unidad de Atención y Reparación de Víctimas* – Victims' Unit) to offer attention, assistance and holistic reparations to victims of internal armed conflict, including a differential approach that recognizes sexual orientation and gender identity. The Victims' Law also created the National Center for Historical Memory (*Centro Nacional de Memoria Histórica*, or CNMH) to contribute to holistic reparations and the right to the truth in order to construct peace, democracy and reconciliation. In 2015, the CNMH published a groundbreaking book, *Aniquilar la Diferencia: Lesbianas, Gays, Bisexuales y Transgeneristas en el Marco del Conflicto armado Colombiano*, which translates roughly to *Annihilation of Difference: Lesbians,*

10 Informe Final de la Comisión de Verdad, Ecuador. 2010 'Sin Verdad no hay Justicia' Violencia Sexual y Enfoque de Género.

11 Ibid., Tomo 1: Violaciones de Derechos Humanos.

12 Amnesty International, supra n 2.

13 James N. Green and Renan Quinalha, *Ditadura e Homossexualidades: Repressão, Resistência e a Busca da Verdade* (São Carlos: Edufscar, 2014).

Gays, Bisexuals and Transgender People and the Colombian Armed Conflict. This book was based on extensive interviews and workshops, as well as a synthesis of existing reports and quantitative and qualitative data.

While the four-year peace negotiations initiated in 2012 included gay and lesbian advocates, the final peace accord excluded much of their contribution. Socially conservative political actors vociferously denounce the ‘gender ideology’ forwarded by LGBTI and feminist advocates. Nevertheless, LGBTI organizations continue organizing and working tirelessly for a peace that includes their visions and demands, and social actors within the Victims’ Unit and CNMH are setting global precedents in the recognition of LGBTI rights.

Given these promising regional developments, which mark a growing trend over a decade, what should scholars and practitioners keep in mind as they approach this emerging area? The next section offers the queer and intersectional analytical coordinates necessary to theoretically and conceptually explore the pitfalls and promising alternative approaches presented in subsequent sections. The last section weaves in a decolonial analytical thread to complete the proposed conceptual frame.

QUEER AND INTERSECTIONAL ANALYTICAL COORDINATES

Queer theory questions regimes based on heterosexual norms and the male–female binary of society and politics, thereby deconstructing essentialist conceptions of gender and sexuality. For example, queer theory assists in theorizing heteronormativity and cisnormativity. Heteronormativity privileges those that identify as heterosexuals over those that are not heterosexual, thereby normalizing heterosexuality. Cisnormativity privileges those that identify with their sex designation at birth (cis-gender people), thereby naturalizing people that adhere to the male–female binary. Cisnormativity systematically excludes transgender and gender-nonconforming people. An ongoing critique of queer theory is its ‘dependence on an unacknowledged white racial identity,’¹⁴ which folds back later in this section with the discussion of intersectionality.

Queer theory analyzes the social production of ontology and its maintenance through ‘disciplinary operations of knowledge.’¹⁵ One of the conclusions drawn in *Annihilation of Difference* states that ‘the recognition of full citizenship of these victims requires the elimination of heteronormative representations and imaginaries that legitimate violence against women and people that do not adhere to gender and sexual norms.’¹⁶ Therefore, the process of queering transitional justice begins with the following question: How are ‘heteronormative representations of family,

14 Michael Hames-García, ‘Queer Theory Revisited,’ in *Gay Latino Studies: A Critical Reader*, ed. Michael Hames-García and Ernesto Javier Martínez (Durham, NC: Duke University Press, 2011), 21. The author offers an alternative genealogy for the study of sexuality in the US.

15 Momin Rahman, ‘Queer as Intersectionality: Theorizing Gay Muslim Identities,’ *Sociology* 44(5) (2010): 952. Also see, Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990); Eve K. Sedgwick, *Epistemology of the Closet* (Berkeley, CA: University of California Press, 1990).

16 Centro Nacional de Memoria Histórica, *Aniquilar la Diferencia: Lesbianas, Gays, Bisexuales y Transgeneristas en el Marco del Conflicto armado Colombiano* (Bogotá: CNMH-UARIV-USAID-OIM, 2015), 438.

community, nation and state'¹⁷ reproduced in transitional justice mechanisms (commissions and tribunals), judicial processes, reparations policies and institutional reform/governance? In terms of governance, the 2008 Ecuadorian constitution offers an interesting example of moving beyond the heteronormative conception of family. Drawing from LGBTI and migrants rights critiques as well as feminist, indigenous and Afro-Ecuadorian critiques, the term 'diverse family' draws from alternative kinship logics and is 'understood to represent same-sex couples but also families such as transnational migrant households.'¹⁸

The complex interrelationships of identity categories recognized within the Ecuadorian constitution reflect the relevance of an intersectional approach. Intersectionality has become the analytical frame to combat homogeneous categories, such as women or gender and sexual minorities, which limit the effectiveness of transitional justice efforts. Rooted in the legacy of US women of color feminisms, this intersectional analysis emanates from 'the collaborative work feminist of color communities engaged in for decades to strategize resistance and defend their lives.'¹⁹ In 1991, US legal scholar Kimberlé Crenshaw brought an intersectional analysis to bear on the limitations of the legal system to address cases of domestic violence against women of color in that the legal defense has difficulty contemplating multiple categories, such as gender and race, at the same time.²⁰ Building upon this legacy of US women of color feminisms, in 1997 political scientist Cathy Cohen explained that 'queerness must be based on an intersectional analysis that recognizes how numerous systems of oppression interact to regulate and police the lives of most people.'²¹ A queer intersectional analysis reveals a differential impact on those that occupy varied social positions. For example, in Colombia, 'a difference persists between everyday lives of urban middle class LGBT persons and those of sexual and gender minorities facing additional marginalities in relation to class or geographical location.'²² This differentiation establishes the marker between those LGBTI individuals whose citizenship is conditionally recognized by the state and those that are branded as criminal, insane, terrorist or otherwise superfluous to the state.

