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‘Voglio una donna!’: On Rewriting the History of International Criminal Justice with the Help of Women Who Perpetrated International Crimes

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C7.S1

‘Voglio una donna!’

C7.P1

Like Uncle Teo in Fellini’s *Amarcord*, I cried out for women. Not to embrace them like Teo, but to include them in a chapter which critically examines histories of international criminal law. Where should I begin the search for samples of ‘women who perpetrated international crimes’? In his *Monsters: History’s Most Evil Men and Women* Simon Sebag Montefiore addresses very few women in its extensive portrait gallery: Yezebel, Empress Theodora, Empress Wu, Isabella the She-Wolf of France, Catherine de’ Medici, Bloody Mary, and Elena Ceausescu.¹ (One might reasonably ask were there any more in his *Heroes: History’s Greatest Men and Women*?²) Reading about past national and international criminal trials for conduct we would nowadays call ‘international crimes’³ in the search for ‘women perpetrators’ takes some perseverance. Whether ‘academic’ or ‘popular’ histories, or histories written by lawyers, few women appear in their pages. When they do, it is as direct victims—killed, raped, tortured, enslaved, persecuted, detained—or their mothers, wives, daughters, other family or community members. In terms of criminal procedure, women figure as victims, victim-witnesses, or witnesses; not as the accused, convicted, or acquitted.

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Why would one search for ‘women perpetrators’, in particular? I acknowledge at the outset the challenges of attempting any research ‘about women’ today—decades after the post-structuralist questioning of identity, agency, power, and

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¹ And a couple of others, see Simon Sebag Montefiore, *Monsters: History’s Most Evil Men and Women* (Quercus 2008).

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² Simon Sebag Montefiore, *Heroes: History’s Greatest Men and Women* (Quercus 2007).

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³ This refers here to conduct today considered as the ‘core crimes’ in international law, ie serious war crimes, crimes against humanity, genocide, and aggression.

‘Voglio una donna!’. *Of Contributing to History of International Criminal Law with the Help of Women Who Perpetrated International Crimes*. Immi Tallgren. © Immi Tallgren, 2019. Published 2019 by Oxford University Press.

knowledge—without adhering to a positivist stream of scholarship which considers the category 'women' as unproblematic, monolithic, and foundational.⁴ As pertinent critics have argued since the 1980s, the efforts to shed light on 'women'—and gender—easily fall into the trap of compensatory or separatist spheres, and may also come close to semi-universal essentialism, ignoring other 'differences' such as 'race', class, sexuality, culture, nationality, religion, and the contexts in time and space.⁵ Those traps continue to plague even the most astute analysis of women perpetrators, too, with straightforward statements such as '[w]hile the genders are not complete opposites, they are also not identical, as women approach and respond to similar situations differently from their male counterparts'.⁶ At the same time, some of the fine-tuned internal struggles and divisions in women's history have been contained in the small island frequented by the interested women only, whereas the waste land of social sciences, including the history of international law, still appear to a great extent oblivious to women's history or gender studies, to start with. Perhaps we lack the *longue durée* for a paradigm shift: the avant-garde has moved ahead but much of the scholarship still struggles to exit 'the traditionally received historical analyses that excluded women'⁷—or, 'women'. My impression is that this is particularly true of the tiny universe of international criminal law and its histories, with elements of criminal and international law, criminology, international relations, and a fair pinch of historical humanitarian hubris. Here then is the inspiration for this chapter in the book.

C7.P3 As is well known, in historical, legal, sociological, anthropological, psychological, and, until recently, even in medical research, the norm for a human individual has been the man. And man was above woman. As Sonya O. Rose explains in her introduction to gender history:

C7.P4 Before the last decades of the twentieth century and the growth and impact of scholarship on women and gender in numerous disciplines ... it was popularly assumed that the differences between men and women were based in nature and that these 'natural differences' accounted for or explained the observed differences in women's and men's social positions and social relationships, their ways of being in the world, and the differences between them in various forms of power. Importantly, the hierarchical nature of the relations between women and men was assumed and not questioned.⁸

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⁴ For a landmark in this discussion, see Denise Riley, *Am I That Name? Feminism and the Category of Woman in History* (Macmillan 1988). For a later analysis from a psychoanalytical point of view, see Joan Wallach Scott, *The Fantasy of Feminist History* (Duke University Press 2011).

⁵ See, eg, bell hooks, 'Postmodern Blackness' in *Yearning: Race, Gender and Cultural Politics* (1990).

⁶ Kimberly Allar, 'Setting the Picture Straight: The Ordinary Women of Nazi Germany and Rwanda Who Participated in Genocide' in Karin Auerbach (ed), *Aftermath—Genocide, Memory and History* (Monash University Publishing 2015) 44, a piece of work I found most helpful.

⁷ Mary Kay Thompson Tetrault, 'Rethinking Women, Gender, and the Social Studies' (1987) 51 *Social Education* 170.

⁸ Sonya O. Rose, *What is Gender History?* (Polity 2010) 3.

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C7.P5 'Women' were, in the not-too-distant past, often perceived to be the main issue in any kind of 'gender trouble'.⁹ Today, both research on men and masculinities—in particular the field of Critical Men Studies—and broader inquiries into the construction of the gendered difference, including institutions such as criminal justice or international law, have to some extent bypassed that confusion.¹⁰ As a discrete field of study, women's history started out with the aim of including women in historical narratives where they had been excluded, underrepresented, or misrepresented, as a countermovement to 'male-defined histories', 'predicated on the assumption that male experience is universal'.¹¹ Some decades later, as Joan Scott points out, researchers invested in the field can claim 'an enormous written corpus, an imposing institutional presence, a substantial list of journals, and a foothold in popular consciousness'.¹²

C7.P6 Against this background, this chapter is an inquiry into the possibilities of 'doing critical history' with the strategic moves associated with women's history or feminist history. As the terrain of experimentation I have chosen the representation of 'women perpetrators' in histories of international criminal law. The chapter then is not about knowing more about the particular women who perpetrated crimes, as such, or analysing the (very pertinent) questions a historian, sociologist, or criminologist would ask about how particular women in their particular contexts got into the positions in which they committed their crimes, that is, in which realms the legal systems in the various contexts found their defendants. Nor am I trying to pursue research that would have any aspirations towards changing the way 'women' in general are considered.

C7.P7 In this chapter, much of the attention is devoted to the corrective quest of 'inclusion in history' that which has previously been excluded. In other contexts, this quest is analysed in a few contributions to this volume.¹³ In this chapter, I examine the paradoxes that the quest for inclusion entails and how apparently innocuous historiographical choices are utterly political. This is because, as I shall discuss, it is not just the disciplinary methodologies and biased strategies of truth that keep women as perpetrators out of the picture both in 'academic' and 'popular' histories of international criminal law, but also explicit choices. The chapter thus flags parallel desires, *both* to write more 'complete' histories where women are present while conscious of the limits of the exercise *and* to imagine what their absence—and occasional presence—may have meant and still means both to the construction, salience, and legitimacy of the 'field' of international criminal law and the various feminism(s). The chapter proceeds in a multidisciplinary landscape of open questions, with at

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⁹ I am hinting, of course, to the cult piece by Judith Butler, *Gender Trouble* (Routledge 1990). On the category of 'women' as agents of violence, see also Coline Cardin and Geneviève Pruvost, 'Thinking Women's Violence' (2015) 5 *History of the Present* 200–16.