By elucidating the interlocking systems of domination, a queer and intersectional analysis serves the study of transitional justice by making visible historic erasure and structural violence within the legal system and political institutions. A queer intersectional approach validates the existence of gender and sexual minorities in all their heterogeneity and legitimizes their subject positioning within the body politic, while strategically engaging and destabilizing institutionalized categories and identities.

17 Amy Lind, 'Introduction: Development, Global Governance, and Sexual Subjectivities,' in *Development, Sexual Rights and Global Governance*, ed. Amy Lind (New York: Routledge, 2010), 15.

18 Amy Lind and Cricket Keating, 'Navigating the Left Turn: Sexual Justice and the Citizen Revolution in Ecuador,' *International Feminist Journal of Politics* 15(4) (2013): 523.

19 The Santa Cruz Feminist of Color Collective, 'Building on "the Edge of Each Other's Battles": A Feminist of Color Multidimensional Lens,' *Hypatia* 29(1) (2014): 33.

20 Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,' *Stanford Law Review* 43(6) (1991): 1241–1299.

21 Cathy Cohen, 'Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?' *GLQ: A Journal of Lesbian and Gay Studies* 3(4) (1997): 441.

22 William Payne, 'Death-Squads Contemplating Queers as Citizens: What Colombian Paramilitaries Are Saying,' *Gender, Place and Culture* 23(3) (2016): 333.

This is a paradoxical process in which hegemonic and alternative ways of knowing exist in constant tension.

A queer and intersectional analysis exposes how institutionalized categories and identities are used to regulate and socialize.²³ Future research might examine how categories that come to designate gender and sexual minorities become part of the international toolkit for states in political crisis after armed conflict and/or authoritarian regimes. For example, the Colombian Victims' Unit is the first of its kind to include in its victim registry an LGBTI category in addition to the default male and female categories typical of heteronormativity and cisnormativity. Yet, many problems have emerged in the implementation of this new category, including the enormous heterogeneity of people and experiences all lumped together in the alphabet soup of LGBTI, the lack of awareness on the part of state functionaries, and hesitation and resistance to self-identify due to prejudice and discrimination.²⁴

Besides illuminating the apparatus and mechanisms of erasure and domination, an intersectional approach lends itself to social movement coalition building. 'The intersectionality of struggles' bridges multiple and interconnected struggles for social justice.²⁵ The recent peace negotiations in Colombia offer an example of intersectional and coalitional politics between advocates for women's rights and advocates for lesbian and gay rights. In the composition of the gender subcommittee, women's rights advocates and feminists actively allied with and supported the inclusion of lesbian and gay rights advocates.²⁶ While the struggle to address gender-based violence has to battle entrenched sexism and patriarchal values, the struggle to address violence against sexual and gender minorities must also battle against heterosexism in the form of cisnormativity and heteronormativity. The intersectional and coalitional politics enacted within the gender subcommittee are notable because even in women's and feminist movements one finds transphobia, as evidenced in the Latin American and Caribbean Feminist Gatherings that excluded transgender people.²⁷ And conversely, within agendas that claim the LGBTI label, one can find cisnormative and misogynistic perspectives. While this intersectional alliance should be celebrated, it cannot overshadow the systematic exclusion of lower-class and working-poor transgender rights advocates due to classism as well as transphobia, and, more specifically, transmisogyny, the hatred of transgender women.²⁸

23 Cohen, *supra* n 21.

24 Colombia Diversa, Caribe Afirmativo and Santamaría Fundación, *Cuerpos Excluidos, Rostros de Impunidad: Informe de Violencia hacia Personas LGBT en Colombia* (2015).

25 Angela Y. Davis, *Freedom Is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement*, ed. F. Barat (Chicago, IL: Haymarket Books, 2016), 19.

26 Personal conversation with Carlos Andres Paredes, 13 June 2007. He recently conducted interviews with the leading Colombian LGBTI advocates with regard to their inclusion in the peace process.

27 Encuentro Feminista de Latinoamerica y el Caribe, 'Se debatirá incorporación de todas las corporalidades en el próximo EFLAC,' <http://13eflac.org/index.php/noticias/19-portada/153-se-debatira-incorporacion-de-todas-las-corporalidades-en-el-proximo-eflac> (accessed 1 November 2017); Elisabeth Jay Friedman, 'Feminism under Construction,' *NACLA: Report on the Americas* 47(4) (2014): 20–25.

28 Pascha Bueno-Hansen, 'Feminismos Insurgentes en Colombia,' *openDemocracy*, 15 September 2017, <https://www.opendemocracy.net/democraciaabierta/pascha-bueno-hansen/feminismos-insurgentes-la-poco-probable-alianza-entre-las-farc> (accessed 1 November 2017).

GENDER-BASED VIOLENCE: RECOGNITION GAINED AND LESSONS LEARNED

This emerging LGBTI challenge to transitional justice breaks a historic silence and builds upon regional feminist and women's rights movements' gains over the last several decades that have brought attention to the issue of gender-based violence during internal armed conflict and/or authoritarian rule. Transitional justice scholarship and practice evidences a mainstreaming of attention to gender-based violence and gender analysis. The confluence of LGBTI movements and the headway gained around addressing gender-based violence opens a space to examine violence against gender and sexual minorities, and presents a new area of research. In scoping the conceptual terrain of this new research area, there are various pitfalls that have developed in the study of gender-based violence and transitional justice to date that should be avoided, including the limits of a victim-oriented focus, the 'adding on' of a gender analysis, and the reduction of gender to a homogenized 'woman' who holds one default universal social position. As noted, the dominant understanding of gender-based violence rests upon the normative male–female binary and corresponding assumption of heterosexuality. To avoid these pitfalls, I build from the edges of current work, connecting across disciplinary fields and employing intersectional and queer analytical approaches to shine a critical light on the private–public divide and false binaries more generally, as well as to point towards inclusive conceptions of citizenship and reparations.

As feminist anthropologist Kimberly Theidon writes, 'From gender hearings to gender units and gender-sensitive truth commissions, "adding gender" is policy-speak for "adding women".'²⁹ To break out of this reduced understanding of gender, Theidon researches militarized masculinity, 'that fusion of certain practices and images of maleness with the use of weapons, the exercise of violence, and the performance of aggressive and frequently misogynist masculinity.'³⁰ In conversation with Theidon's work is transitional justice scholar Brandon Hamber, who wrote an essay proposing a research agenda on masculinity and transitional justice in 2007 and a later reflection on the state of the field.³¹ Hamber problematizes the limited focus on direct violence, particularly enactments of militarized masculinity by men in the form of sexualized violence against women. He writes,

We need to guard against a focus merely on the expressions of masculinity, however critical these are, which do not address structural factors such as unemployment and living conditions that exacerbate violent masculinities, and are directly linked to a range of other structural violations.³²

29 Kimberly Theidon, 'Reconstructing Masculinities: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia,' *Human Rights Quarterly* 31(1) (2009): 4.

30 *Ibid.*, 5.

31 Brandon Hamber, 'Masculinity and Transitional Justice: An Exploratory Essay,' *International Journal of Transitional Justice* 1(3) (2007): 375–390; Brandon Hamber, 'There Is a Crack in Everything: Problematizing Masculinities, Peacebuilding and Transitional Justice,' *Human Rights Review* 17(1) (2016): 9–34.

32 Hamber, 2016, *supra* n 31 at 19.

Here, careful attention should also be placed on the multiplicity of social factors that refract the heterogeneity of masculinity as mapped onto all types of bodies, not just those assigned male at birth. Equal attention must interrogate the institutional and organizational manifestations of masculinity that maintain asymmetrical power relations.

Filling the lacunae from a historical perspective, James Green offers an insightful study of a Brazilian revolutionary Left organization and its response to its members 'non-normative sexual desires' through an analysis of oral histories, given that researchable material on the topic is lacking.³³ The focus on victimization has brought some attention to sexual violence against men and now some attention is moving towards harms against gender and sexual minorities. Careful work must be done to avoid the reduction of gender and sexual minorities to a simplistic victim status and to redirect the research inquiry in potentially more productive directions.

In response to the pitfall of reducing the impact of armed conflict on women to sexual violence and thereby defining women singularly by their victimhood, legal scholars Julieta Lemaitre and Kristin Bergtora Sandvik suggest that political insecurity due to forced displacement is a gendered harm.³⁴ For context, Colombia has over seven million internally displaced people³⁵ and forced displacement is the human rights violation most commonly reported by LGBTI populations.³⁶ Lemaitre and Sandvik, true to the male–female binary, argue that women's experiences of forced displacement and resettlement are markedly different than men's in that threats and intimidation are gendered. Therefore, reparations policies must consider the structural discrimination inherent in women's experiences and the need for reparations that include rectification, not only restitution.³⁷ Restitution seeks to restore the conditions prior to the displacement, while rectification addresses the need to eradicate the conditions that fueled the conflict to begin with and to create a new foundation upon which to uphold a more just social contract. The need for rectification overlaps with legal scholar Ruth Rubio-Marín's guidelines for reparations for conflict-related sexual and reproductive violence that highlight the need 'to link reparations initiatives to broader conversations about the necessary structural, institutional and legal reforms that would allow the construction of more inclusive and sex-egalitarian democracies.'³⁸

Similarly, *Annihilation of Difference* suggests that holistic reparations for LGBTI victims of displacement must not be limited to restoring the living conditions prior to the violent acts of armed actors and displacement. Indeed, the living conditions of LGBTI populations were already deeply impacted by 'marginalization and

33 James Green, "Who Is the Macho Who Wants to Kill Me?" Male Homosexuality, Revolutionary Masculinity, and the Brazilian Armed Struggles in the 1960s and 1970s,' *Hispanic American Historical Review* 92(3) (2012): 440.

34 Julieta Lemaitre and Kristin Bergtora Sandvik, 'Beyond Sexual Violence in Transitional Justice: Political Insecurity as a Gendered Harm,' *Feminist Legal Studies* 22 (2014): 243–261.

35 See, Internal Displacement Monitoring Centre at <http://www.internal-displacement.org/countries/colombia> (accessed 1 November 2017).