¹⁰ See, eg, Michael S. Kimmel and Jeff Hearn, *Handbook of Studies on Men and Masculinities* (Sage 2005); Judith Gail Gardam, 'The Law of Armed Conflict: A Gendered Regime' (1993) 25 *Studies in Transnational Legal Policy* 171.

¹¹ Mary Kay Thompson Tetrault, 'Rethinking Women' (n 7) 170.

¹² Wallach Scott, *The Fantasy of Feminist History* (n 4) 24.

¹³ See the contributions by Christopher Gevers, Emily Haslam, and Kamari Maxine Clarke.

times uneasy proximity of language between discourses of law, history, criminology, and media. I start by discussing what might motivate the desire to either elucidate or obscure the role of women as perpetrators of international crimes. I address the discursive practices of 'becoming' a woman perpetrator, that is, the tropes of representing individual histories of a woman accused of an 'international crime'. To address this, I make an excursion into the scholarship on German National-Socialist criminality that has, from the 1980s on, tackled the 'exceptionality' of women perpetrators with more aplomb than current international criminal law studies. I conclude by suggesting an intuitive explanation for the derivative histories of 'women perpetrators of international crimes', whilst pointing to the possibility of another kind of history.

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'Rapacious Beasts of the Dog Kind'?

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In criminological research the basic finding is that men offend at significantly higher rates than women, and this difference holds across different offences, times, and space.¹⁴ Yet some women do commit crimes, also very violent crimes, including those of an 'international' character. However, 'while male violence is frequently normalised and even expected in certain situations, female violence both repels and attracts', to quote Kimberly Allar.¹⁵ This repulsion vs. attraction seems to dominate the way in which women perpetrators are represented.

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Were one to try to impose some order when addressing information on women known to have committed what today are referred to as 'international crimes', various taxonomies could be entertained, but not without the 'ambiguities, redundancies and deficiencies'¹⁶ that are the curse of all classifications. Women could be divided chronologically according to 'generations': before World War Two, post-war, 1990s, the present, etc. They could be organized according to geographical contexts or 'origins': as 'Nazis', 'Slavs', 'Asians', 'Africans', 'Chechens', etc. A focus on the individual would give lists based on age, marital status, education, profession, religion, sexual orientation, etc. Focusing rather on the types of crimes and types of responsibility for crimes would direct attention to planners, leaders, those hands-on perpetrators of violent acts, as superiors in military forces or civilian government, as part of an individual or collective initiative, those aiding or abetting, etc.

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What kind of continuities and breaks could be observed in histories of women perpetrators? No women were among those who stood accused in the emblematic first 'international' criminal trials, that is, the International Military Tribunal in Nuremberg (IMT) and the International Military Tribunal for the Far East in Tokyo

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¹⁴ See, eg, Hollie Nyseth Brehm, Christopher Uggen, and Jean Damascène Gasanabo, 'Age, Gender, and the Crime of Crimes: Toward a Life-Course Theory of Genocide Participation' (2016) 54 *Criminology* 713–43, 717.

¹⁵ Allar, 'Setting the Picture' (n 6) 21.

¹⁶ Borges' story of the Celestial Emporium of Benevolent Knowledge with its 'Rapacious Beasts of the Dog Kind' is likely to pop up in the mind of many readers here, Jorge Luis Borges, 'The Analytical Language of John Wilkins' in *Other Inquisitions 1937–1952* (University of Texas Press 1993).

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(IMTFE). Women indicted at the various war crimes trials by national courts or the occupying states after World War Two were mainly guards, nurses, staffers, or wives. The second wave of trials for international crimes starting from the 1990s included the trial at the International Criminal Tribunal for Former Yugoslavia (ICTY) of Biljana Plavšić, former president of Republika Srpska. Pauline Nyiramasuhuko, former Minister for Family Welfare and the Advancement of Women in Rwanda, was the only woman convicted at the International Criminal Tribunal for Rwanda (ICTR). Other women have been convicted in Bosnian courts, and even more so in Rwanda.¹⁷ The Extraordinary Chambers in the Courts of Cambodia prosecuted Ieng Thirith, but the trial was abandoned because of her dementia.¹⁸ The International Criminal Court (ICC) unsealed an arrest warrant for Simone Gbagbo, wife of the former President and ICC detainee, Laurent Gbagbo.¹⁹ Two trials subsequently took place against her in the Ivory Coast.

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Many other names could be added to this list of the most obvious, depending on the taxonomy chosen, and the desire to collect, list, categorize, and organize the information available on past perpetrators. Some scholarship is available on these various (types of) perpetrators, with more written on recent ones²⁰ than past.²¹ That being said, even with regard to the more recent practice of international criminal law since the early 1990s, there are more academic articles on women perpetrators than there are women perpetrators indicted in international criminal trials. Not that there is much scholarship on women perpetrators, either. Research is scarce on how the identity, agency, and experience of 'women perpetrators of international crimes' have been construed. Not only then are women seldom accused of international crimes but they also figure in the margins of legal, historical, criminological, or anthropological attention to perpetrators of international crimes.²²

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¹⁷ The number of women tried in Rwanda has been estimated to 3000, Laura Sjoberg and Carol Gentry, *Mothers, Monsters, Whores: Women's Violence in Global Politics* (Zed Books 2007) 160. See also Carrie Sperling, 'Mother of Atrocities: Pauline Nyiramasuhuko's Role in the Rwandan Genocide' (2006) 33(2) *Fordham Urban Law Journal* 637 (28); Nicole Hogg, *Women's Participation in the Rwandan Genocide: Mothers or Monsters?* 69, 75.

¹⁸ Paul Armstrong, 'First Lady of Khmer Rouge Ruled Unfit for Genocide Trial', CNN (13 September 2012), http://articles.cnn.com/2012-09-13/asia/world_asia_cambodia-khmer-rouge-ieng-thirith.

¹⁹ *Prosecutor v Simone Gbagbo*, Case No ICC-02/11-01/12, Warrant of Arrest, 9 (29 February 2012), <https://www.icc-cpi.int/pages/record.aspx?uri=1344439>.