36 Colombia Diversa et al., supra n 24 at 129.

37 Lemaitre and Sandvik, supra n 34 at 245.

38 Ruth Rubio-Marín, 'Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue,' *William and Mary Journal of Women and the Law* 19(1) (2012): 104.

heteronormative structural violence.' Therefore, reparations must include the restitution of rights and rectification of oppressive conditions of life so that victims 'do not return to the same situation of vulnerability.'³⁹ As countries in transition include LGBTI rights, the possibility for full citizenship grows, as does the recognition of LGBTI rights within reparations policies.

Both Theidon and geographer William Payne utilize the analytical category of citizenship to theorize how military service and soldiering link up with social mobility for poor young men⁴⁰ and the struggle of sexual and gender minorities against the suppression of their rights as citizens.⁴¹ Both assist in transforming the conceptual and lived parameters of citizenship, thereby providing a fruitful direction for future research on gender and sexual minorities that breaks from the victim narrative. As *Annihilation of Difference* concludes, 'it is urgent that state policies recognize the full citizenship of those that do not comply with gender and sexual norms.'⁴²

For LGBTI populations, intimacy and community are equally regulated alongside public expression and formal citizenship. Queer theory offers analytical traction with the public-private divide as it not only systematically disadvantages women, but also upholds heteronormativity in all aspects of society, politics, economics and culture. Indeed, 'discrimination against LGBT people has long been justified on the basis of its purported relegation to the private realm of our "intimate" lives.'⁴³ The populations disadvantaged by the private-public divide not only multiply if seen through the lens of queer theory, but also can be comprehended relationally in terms of access to citizenship.

Sexual citizenship offers an expansive definition that includes the role of collectively occupying public space to claim and reaffirm humanity and existence.

Sexual citizenship is not just about personal rights or individual empowerment, nor is it simply about state recognition of certain kinds of privacy, although it includes all of these. It is also concerned with collective processes, public spaces and forms of interrelatedness that are sexual or sexualized.⁴⁴

This framing of sexual citizenship with its spatial and collective inflection recognizes the transformational redefinition of citizenship outside of heteronormative and cisnormative referents, as well as the private-public divide. Furthermore, sexual citizenship offers a conceptual grip for those taking on the critical analysis of institutional reform and governance under transitional justice. The institutions of the state, which typically deny access to equal rights by reproducing systematic violence against LGBTI populations, must be transformed. The next section moves attention to the global context of the Latin American LGBTI rights challenge to transitional justice.

39 Centro Nacional de Memoria Histórica, supra n 16 at 452.

40 Theidon, supra n 29.

41 Payne, supra n 22.

42 Centro Nacional de Memoria Histórica, supra n 16 at 437.

43 Lind, supra n 17 at 4.

44 Mimi Sheller, *Citizenship from Below: Erotic Agency and Caribbean Freedom* (Durham, NC: Duke University Press, 2012), 41.

GLOBAL LGBTI POLITICS

While the four Latin American truth commissions spanning 2001 to 2014 and the upcoming Colombian commission demonstrate a growing attention to gender and sexual minorities, this development must be positioned within current global LGBTI politics and scholarly debates. This analysis lends careful attention to the current paradox between the growing recognition of LGBTI rights and virulent homophobia and transphobia. I argue that future research must reject western exceptionalism and intervene in and disrupt the dominant dichotomous frameworks utilized for the comprehension of LGBTI struggles globally.

Since two of the main scholarly areas of international relations include state and nation formation and war and peace, queer interventions in international relations offer rich material to draw from in constructing a queer intervention in transitional justice.⁴⁵ Queer international relations scholars take a queer analytical approach to challenge and deconstruct related disciplining logics that uphold state power, such as private–public, normal–abnormal, domestic–foreign.⁴⁶ Other relevant binaries in the field of transitional justice include war–peace, conflict–postconflict, victim–perpetrator and ordinary–extraordinary violence.⁴⁷

Current international civil society and organization efforts to recognize LGBTI individuals as global citizens fuel the LGBTI challenge to transitional justice. The international trend towards recognition of LGBTI rights, exemplified by the 2016 UN Human Rights Council appointment of the first independent investigator of violence and discrimination against LGBTI people, may in part explain the expanding scope of transitional justice in Latin America. This appointment builds from the UN 2012 report *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*,⁴⁸ which was the first of its kind to establish the legal obligations of states to protect the rights of LGBTIQ peoples.

The dissemination and implementation of the 2006 Yogyakarta Principles, which define the application of international human rights law in relation to sexual orientation and gender identity, also marks a milestone in the international recognition of LGBTI rights. The Principles, developed by a representative group of international civil society,⁴⁹ provide a comprehensive legal framework for the protection of gender and sexual minorities from persecution, discrimination and violence. The Principles were deemed necessary because ‘human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute

45 Cynthia Weber, ‘From Queer to Queer IR,’ *International Studies Review* 16(4) (2014): 596–601.

46 *Ibid.*, citing Sedgwick, *supra* n 15.

47 Shana Tabak, ‘False Dichotomies of Transitional Justice: Gender, Conflict and Combatants in Colombia,’ *Journal of International Law and Politics* 44 (2011): 103–163.

48 See, <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> (accessed 1 November 2017).

49 ‘The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others. The Rapporteur of the process, Professor Michael O’Flaherty, has made immense contributions to the drafting and revision of the Yogyakarta Principles.’ See, <http://www.yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles/> (accessed 1 November 2017).

an entrenched global pattern of serious concern.⁵⁰ Analyzing cisnormativity in the law exposes the erasure or criminalization of transgender and gender-nonconforming people and the naturalization of violence against them. Analyzing heteronormativity in the law reveals the disavowal or criminalization of people who are not heterosexual and the normalization of violence against them. The criminalization of homosexuality; the application of the death penalty for sexual acts between consenting adults; prohibition of gender reassignment surgery; educational, housing and work discrimination; and overwhelming impunity for crimes against LGBTI individuals comprise a sampling of the quotidian experiences of LGBTI populations.

Formidable forces of homo- and transphobia present strong opposition and political constraints to the recognition of LGBTI rights at every level. Political scientists Meredith Weiss and Michael Bosia study the global diffusion of homophobia through transnational networks by both state and nonstate actors as a political phenomenon. As a 'state strategy, social movement and transnational phenomenon,' political homophobia is

Purposeful, especially as practiced by state actors; as embedded in the scape-goating of an 'other' that drives processes of state building and retrenchment: as the product of transnational influence peddling and alliances; and as integrated into questions of collective identity and the complicated legacies of colonialism.⁵¹

The current political climate in Colombia regarding LGBTI rights exemplifies political homophobia. Conservative religious and political sectors frame the advances of women's and LGBTI rights within the peace process as a threat to God's given design of the family and social order. According to these conservative sectors, led by former Colombian president Álvaro Uribe and former attorney general Alejandro Ordóñez, 'gender ideology' undermined the peace accord and continues to menace the nation. "Gender ideology" is becoming the catch-all metonym of a growing global movement opposing gender equality, abortion, same-sex marriage and adoption, comprehensive sexuality education, and transgender rights.⁵² As manifest in Colombia, this hostile political climate bodes poorly for the outcomes of the future truth commission, especially with regard to recommendations for public policy and institutional reform that might have redressed structural violence against gender and sexual minorities.

What is the relationship between global gains in LGBTI rights and political homophobia? Feminist and queer studies scholars Amy Lind and Cricket Keating explain this relationship through an examination of Ecuador. The state mobilizes consent from differing social sectors through a seemingly contradictory mix of state homophobic and state homoprotectionist initiatives. State homoprotectionism names how 'political actors harness the power of the state to protect LGBT people

50 Ibid.

51 Meredith L. Weiss and Michael J. Bosia, eds., *Global Homophobia: States, Movements, and the Politics of Oppression* (Urbana, IL: University of Illinois Press, 2013), 2.

52 Annie Wilkinson, 'Latin America's Gender Ideology Explosion,' *Sexuality Policy Watch*, 28 March 2017, <http://sxpolitics.org/latin-americas-gender-ideology-explosion/16724> (accessed 1 November 2017).

from persecution and domination.⁵³ These types of policies support national identity and centralize authority. As mentioned earlier, the 2008 Ecuadorian constitution redefined family to include same-sex couples and alternative articulations of kinship. At the same time, then president Rafael Correa conceded to conservative pressures and reaffirmed marriage as the union between a man and woman and adoption as limited to heterosexual couples. Therefore, this double move, adopted just as the Ecuadorian truth commission was initiating its investigation, embodies the contradictions in governance between homoprotectionist and homophobic impulses and the drive to placate differing social sectors during a period of transitional justice.

Theorizations of the mixing of homoprotectionist and homophobic policies shed a critical light on the formulation of institutional reform and governance within transitional justice. In the Colombian context, while religious and political conservative politicians attack 'gender ideology,' enacting explicit homophobia and transphobia, the Victims' Unit typifies homoprotectionist efforts by including an LGBTI category in the victim registry, and offering reparations for individual and collective harms against gender and sexual minorities. The fact that both are happening at once not only underscores the way homoprotectionism and homophobia are mobilized to gain or retain support from opposing sociopolitical sectors, but also highlights the heterogeneity of the state and the multiple agendas forwarded within state entities.

The concept of homonationalism gives context to state homoprotectionism and its complex interplay with political homophobia. According to feminist and queer cultural studies scholar Jasbir Puar, homonationalism is a conceptual frame that assists in comprehending the way in which national sovereignty gets evaluated through the level of acceptance of LGBTI populations. As a facet of modernity, homonationalism marks a historical shift 'by the entrance of (some) homosexual bodies as worthy of protection by nation-states, a constitutive and fundamental reorientation of the relationship between the state, capitalism, and sexuality.'⁵⁴ A queer and intersectional analysis illuminates how a narrow band of privileged LGBTI individuals benefit from inclusion, while those that occupy lower positions in the national racial, religious and class hierarchy are marked as excess to the nation.

Within the global context, there exists a problematic positioning of LGBTI rights as aligned with western exceptionalism in opposition to the construction of the 'other' (read: Africa, Middle East, Asia). Puar defines exceptionalism through her formulation of US sexual exceptionalism as paradoxically signaling 'distinction from (to be unlike, dissimilar) as well as excellence (imminence, superiority), suggesting a departure from yet mastery of linear teleologies of progress.'⁵⁵ Therefore, homonationalism, or the limited acceptance of LGBTI rights, buttresses the claim of modernity and thereby political relegitimization. 'Western civilizational exceptionalism'⁵⁶ relies upon linear temporality and the progress and civilization it promises. Western

53 Lind and Keating, *supra* n 18 at 518.

54 Jasbir Puar, 'Rethinking Homonationalism,' *International Journal of Middle East Studies* 45(2) (2013): 337.

55 Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham, NC: Duke University Press, 2007), 3.