²⁰ See, eg, Sara Brown, 'Female Perpetrators of the Rwandan Genocide' (2014) 16 *International Feminist Journal of Politics* 448–69; Lisa Sharlach, 'Gender and Genocide in Rwanda: Women as Agents and Objects of Genocide' (1999) *Journal of Genocide Research* 1: 387–99; Chris Coutler, 'Female Fighters in the Sierra Leone War: Challenging the Assumptions?' (2008) 88 *Feminist Review* 54–73; Shana Tabak, 'False Dichotomies of Transitional Justice: Gender, Conflict and Combatants in Colombia' (2011) 44 *NYU Journal of International Law and Policy* 103–63; Adam Jones, 'Gender and Genocide' (2002) 4 *Journal of Genocide Research* 65–94; Mark A. Drumbl, 'She Makes Me Ashamed To Be A Woman': The Genocide Conviction Of Pauline Nyiramasuhuko, 2011' (2013) *Michigan Journal of International Law* 559–603. For discussion, see also Karen Engle, 'Judging Sex in War' (2008) 106 *Michigan Law Review* 941–1641.

²¹ See, eg, Ulrike Weckel and Edgar Wolfrum, 'Bestien' und 'Befehlsempfänger': Frauen und Männer in NS-Prozessen nach 1945 (Vandenhoeck & Ruprecht 2003); Nicole Hogg, 'Women's Participation in the Rwandan Genocide: Mothers or Monsters?' (2010) 92 *International Review of the Red Cross* 69–102.

²² See, eg, Augustine Brannigan, *Beyond the Banality of Evil* (Clarendon Press 2013); Claus-Christian W. Szejnmann, 'Perpetrators of the Holocaust: A Historiography' in Olaf Jensen and Claus-Christian

C7.P12 'The margins' is a familiar realm for women and their histories. Familiar too is the claim of women's exclusion. As the London Feminist History Group argued, 'women have not just been hidden from history. They have been deliberately oppressed. Recognition of this oppression is one of the central tenets of feminism.'²³ Various subsequent moves have taken place to include women in the master narratives of history, to make women 'visible'.²⁴ Mary Kay Thompson Tetreault describes five phases—not sequential or linear but rather 'a series of intersecting circles, patches on a quilt'—'of thinking about women': male-defined history, contribution history, bifocal history, histories of women, and, as the most advanced and the most challenging approach, histories of gender.²⁵

C7.P13 With respect to the 'women perpetrators of international crimes' discussed in this chapter, the intrigue of inclusion (or exclusion) culminates at two levels. First there are the discursive practices involved in law, legal institutions, and media that take place in the context of the time of the crimes, through criminal trials, media, victims' representation, and so forth, 'producing' (or not) women perpetrators—the logic not being different from how such discursive practices would produce any kind of perpetrator. Second, there is the later phase of re-producing the perpetrator when the historian (or lawyer, judge, or professor teaching international criminal law) looks back into 'the past' to find and represent perpetrators of international crimes. Even if these two ways of 'becoming' women perpetrators of international crimes may take place in similar ways, they are disconnected. A perpetrator may be hailed in the moment, but excluded in the historian's reconstruction of that moment later. Nevertheless, at both levels we may wonder whether women's apparent absence as perpetrators was because they engaged so much less in conduct deemed to be 'crimes' or whether it related to their subsequent scarce and reductive representation both in trials and in histories; in lesser roles, with less guilt, and with less or no punishment.

C7.P14 How would one know, today or ever? This is the question all contributory or compensatory histories have to deal with, not only in women's but also in postcolonial or 'global' histories. Even the broadest imaginable empirical studies, combining quantitative and qualitative methodologies, could be critically questioned: perhaps the sources available as such are already biased, belittling, distorting, or omitting information on women, so that the elimination of competing interpretations appears irrefutable. Scholars in women's history have pointed out how they have to cope with a 'double marginalisation' of women—in their life context and in the sources that remain—as well as an intertwining of the public and private in the available sources, and to which value judgements of 'legitimacy' are attached.²⁶

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W. Szejnmann, *Ordinary People as Mass Murderers: Perpetrators in Comparative Perspective* (Palgrave Macmillan 2008) 25–54.

²³ London Feminist History Group, *The Sexual Dynamics of History: Men's Power, Women's Resistance* (London Pluto 1983) 2.

²⁴ See, eg, Renate Bridenthal, Claudia Koonz, and Susan Stuart, *Becoming Visible—Women in European History* (Houghton Mifflin Company, 2nd edn, 1987).

²⁵ See, Thompson Tetreault, 'Rethinking Women' (n 7) 173.

²⁶ See, eg, Rosemary Auchmuty, 'Recovering Lost Lives: Researching Women in Legal History' in Linda Mulcahy and David Sugarman (eds), *Legal Life Writing: Marginalized Subjects and Sources* (Wiley

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The first observation to make here is that the modes and rationales of how women perpetrators of international crimes are produced and reproduced first by trials and then by histories share the elements of selection and discovery (by the legal institutions, media, historians, and academic scholarship), and hiding, forgetting, or falling into desuetude. The second observation is that the inclusion/exclusion intrigue is of course less technical in character than it may seem. No *ex post facto* taxonomy manages to breathe life into subjects that were not deemed important enough to be considered perpetrators of crimes from the outset—or could it resuscitate them by corrective movements, by ‘rewriting’? In any case, if the assumption is that the discursive practices that ‘produce’ international crimes and their perpetrators exclude women because of their lack of power, one might expect a jump towards higher numbers of women accused, now that (some) women do lead nations and command armies. The weapons technologies today certainly provide abundant solutions for conduct warfare where physical force is not essential. There are then fewer sociological or physical limits to women’s role as perpetrators. As cynical as it may sound here, at the moment we may have to await tomorrow’s histories to see whether the structures producing ‘international perpetrators’ yield to those sociological, political, and technological changes.

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Gerda Lerner refers to compensatory or contributory history as studying what she calls ‘women worthies’;²⁷ women whose achievements did not differ significantly in kind from those of men in the same context. Clearly that should not then be the end of the story for those committed to women’s history, as Thompson Tetreault’s phases point out (see above). But the idea of contributory history appears in a different and potentially more intriguing light when the notable women whose agency is emphasised are perpetrators of serious crimes—not the first women international judges, for example. The same political projects that call for the inclusion of the judges in histories may wish to exclude the perpetrators. As I turn to discuss, at times one would rather *not know more* about women in history.

C7.S3

‘Not Our Sisters’

C7.P17

I can’t get that picture of England out of my head because this is not how women are expected to behave. Feminism taught me 30 years ago that not only had women gotten a raw deal from men, we were morally superior to them. When it came to distinguishing right from wrong, the needle of our compass always pointed to true north.²⁸

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Blackwell 2015); Sue Morgan (ed), *The Feminist History Reader* (Routledge 2006); Teresa A. Meade and Merry E. Wiesner-Hanks (eds), *A Companion to Gender History* (Blackwell 2004).

²⁷ Gerda Lerner, *The Majority Finds Its Past: Placing Women in History* (Oxford University Press 1979) 145–6.

²⁸ Mary Jo Melone, *We’ve come a long, and wrong, way* (May 2004), quoted by Sheri Ann Labenski, *The Importance of Women as Villains and Violators: Scenes from the ICTY, the ICTR, and Abu Ghraib*, Master’s thesis, June 2013, American University of Cairo.

C7.P18 'The crimes of which these women were convicted ought to be unimaginable, and will remain, here at least, unprintable.'²⁹ This sentence concludes, somewhat abruptly, the succinct treatment devoted to women perpetrators of international crimes on the IntLawGrls—a US-based website on women and/on international law—blog series on 'Women in Nuremberg'. Whereas women lawyers amongst the prosecutorial staff and defence counsels, as well as staffers, interpreters, and journalists receive a detailed and celebratory description on the website, the very few women accused at the Nuremberg follow-up proceedings and in other trials by the US or UK occupation authorities seem to complicate the efforts to find the *first* women in histories of the *first* international trials.

C7.P19 Here one encounters the 'understandable wish' (id.) on the part of scholarship to identify only with the positive and until recently underestimated accomplishments of women in history. Other scholars, by contrast, are intentionally striving to break the obscurity, if not omertà, surrounding women's criminality.³⁰ In the German context, subsequent waves of active discussion on Nazi criminality have sought—even if not necessarily found—an end to 'the rituals of innocence in the women's movement and in women's history'.³¹ In the international criminal law scholarship starting from the mid-1990s, this turn is still in the making. As the IntLawGrls blog acknowledges, 'we have understandably been loath [sic] to claim these women as our own. But they exist ... Those who stood trial for war crimes have an undeniable, if unfortunate, international prominence, and at times their story too must be told.'³²

C7.P20 Lurid stories do get told, speaking for the attraction of women's violence, in particular of the paradigmatic birth context of international criminal law, that is, Nazi Germany: 'Nightmare Creature', 'The Angel of Death', 'Bloody Brigitte', 'The Sadistic Beast and Queen of the Realm of Dead', 'The Evil Doctor' ... These are subtitles of chapters in a recent study, devoted to biographies of German women brought to criminal responsibility after the Second World War.³³ *Blutige Brigide*, as Hildegard Lächert was nicknamed, was a guard who served in Ravensbrück, Auschwitz, and Majdanel. Lächert allegedly abused prisoners by beatings, whippings, and attacking them with her dog. She took part in selecting victims for the gas chamber, and was an accomplice to murders. She found guilty in both the 1947 Auschwitz trials and the third Majdanek trial (1975–81). Beyond the claims of Hildegard Lächert's brutality and sadism that are frequently levelled at Nazi guards, Lächert's maternity is central to the comments. Wendy Sarti reports how Lächert became a mother at eighteen and had another child at the age of twenty-three, both out of non-marital relationships.³⁴ To quote Sarti: 'At first, one would think that a

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²⁹ <http://www.intlawgrls.com/2007/07/not-our-sisters.html>.

³⁰ For the 1990 conference in Würzburg on 'Participation and Resistance: The Problematisation of National Socialism in Recent Women's Studies' see Lerke Gravenshort and Carmen Tatschmurat (eds), *Töchter-Fragen, NS-Frauen-Geschichte* (Kore 1990).

³¹ Ibid.

³² <http://www.intlawgrls.com/2007/09/women-at-nuremberg-defendants.html>.

³³ Wendy A. Sarti, *Women and Nazis: Perpetrators of Genocide and Other Crimes During Hitler's Regime, 1933–1945* (Academica Press 2011).

³⁴ Ibid. 127.

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mother of two young children could not possibly want to kill any human beings, especially children.³⁵ Sarti also wonders what happened to her children while she was in prison: 'It can be assumed that the parent(s) took on raising the children once she was imprisoned.'³⁶

C7.P21 Amongst the portraits of handsome women wearing black leather boots and Nazi uniforms, to whom adjectives such as 'vicious', 'cruel', 'sadistic', or 'perverse' are often employed, that of Irma Grese, 'The Angel of Death', is the most notorious. She was a young *Aufseherin*, a camp guard at Ravensbrück, Auschwitz-Birkenau and Bergen-Belsen. In the accounts by survivors from the camps, she appears as a devilish beauty, taking sadomasochist pleasure in her cruelty.³⁷ She was sentenced to death at the Belsen trial in the British occupation zone in November 1945. Her young age and her looks brought her sensational media attention during her trials, where she stood out from other women who 'traversed the range from ugly to repellent'.³⁸ Her outfits—complete with a riding whip, cane, and pistol—have made of her a legendary character also in pornographic entertainment, in several books and films.

C7.P22 Herta Oberheuser, 'The Evil Doctor', was a dermatologist found guilty of war crimes and crimes against humanity by US military judges in the Doctors' Trial at Nuremberg in 1948, one of the Control Council Act number 10 trials by the US occupation authorities in Germany.³⁹ Oberheuser was the only woman accused in the Doctors' Trial. The tribunal found that she had conducted medical experiments on inmates at the Ravensbrück camp. She had also participated in selections of inmates to be executed in the gas chambers. She was sentenced to twenty years' imprisonment. Oberheuser was released from prison in 1952 by the German authorities. She resumed medical practice, but soon had her licence revoked on account of camp survivors' protests.

C7.P23 Hildegard Lächert was a fallen mother, Irma Grese a seducing but beastly whore, and Herta Oberheuser a shameful monster sullyng her medical profession. Their caricatured profiles rely on gendered stereotypes of violent or otherwise deviant women, recognizable also beyond the realm of Nazi perpetrators.⁴⁰ One could certainly add other recurrent profiles, such as a decadent or perverse (Nazi) wife of a powerful man, the most prominent being Ilse Koch, wife of the commandant of Buchenwald.⁴¹ Liesel Willhaus, wife of commandant Gustav Willhaus in Janowska,

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³⁵ Ibid. 129. ³⁶ Ibid. fn 5.

³⁷ See Olga Lengyel, *Five Chimneys: The Story of Auschwitz* (Mayflower 1972); Fania Fénélon, *Playing for Time* (Berkley 1979) 177, 194–212, 244–50.

³⁸ Quoted by Daniel Brown, *The Beautiful Beast: The Life and Crimes of SS-Aufseherin Irma Grese* (Golden West Historical Publications 1996) 70.

³⁹ See, eg, Kevin Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford University Press 2011).

⁴⁰ See Carol Gentry and Laura Sjöberg, *Beyond Mothers, Monsters, Whores: Thinking About Women's Violence in Global Politics* (Zed Books 2015).