56 Momin Rahman, 'Queer Rights and the Triangulation of Western Exceptionalism,' *Journal of Human Rights* 13(3) (2014): 278.

notions of sexuality and gender become the categories of measurement for modernity.

Future research on gender and sexual minority experiences in the study and practice of transitional justice must carefully assess how transitional justice processes may instrumentalize homonationalism and exceptionalism. In addition, future research must intervene in and disrupt the dichotomous frameworks utilized for the comprehension of LGBTI struggles globally. Good versus bad queers provide the foundational dichotomy for homonationalism. Given the securitizing of sexual politics, LGBTQ populations are understood as a threat to the nation or as victims needing rescue by international intervention.⁵⁷

Most importantly here, the study of Latin American transitional justice initiatives that advance LGBTI rights must roundly reject interpellation into the western exceptionalism narrative. In order to interrupt dominant frameworks based largely on false dichotomies and linear temporality, sociologist Momin Rahman asserts, 'It is important to build the capacity to render visible local versions of sexual diversity and their intersection with contemporary international formations.'⁵⁸ Attention to 'local versions of sexual diversity' pushes against the universalizing application of homogeneous identity categories within transitional justice processes, such as LGBTI inclusion in the Colombian Victims' Unit. Similar arguments regarding the need to make visible the heterogeneity of women have been echoing on the margins of transitional justice discussions for decades. While this section offered a global context, the next section presents a regional historical context, picking up on Weiss and Bosia's mention of 'the complicated legacies of colonialism' and weaving in a decolonial analytical thread.

DECOLONIAL HISTORICIZING OF CRIMINAL PATTERNS

According to the ICTJ, crimes based on sexual orientation have been documented in different contexts of conflict or repression: from Germany during the Holocaust and South Africa during apartheid to Peru during its armed conflict. Yet, insufficient research has been done 'to expose these criminal patterns.'⁵⁹ Just at the ICTJ highlights the criminal patterns in the context of armed conflict and/or authoritarian regimes, the Yogyakarta Principles underscore the need to address 'entrenched global patterns'⁶⁰ of human rights violations targeting gender and sexual minorities. These global and criminal patterns are manifestations of heteronormative violence,⁶¹ violence that reifies heteronormativity, and its deeply impacted roots of impunity. As argued, the limits and pitfalls associated with the normative male–female binary and

57 Paul Amar, *The Security Archipelago: Human-Security States, Sexuality Politics and the End of Neoliberalism* (Durham, NC: Duke University Press, 2013).

58 Momin Rahman, 'Querying the Equation of Sexual Diversity with Modernity: Towards a Homocolonial Test,' in *Queering Paradigms V: Queering Narratives of Modernity*, ed. María Amelia Viteri and Manuela Lavinas Picq (Quito: FLACSO, 2016), 103.

59 'Colombia's LGBTI Community Claims Its Space in Country's Search for Truth,' 21 April 2015, <https://www.ictj.org/news/colombia%E2%80%99s-lgbti-community-claims-its-space-country%E2%80%99s-search-truth> (accessed 1 November 2017).

60 Yogyakarta Principles, *supra* n 49.

61 Centro Nacional de Memoria Histórica, *supra* n 16.

the default assumption of heterosexuality in part explain the lack of research in this area. The third pitfall that transitional justice scholarship and practice must grapple with is the colonial/modern fragmentation of temporality into a linear framework that denies historic patterns of violence and supports narratives of exceptionalism. An intersectional, queer and decolonial approach deepens the ‘continuum of violence’ argument by grounding violence against gender and sexual minorities regionally and historically and exposing the colonial ontological underpinnings of violence and erasure that endure to the present. Such an approach also provides the opportunity to radically shift ontological reference points, acknowledge the unconditional humanity of LGBTI people and uphold full LGBTI citizenship.

One of the various calls by feminists intervening in transitional justice includes the need to examine the continuum of violence from the preconflict period through to the postconflict context. Specifically, the kinds of gender-based violence that women suffer during ‘peaceful’ preconflict contexts continue through conflict and postconflict contexts. Therefore, ‘gendered patterns of abuse’ do not respect the divided and linear temporality that dominates transitional justice, given its focus on legal and institutional solutions to political problems in the short term.⁶² Muddell and politics scholar Helen Scanlon assert that ‘neglecting gendered patterns of abuse entrenches impunity, distorts the historical record, and undermines the legitimacy of transitional justice initiatives.’⁶³ Although the use of gender here seems to reduce to women, I read it capaciously to include the multiplicity of gendered victims. From a queer, intersectional and decolonial analysis, these ‘gendered patterns of abuse’ can also be read as the ongoing terrorization of gender and sexual minorities, exemplified by social extermination campaigns that result in forced displacement. In addition, the study of ‘gendered patterns of abuse’ must read for state processes and protocols, as well as political arrangements whose dominant logics sustain these patterns and their impunity.

The decolonial critique posits that the celebratory narrative of modernity, originating in Europe and commonly identified with progress and development, has a hidden flipside. The other side of modernity is coloniality, which encompasses the modes of control Europeans used to manage their American and Caribbean colonies from the 1500s on. These modes of social, political and economic domination perpetuate injustice, commodification, disregard for human life and inequality.⁶⁴ Most importantly, the decolonial critique brings to light how the enduring male–female binary, part and parcel of the legacy of Spanish and Portuguese colonialism, justifies violence inflicted upon those that do not comply and continues through the current limited access to citizenship and justice for LGBTI populations.