⁴¹ See Alexandra Przyrembel, 'Der Bann eines Bildes – Ilse Koch, die "Kommandeuse von Buchenwald"' in Insa Eschebach, Sigrid Jacobeit, and Silke Wenk (eds), *Gedächtnis und Geschlecht: Internationale Studien zur Rezeptionsgeschichte des Nationalsozialismus und seiner Verbrechen* (Frankfurt a.M. 2002) 245–67.

a work camp near Lemberg, allegedly killed for leisure and her own pleasure. She is reported to have made a show of shooting prisoners working in the garden, just like rabbits, when guests came over to visit the family and sat on the porch of their house.⁴² As perpetrators and wives, Koch and Willhaus are in a notorious but often curiously nameless company: 'Many *wives of* oppressive dictators, for example, such as the wives of Mao Tse-tung, Slobodan Milosevic and Nicolae Ceausescu became ignominious in their own right.'⁴³

C7.S4

Constructing the Exceptional through Stereotyping

C7.P24

Stereotypes of mothers, whores, monsters, and vicious wives of important men both differ from each other and partly coalesce, each striking several chords with a mythological 'womanhood', expressed in various gendered notions of femaleness or femininity which may have a certain universality.⁴⁴ Yet that is not my focus here. Nor I am likely to surprise anyone with the claim that stereotypes of women perpetrators do indeed exist—just as there are stereotypes of men perpetrators.⁴⁵ More interesting potentially is to ask how far such stereotypes have had or still have an effect not only in popular culture, as one might think at first, but also in the fields of history, criminology, and law, shaping the understanding of 'women perpetrators'.

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But what do I mean here by stereotypes or stereotyping? The reputation of these notions is deplorable. In media studies, the predominant view of stereotypes sees them as 'rigid, simplistic, overgeneralized and erroneous', at worst forming 'the basis for negative or hostile judgements, the rationale for exploitative, unjust treatment, or the justification for aggressive behaviour'.⁴⁶ And yet the exclusively negative view of stereotypes has not necessarily always been the one that prevails. The term *stereotype* was introduced into the terminology of social sciences by Walter Lippman's *Public Opinion* (1922), a classic of US media studies.⁴⁷ Lippmann conceptualized stereotype in two contrasting ways. In the first sense, he saw them as inadequate and biased, contrasting stereotyping with the more positive connotation of 'individualised understanding'.⁴⁸ In the second sense, stereotyping was for Lippmann a necessary mode of processing information, especially in highly differentiated societies, an inescapable way of creating order out of 'the great blooming, buzzing confusion of the outer world'.⁴⁹ Stereotyping was, in this second sense, merely a way, in itself

C7.N46

⁴² Wendy Lower, *Hitlers Furies: German Women in the Nazi Killing Fields* (Vintage Books 2014) 134.

⁴³ Alette Smeulders and Fred Grünfeld, *International Crimes and Other Gross Human Rights Violations* (Martinus Nijhoff Publishers 2011) 326 (italics added). On anonymity of women perpetrators in the post-Second World War Allied repression, see also Allar, 'Setting the Picture' (n 6) 34–5.

⁴⁴ See John E. Williams and Deborah L. Best, *Measuring Sex Stereotypes: A Thirty Nation Study* (Sage Publications, rev. edn, 1990).

⁴⁵ See, eg, Sofia Stolk, *A Solemn Tale of Horror: The Opening Statement of the Prosecution in International Criminal Trials* (doctoral thesis, Vrije Universiteit Amsterdam 2017).

⁴⁶ Michael Pickering, 'The Politics and Psychology of Stereotyping' (1995) 17 *Media, Culture & Society* 691–700, 691.

⁴⁷ Ibid. 692.

⁴⁸ Walter Lippman, *Public Opinion* (The Free Press 1922) 59.

⁴⁹ Ibid. 55.

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neutral, of making sense of the world, of typifying and representing. Interestingly, the pioneering Lippmann was equally sensitive to the ideological aspect of using stereotypes, as 'the projection upon the world of our own sense of our own value, our own position and our own rights',⁵⁰ and to the manner in which stereotypes work as social control: 'They are the fortress of our tradition, and behind its defenses we continue to feel ourselves safe in the position we occupy.'⁵¹

C7.P26 Nor are stereotypes totally foreign to Max Weber's ideal types, or to later conceptualizations of categorization in the social sciences.⁵² As Richard Jenkins puts it, 'whether for sociological purposes or in everyday life, categorization and knowing the world are inseparable'.⁵³ Contexts and disciplines do differ of course, but what seems to remain is the difficulty of claiming a validity in terms of a reproduction of or correspondence with social reality. To quote Kenneth Prandy, 'in everyday life stereotypes allow people to avoid confronting complexities and contradictions in their experience; in intellectual life ideal types allow theories to preserve themselves from empirical challenge'.⁵⁴

C7.P27 Writing in 1922, Lippmann was yet to find his anecdotic examples of the limits of perception anchored in cultures and contexts from the institutional practice of international criminal law. My guess is that he would have found the empirical material rich and more than adequate. Instead, he used the closest to hand, the context of the First World War and the Versailles Treaty negotiations, asking,

C7.P28 [o]f the great men who assembled at Paris to settle the affairs of mankind, how many were there who were able to see much of the Europe about them, rather than their commitments about Europe? Could anyone have penetrated the mind of M. Clemenceau, would he have found there images of the Europe of 1919, or a great sediment of stereotyped ideas accumulated since 1871? ... If a junker blustered, that was an authentic German; if a labor leader confessed the guilt of the empire, he was not an authentic German.⁵⁵

C7.P29 One hundred years on, we may ponder the extent to which international criminal justice, and the way it is dealt with in various contemporary professional and academic contexts, is an operational area based on stereotypes of Lippmann's 'great blooming, buzzing confusion' of 'reality'.⁵⁶ On the very broad sets of temporal, territorial, cultural, social, ideological, factual, historical contexts perceived by individuals of various professions and backgrounds are constructed the (criminological, criminal policy, legal, political, bureaucratic) modes of operation, modes whose correspondence with social reality one is scarcely in a position—or instructed—to diligently verify and take into account. In such a heterodox domain of intense political, legal, bureaucratic institutional activity where scales, sizes, and perspectives

C7.N56

⁵⁰ Ibid. 64.

⁵¹ Ibid.

⁵² See, eg. Kenneth Prandy, 'Ideal Types, Stereotypes and Classes' (2002) 53 *British Journal of Sociology* 583–601; Max Weber, 'Objectivity in Social Science and Social Policy' in Edward A. Shils and Henry A. Finch, ed and trans, *The Methodology of the Social Sciences* (The Free Press 1904/1949).

⁵³ R. Jenkins, 'Categorization: Identity, Social Process and Epistemology' (2000) 48(3) *Current Sociology* 8.

⁵⁴ Prandy, 'Ideal Types' (n 53) 589.

⁵⁵ Lippmann, *Public Opinion* (n 49) 55.

⁵⁶ Ibid. 96.

interlope and overlap, the language of ‘stereotype’ may capture a key aspect of the operational modus. How far such stereotyping—at worst a mixture of simplification, deep-held prejudice, and inexcusable ignorance—is at work with regard to racializing the perpetrators (and victims) both in the present institutional practice of international criminal justice and in its histories, has recently been addressed in excellent commentaries.⁵⁷ On women, less so.

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C7.S5

Behind Stereotypes of Women Perpetrators

C7.P30 By their ‘unimaginable ... and unprintable’ deeds, as the IntLawGrls’ blog called them, the perpetrator women entered into flagrant contradiction of what is expected of a woman. As with the accounts of international criminal law discussed in this volume, these expectations of course have a history. The societal and cultural norms on ‘womanhood’ could be presented both in terms of strong continuities and rapid changes, depending on the temporal, geographical, and social context. What follows here are just three snapshots in particular times and places within that history.

C7.P31 First, as Barbara Welter argued in a landmark article,⁵⁸ the nineteenth-century North American women’s lives were influenced by a cultural ideology prescribing that women should live by and for the virtues of ‘piety, purity, submissiveness, and domesticity. Put them together and they spelled mother, daughter, sister, wife—woman’. Women’s universe—in the class and ‘race’ and temporal context Welter wrote about—consisted of marriage, motherhood, home, and church, whilst the rest befell on men. Welter coined her term, the ‘Cult of True Womanhood’,⁵⁹ as a critical stance on the ‘separate spheres’ of women and men. The metaphor of ‘sphere’ has been a key trope in the historical discourse on women, grounded not only in culture as Welter recognized, but also in psychology, and property relations.⁶⁰ It has also done service in the interpretations of distinctive women’s cultures.⁶¹

C7.P32 Second, in the early and mid-twentieth century, in the geographical and ideological context that later became the emblematic and paradigmatic crime scene in histories of international criminal justice, that is, Nazi Germany, marriage and housewifery mattered far less, as such. ‘Aryan’ German women’s priorities were expected to lie in motherhood in the literal sense of diligent procreation, as well as caring for the needs of the nation and the party. For other women (and men), the

C7.N69

⁵⁷ See Christopher Gevers, ‘Africa and International Criminal Law’ in (x, y) (eds), *The Oxford Handbook of International Law* (Oxford University Press, forthcoming 2019); Kamari M. Clarke, Abel S. Knottnerus, and Eefje de Volder (eds), *Africa and the ICC: Perceptions of Justice* (Cambridge University Press 2016).

⁵⁸ Barbara Welter, ‘The Cult of True Womanhood: 1820–1860’, (1966) 18 *American Quarterly* 152.

⁵⁹ Ibid.

⁶⁰ For discussion, see, eg, Linda Kerber, ‘Separate Spheres, Female Worlds, Woman’s Place: The Rhetoric of Women’s History’ in *Toward an Intellectual History of Women* (The University of Carolina Press 1997) 159–99.

⁶¹ See Carroll Smith-Rosenberg, ‘The Female World of Love and Ritual: Relations between Women in Nineteenth-Century America’ (1975) 1 *Signs* 1–29.

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racist Nazi regime imposed violent measures of anti-natalism.⁶² The influence of church was replaced and surpassed by the Nazi party.⁶³ As with power in many other political systems, Nazi authority as such validated itself by its distance from women and the feminine.⁶⁴

C7.P33 Third, at the end of the twentieth century, the negotiations over the Rome Statute for an International Criminal Court negotiations began in New York. At the same time, the 1995 Beijing Declaration on Women affirmed that '[l]ocal, national, regional and global peace is attainable and is inextricably linked with the advancement of women, who are a fundamental force for leadership, conflict resolution and the promotion of lasting peace at all levels.'⁶⁵ The Rome Statute, concluded in 1998, came to include rules on women with regard to the composition of the court and in the staff of the institution, a definition of 'gender', broader criminalization of sexual crimes, special protection measures in investigating sexual and gender violence, etc.⁶⁶ The Rome Statute, as well as jurisprudence of the ad hoc tribunals for the Former Yugoslavia and for Rwanda were often held up as a major victory for 'feminism'.⁶⁷

C7.P34 My sketch reads as a linear progress narrative of how expectations towards 'women' have gradually changed, the images of women leaving the 'private sphere' and gravitating towards the more public and political 'sphere' occupied by men, which gradually becomes a shared one. Even if the context is by definition international, the narrative is culturally and politically situated. At its culmination, the Beijing Declaration mentions women's 'leadership', a strong symbol of progress. There remains, however, an element of continuity in the use of the metaphoric 'separate sphere', in Linda Kerber's phrase, 'a trope that hid its instrumentality', even from those who employed it.⁶⁸ Women may enter men's world, but they remain distinctively different. 'Are women peaceful?' Hilary Charlesworth asked in the context

C7.N6B

⁶² See Gisela Bock, 'Equality and Difference in National Socialist Racism' in Joan Scott (ed), *Feminism and History* (Oxford University Press 1996) 267–90.

⁶³ Jill Stephenson, *Women in Nazi Germany* (Routledge 2001) 16.

⁶⁴ See Renate Bridenthal, Atina Grossmann, and Marion Kaplan, *When Biology Became Destiny: Women in Weimar and Nazi Germany* (New Feminist Library 1984).

⁶⁵ Fourth World Conference on Women, Beijing Declaration (1995), <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

⁶⁶ The Rome Statute of the International Criminal Court (1998).

⁶⁷ For a rich discussion, see, eg, Valerie Oosterveld, 'The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?' (2005) 18 *Harvard Human Rights Journal* 55–84; Kelly Askin, 'Gender Crimes Jurisprudence in the ICTR: Positive Developments' (2005) 3 *Journal of International Criminal Justice* 1007–18; Catherine MacKinnon, 'The ICTR's Legacy on Sexual Violence' (2008) 14 *New England Journal of International and Comparative Law* 211–20; Kimi Lynn King and Megan Greening, 'Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for Former Yugoslavia' (2007) 88 *Social Science Quarterly* 1049–71. For critical views, see Janet Halley, 'Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict' (2008) 9(1) *Melbourne Journal of International Law* 78–124; Janet Halley, 'Rape in Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law' (2008) 30(1) *Michigan Journal of International Law* 1–123; Karen Engle, 'Feminisms and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99 *The American Journal of International Law* 778–953.

⁶⁸ Kerber, 'Separate Spheres' (n 61) 187.

of peace-building, putting her finger on the persistent expectation.⁶⁹ The dream of an alternative, pacifist society created by women, local or global, still figures as one of the strivings of feminism(s), also within international law.⁷⁰

C7.P35

Moral inclinations among women towards the care and protection of life may no longer be as eagerly defended by biology as they have been by Francis Fukuyama: 'What is bred in the bone cannot be altered easily by changes in culture and ideology'.⁷¹ The essentialist assumptions nevertheless still appear powerful, and breaking the taboo certainly hurts. 'When we lose the *mothers* to the dark side, all is lost,' Sjöberg and Gentry write on Nyiramasuhuko's deviance, and they are not alone in the sentiment.⁷² From Virginia Woolf's *Three Guineas* to Susan Griffin's *The Roaring Inside Her*⁷³ and Judith Gardam's remarkable work on the law of armed conflict, uncertainty remains as to whether 'women have something different to offer, a view of the world incompatible with the violence of armed conflict'.⁷⁴ Next to the 'Thatcher problem', it is women perpetrating serious, large-scale crimes who forcefully challenge such hopes. Yet even in crime, women do not seem to really stand alone, as I shall now discuss.