How do criminal patterns of violence, such as the social extermination campaign implemented by the Guayaquil municipality in 2000, relate to the colonial ontological references regarding gender and sexuality? During the initial period of colonial encounter, the Spanish inquisition held extended authority over indigenous people

62 Pascha Bueno-Hansen, *Feminist and Human Rights Struggles in Perú: Decolonizing Transitional Justice* (Urbana, IL: University of Illinois Press, 2015).

63 Kelli Muddell and Helen Scanlon, ‘Gender and Transitional Justice in Africa: Progress and Prospects,’ *African Journal on Conflict Resolution, Special Issue on Gender and Transitional Justice in Africa* 9(2) (2009): 2.

64 Walter D. Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Durham, NC: Duke University Press, 2011).

until 1571.⁶⁵ Catholicism and missionary principles stipulated that homosexuality and transvestism were punishable by death.⁶⁶ For example, the Spanish conquistador Hernán Cortés was an ardent crusader against sodomy, which he considered to be a deplorable and abominable sin.⁶⁷ He was committed to the eradication of males who performed female social and sexual roles.

Heteronormative beliefs that naturalize heteronormative violence endure through the power of social classifications:

A method by which actors installed in specific institutions create and preserve knowledge embedded in the narratives of modernity, in the very act of building the idea of modernity as an inescapable march of history, social progress, and economic development.⁶⁸

The Colombian religious and political conservative opponents to women's and LGBTI rights echo the preserved knowledge of the Spanish conquest that the threat to social morality must be eliminated. Payne's research supports this analysis by identifying various ways members of Colombian armed groups explain violence against gender and sexual minorities, including to correct problem behavior, to eliminate those that threaten social morality and integrity, to demonstrate their capacity to dominate and rule territory and to uphold cultural and religious values.⁶⁹ Likewise, the persecution of homosexuals under the Stroessner dictatorship in Paraguay was understood as a defense of social morality. The examples of contemporary harms against gender and sexual minorities in Ecuador, Colombia and Paraguay reflect the unbroken trajectory of colonial ontological references and preserved knowledge regarding gender and sexuality in the Américas.

Payne identifies the type of violence against sexual and gender minorities associated with social extermination as communicative, meaning that the violence disciplines the population through example.⁷⁰ This underinvestigated and undertheorized harm against LGBTI populations creates a cycle of political insecurity, starting with forced displacement and continuing through resettlement with repetitive experiences of discrimination and violence. Indeed, forced displacement is the most common violation reported by LGBTI populations⁷¹ and it overlaps consistently with poverty, food insecurity, homelessness, violence and increased risk of contracting HIV.⁷²

65 Michael Hardin, 'Altering Masculinities: The Spanish Conquest and the Evolution of the Latin American Machismo,' *International Journal of Sexuality and Gender Studies* 7(1) (2002): 1–22.

66 *Ibid.*, 14.

67 *Ibid.*, 11.

68 Walter Migñolo, 'Foreword: Decolonial Body-Geo-Politics at Large,' in *Decolonizing Sexualities: Transnational Perspectives, Critical Interventions*, ed. Sandeep Bakshi, Suhraiya Jivraj and Silvia Posocco (Oxford: Counterpress, 2016), viii.

69 Payne, *supra* n 22 at 329.

70 *Ibid.*

71 Virginia Bouvier, 'Gender and the Role of Women in Colombia's Peace Process,' UN Women Background Paper, <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/women-colombia-peace-process-en.pdf?la=en&vs=17> (accessed 1 November 2017).

72 Maria Cecilia Zea, Carol A. Reisen, Fernanda T. Bianchi, Felisa A. Gonzales, Fabián Betancourt, Marcela Aguilar and Paul J. Poppen, 'Armed Conflict, Homonegativity and Forced Internal Displacement:

What happens if we take the social extermination in Colombia and in the Peruvian Northern Amazon in the 1980s and place it relationally with the massacre of gender-nonconforming people by Spanish conquistador Vasco Núñez de Balboa? In 1513 in a village named Quarequa, in what we now call Panamá, Núñez de Balboa set his war dogs on native people for whose gender he had no name. Spanish conquistadors 'believed that man and woman are two distinct and opposite entities, each of them defined by well-established ontological features.'⁷³ Therefore, Spanish conquistadors held no ontological space in which fluidity and movement of energies could exist. Indeed, the nascent colonial state apparatus anchored itself in 'heterosexual relations of rule.'⁷⁴ To consolidate power and establish domination, they imposed 'structures of governance and knowledge that demonized fluidity and complementarity overall.'⁷⁵ Exemplified by the actions taken by Núñez de Balboa as well as Colombian and Peruvian armed actors, the extreme manifestation of this male-female binary is the social extermination of those that do not comply.