C7.S6

Behind Every Perpetrator Woman

C7.P36

Then a woman prisoner from Auschwitz, Severina Shmaglevskaya, described the treatment of women and children there. Babies born in the camp were taken away immediately and never seen again. She demanded with suppressed bitterness, 'In the name of all the women of Europe who became mothers in

C7.N70

⁶⁹ Hilary Charlesworth, 'Are Women Peaceful? Reflections on the Role of Women in Peace-building' (2008) 16(3) *Feminist Legal Studies* 347–61.

⁷⁰ Hilary Charlesworth, Christine Chinkin, and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *The American Journal of International Law* 613–45; Hilary Charlesworth, 'Alienating Oscar? Feminist Analysis of International Law' in Dorinda G. Dallmeyer (ed), *Reconceiving Reality: Women and International Law*, Studies in Transnational Legal Policy No 25, ASIL, Washington, D.C., 1993; Barbara Ehrenreich, 'Feminism's Assumptions Upended' (2007) 24(1) *South Central Review* 170–3.

⁷¹ See Sara Ruddick, *Maternal Thinking: Towards a Politics of Peace* (The Women's Press 1989); Francis Fukuyama, 'Women and the Evolution of World Politics' (1998) 77 (5) *Foreign Affairs* 24–40. In contrast, Joshua Goldstein asks, 'why warfare is virtually an all-male occupation' and replies that 'biology provides diverse potentials, and cultures limit, select, and channel them.' Joshua Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge University Press 2001) 169.

⁷² Sjöberg and Gentry, *Mothers, Monsters* (n 17) 169 (emphasis in the original). For discussion, see Jodi York, 'The Truth about Women and Peace' in Lois Ann Lorentzen and Jennifer Turpin (eds), *The Women and War Reader* (New York University Press 1998) 19–25.

⁷³ Virginia Woolf, *Three Guineas* (Hogarth Press 1938); Susan Griffin, *Women and Nature: The Roaring Inside Her* (Counterpoint, revised 2nd edn, 2016).

⁷⁴ Judith Gail Gardam, 'The Law of Armed Conflict: A Gendered Regime?' in Dorinda G. Dallmeyer (ed), *Reconceiving Reality: Women and International Law*, Studies in Transnational Legal Policy No 25, (ASIL 1993) 174–5; Judith Gardam, 'A New Frontline for Feminism and International Humanitarian Law' in Vanessa E. Munro (ed), *The Ashgate Research Companion to Feminist Legal Theory* (Routledge 2013) 217–32.

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concentration camps, I would like to ask German mothers, "Where are our children now?"⁷⁵

- C7.P37** Amongst the women convicted after the Second World War, dermatologist Herta Oberheuser was most likely in the highest position in the Nazi hierarchy, as suggested by her prosecution in the Nuremberg Doctors' Trial. Nevertheless, her defence also argued that she did not conduct the experiments independently but was totally submitted to her superior, a male doctor. In her succinct final statement, she stated: 'In administering therapeutical care, following established medical principles, as a woman in a difficult position, I did the best I could.'⁷⁶ Liesel Willhaus was, to begin with, primarily just a wife, and that is how she got into the position which made her crimes possible. As described, Willhaus's pattern of behaviour is like that of a spoilt or bored child. If women occasionally made seemingly fully independent individual decisions, such as Erna Petri, convicted of shooting six Jewish children refugees she happened to find on her way home from shopping, it is typically claimed, as it is in her case, that she acted to impress either men in general or her own man, in particular.
- C7.P38** These women, in the light of the court proceedings or the subsequent commentaries, were merely following, if not direct orders, then at least their impulses and urges. They suffered from 'sexual dependences' or acted immaturely, fragile in their erratic descent into violent crime. Their stereotypical profiles bring to mind women's image as described by the eighteenth-century feminists: 'in a state of perpetual childhood, unable to stand alone', to quote Mary Wollstonecraft.⁷⁷ These profiles have a strong continuity. In their landmark book in the 1980s, criminologists Nicole Rafter and Elizabeth Stanko referred to how key images of women 'draw[ing] upon assumptions about how women ought to behave in specific situations, frequently function to reinforce the view of women as dependent, emotional, and in need of manly support'.⁷⁸ At the same time, paradoxically, testimonies and commentaries frequently claim that particular women perpetrators were—from the point of view of the victims—far worse than men, another generalizing gendered claim whose evaluation is problematic.⁷⁹
- C7.P39** This brings us back to where the chapter started, on how the representations of women perpetrators work out in relation to those of men, considered the norm. Behind every visible woman perpetrator, viewed as the exception, there is an invisible or visible man. Women perpetrating crimes either imitate, obey or seek to please
- C7.N78**

⁷⁵ The diary of an American prison psychologist on post in Nuremberg during the IMT trial, Gustave Gilbert, *Nuremberg Diary* (Farrar, Straus and Company 1947) 174.

⁷⁶ Final Statement of Defendant Oberheuser, *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10* October 1946–April 1949, Vol II. The Medical Case, 169.

⁷⁷ Quoted in Moira Ferguson (ed), *First Feminists: British Women Writers, 1578–1799* (University of Indiana Press 1985) 413–19.

⁷⁸ Nicole Rafter and Elizabeth A Stanko, *Judge, Lawyer, Victim, Thief: Women, Gender Roles, and Criminal Justice* (Northeastern University Press 1982) 2–4.

⁷⁹ On this claim and its sustained biases, see Claudia Koonz, *Mothers in the Fatherland* (St. Martin's Press 1987) 404–5. On claims of cruelty by women in Rwanda, see Adam Jones, 'Gender and Genocide in Rwanda' in Adam Jones, *Gendercide and Genocide* (Vanderbilt University Press 2004) 98, 120–2.

men, with no ownership or ideological input of their own. The Abu Ghraib photos featuring torture by women in the 2000s reactivated this discussion.⁸⁰ How to negotiate here the persistent tension in feminism(s), between the claims of similarity and equality on the one hand, and difference and (potential) moral superiority on the other?⁸¹

C7.P40 In this discussion, one could argue (and some do) that international criminal law and its institutional practices as we know them today contribute to reinforcing women's subordinate status. In its sphere of activities and in its advocacy, 'women' remain perpetually in need of protection as victims or potential victims, in particular of sexual and gendered violence. That is the abiding image, no matter that many key figures (judges, prosecutors) in the ICC, for example, are of the female sex. Suggestions for redress that follow may have a flavour of absurdity, at least from the point of view of the dogmas stressing women's propensity to preserve life, discussed above. Should women get to be seen—be shown and known—to commit crimes, preferably bearing prime responsibility?⁸² In such a scenario international criminal justice would become an instrument of progress towards broadening the frames of representation of women's relation to war and agency at war by demonstrating in court practice how (perpetrator) women have acquired more agency and power.⁸³ Such women would reverse the striking absence of heroic, venerated women figures with qualities which at times seem to render (perpetrator) men appealing: physical force, charisma, intelligence, leadership, true devotion to a nationalistic or other ideological cause.