Significant ontological constraints block the ability of transitional justice scholars and practitioners to seriously consider these historical patterns of abuse, or, as queer anthropologist Marcia Ochoa writes, 'the deep patterns of colonial violence'⁷⁶ in the Américas. Saturation in the logics of modernity and adherence to linear temporality and binary logic, despite its fragmentation and distancing of patterned abuses, produces a profound resistance to fully appreciating the historic significance of these harms. As feminist scholar Jacqui Alexander explains,

The idea of the 'new' structured through the 'old' scrambled, palimpsestic character of time, both jettisons the truncated distance of linear time and dislodges the impulse for incommensurability, which the ideology of distance creates. It thus rescrambles the 'here and now,' and the 'then and there' to a 'here and there' and 'then and now,' and makes visible what Payal Banarjee calls the ideological traffic between and among formulations that are otherwise positioned as dissimilar.⁷⁷

The palimpsestic character of time utilizes the metaphor of the palimpsest, parchment or papyrus that was written upon, cleaned and written upon again and again, always retaining traces of the previous communications. If we consider time as palimpsestic, and violence as communicative, as Payne suggests, what communications are repeated over and over through violence across time? This conception of time closes the distancing of linear temporality by bringing light to the overlapping patterns connecting apparently unrelated acts of violence.

Implications for HIV among Colombian Gay, Bisexual, and Transgender Individuals,' *Culture, Health and Sexuality* 15(7) (2013): 788–803.

73 Mignolo, supra n 68 at xiv.

74 Jacqui Alexander, *Pedagogies of Crossing: Meditations on Feminism, Sexual Politics, Memory, and the Sacred* (Durham, NC: Duke University Press, 2005), 198.

75 Mignolo, supra n 68 at xiv.

76 Marcia Ochoa, 'Toxic Masculinity and the Orlando Pulse Shooting,' *Mujeres Talk*, 2016, <https://library.osu.edu/blogs/mujerestalk/2016/06/28/countering-hate-with-love-latino-scholars-respond-to-orlando-massacre/> (accessed 1 November 2017).

77 Alexander, supra n 74 at 190.

The rigors of linear temporality and false dichotomies upon which the claim to modernity is based show themselves as part of the methodology of institutional and structural domination and western exceptionalism. This queer feminist decolonial approach opens a channel to discern the 'ideological traffic' between expressions of violence against gender and sexual minorities presumed to be unrelated due to modernity's drive towards temporal distancing and disassociation. Admitting the patterned qualities of colonial-modern violence against gender and sexual minorities in the form of social extermination begins to expose the knowledge systems, mechanisms and institutional apparatus that uphold its impunity. This intersectional, queer and decolonial approach not only reveals the brutality of the present to be as atrocious as colonial acts of violence, but opens the possibility of healing disassociated temporalities and radically transforming our ontological references. Such radical transformation offers the promising possibility of recognizing LGBTI and indigenous people's full humanity, which would lead to full citizenship.

IN CLOSING

The relatively new terrain of transitional justice opens up a political opportunity for marginalized populations to insert and enact their demands on the national stage, thereby disrupting restricted narratives of inclusion and reconciliation, as well as denouncing discrimination and violence. Gender and sexual minorities are just beginning to gain attention to the harms committed against them as part of a larger political project of ending impunity and gaining full citizenship.

Given this new research area, there is a possibility that scholars and practitioners can avoid some of the more troublesome pitfalls already identified in the study of gender (read women) and masculinity studies within transitional justice. Broadening out to an analysis of heteronormativity and cisnormativity integrates and adds traction to the existing feminist and gender critiques of transitional justice. Also, sexual citizenship offers a useful category of analysis that breaks through the limits of the private-public divide in thinking about both governance and reparations, especially in terms of rectification for forced displacement due to the social extermination of LGBTI populations.

The political opportunity embedded in transitional justice processes and mechanisms occurs temporarily due to the crisis of legitimacy and is infused with the complex dynamics of state homoprotectionism and homophobia. Colombia's precedent-setting inclusion of gay and lesbian advocates in the peace negotiations and of the LGBTI population as a category recognized in the registry of victims and reparations policy, and the simultaneous virulent political homophobia, offers a contemporary illustration of these dynamics. This emerging area of inquiry requires vigilance regarding the second pitfall – the assumption that LGBTI rights are the indicator of modernity. Latin American regional cases should not be incorporated into a narrative of western exceptionalism. Transitional justice scholars and practitioners concerned with the rights of gender and sexual minorities have an ethical duty to expose the global politics behind such discursive maneuvering while respecting local iterations of gender and sexual diversity and how they interact with the international categories and concepts in global circulation. Future research around sexual and gender

minorities and transitional justice must construct innovative inter- and transdisciplinary approaches that situate the dynamics of any given case(s) in regional and global, as well as historical, context.

A queer, intersectional and decolonial approach to the study of gender and sexual minority experiences in transitional justice challenges the heteronormativity and cis-normativity of the field. Fobear asserts,

The recognition and the protection of sexual and gender minorities is one step towards dismantling hegemonic norms of patriarchy, racial hierarchy, inequality, sexism, and heterosexism whether brought on by colonization, state insecurity, or civil conflict.⁷⁸

Of the myriad methods of institutional and structural domination, this article exposes false dichotomies and linear temporality as disciplining logics that uphold state power. In terms of false dichotomies, governance and its dependence on the public–private divide reifies heteronormativity as the basis of state reconsolidation. And in terms of linear temporality, social extermination campaigns are demonstrative of the patterns of colonial violence. An intersectional, queer and decolonial lens places attention upon the neglected issue of ‘gendered patterns of abuse’ to correct the distortion of the historical record and unearth the roots of impunity, while envisioning the possibilities of radical social transformation, the full recognition of LGBTI people’s humanity and deep healing.

78 Fobear, *supra* n 4 at 53.