C7.P41 Many of the emotions that followed Abu Ghraib had surfaced earlier. The responsibility for Nazi crimes—be it direct or indirect, individual or collective, political, moral, or legal—remains arguably one of the most passionately disputed question in the historiography of the twentieth century. Those disputes focus on men and are led by men. As an exception, Claudia Koonz's *Mothers in the Fatherland* (1987) started a 'Historikerinnenstreit'.⁸⁴ Koonz observed, to start with, how 'the chain of command from chancellery to crematorium remained entirely within men's domain; women took no part in planning the "final solution", and except for a few thousand prison matrons and camp guards, women did not participate in murder'.⁸⁵ Yet for Koonz, women comprised 'half of the Germans who made dictatorship, war and genocide possible ... Far from remaining untouched by the Nazi evil, women operated at its very center.' Koonz argues that motherhood and the ideology of a decent, happy Aryan family were there to 'convey an illusion of clean-cut decency that masked a

C7.N81

⁸⁰ See, eg, Tara Mckelvey (ed), *One of the Guys: Women as Aggressors and Torturers* (Sealpress 2007).

⁸¹ See, eg, Nancy F. Cott, *The Grounding of Modern Feminism* (Yale University Press 1987).

⁸² See Labenski, *The Importance of Women* (n 29) 41.

⁸³ On women's agency in armed conflict and political violence, see Caroline Moser and Fiona Clark (eds), *Victims, Perpetrators or Actors? Gender, Armed conflict and Political Violence* (Zed books 2001). On the 'prototypical constructions' of women as non-combatants, 'the Beautiful Soul', and men as fighters, 'the Just Warrior', see Jean Bethke Elshtain, *Women and War* (Basic Books 1987).

⁸⁴ See, eg, Gisela Bock, and the 1990 conference in Würzburg on 'Participation and Resistance: The Problematicization of National Socialism in Recent Women's Studies', volume *Töchter-Fragen, NS-Frauen-Geschichte*.

⁸⁵ Koonz, *Mothers* (n 80) 387.

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murderous state'.⁸⁶ German women did not lend their support to Nazi criminality despite being 'good mothers' and devoted caretakers of their families, but precisely because of that. And Koonz went further, suggesting that the collective, moral responsibility for Nazi criminality should more explicitly rest on women. Within the fields of history, sociology, and women's studies, Angelika Ebbinghaus's *Opfer und Täterinnen* (1987) was another controversial text for many.⁸⁷ Ebbinghaus's book focused on public-service social workers and counsellors under National Socialism. It touched a sore point insofar as she was understood to suggest that the categories of perpetrators and victims were clear-cut and mutually exclusive.⁸⁸ This countered the understanding of women advocated by Gisela Bock that they would be mere assistants or facilitators of National Socialism, to a degree involuntary and less responsible owing to their oppressed position in patriarchal societies in general and in a totalitarian state in particular, as well as rebutting the ideals of women's occupation of a higher moral plain.

C7.P42

Similarly, fifty years later and thousands of kilometres South, in Rwanda, women may have taken part in the genocide in many ways but it is considered that they 'were rarely directly engaged in the killings', to cite Nicole Hogg.⁸⁹ In general, Rwandan women also acted in lower positions in the hierarchy. Even in cases where they may have exercised more autonomous powers and discernment, as members of the government, for example, they are frequently considered to have less responsibility for their crimes than men. And according to Hogg and other commentators⁹⁰ that is also one of the strategies on which they built their defence. In the case of Nyiramasuhuko at the ICTR, Mark Drumbl observes how 'her status as woman and mother' was highlighted both 'to underscore her personal culpability and individual deviance' and by those who sought to 'defend her conduct, including Nyiramasuhuko herself, invoking womanhood and motherhood tropes to emphasize the impossibility of her culpability'.⁹¹

C7.P43

With regard to Rwanda, Hogg suggests that women were under-represented amongst those pursued for genocide-related crimes, both at the international level and in Rwanda, including in the Gacaca courts, the main focus of her study.⁹² But why would women's participation in crime be belittled or obscured in trials? In a more general context, Judith Butler points out how 'natural' gender identities and behaviours require the disciplining of performative acts that might disturb the coherence of sex and gender categories: 'When particular acts of gender transgression,

C7.N90

⁸⁶ Ibid. 389.

⁸⁷ Angelika Ebbinghaus, *Opfer und Täterinnen, Frauenbiographien des Nationalsozialismus* (Fischer 1987); Dagmar Reese and Carola Sachse, 'Frauenforschung zum Nationalsozialismus' in Lerke Gravenshort and Carmen Tatschmurat (eds), *Töchter-Fragen, NS-Frauen-Geschichte* (Kore 1990) 73.

⁸⁸ See the contribution by Mark Drumbl.

⁸⁹ Nicole Hogg, 'Women's Participation in the Rwandan Genocide: Mothers or Monsters?' (2010) 92 *International Review of the Red Cross* 69–102. Compare to African Rights, *Rwanda—Not So Innocent: When Women Become Killers* (1995).

⁹⁰ Hogg, 'Women's Participation' (n 90).

⁹¹ Drumbl, 'The Genocide Conviction Of Pauline Nyiramasuhuko, 2011' (n 21) 124.

⁹² Hogg, 'Women's Participation' (n 92) 69–102. Allar, 'Setting the Picture' (n 6) 28–9 and 35 argues similarly with regard to Nazi Germany and Rwanda.

perceived to be extraordinary in nature, become highly visible in public discourse, the “containing” of those acts often entails the reproduction and circulation of elaborate narratives that explain the “abnormalities” in normative ways’.⁹³

C7.P44 Hogg develops several complementary explanations for the fact that so few women have been held responsible for genocide in Rwanda. She finds ‘some evidence that in the pursuit of justice ... women have benefited from the “chivalry” of men’.⁹⁴ Criminologist Otto Pollak’s ‘chivalry theory’ has it that

C7.P45 male witnesses, investigators, prosecutors and judges are so infected by gender stereotypes that they either cannot perceive of women as criminals or feel protective towards them in spite of their suspected or proven criminality. Men therefore, perhaps unwittingly, exercise their discretion in women’s favour at each level of the criminal justice system—during reports, arrests, prosecution and sentencing.⁹⁵

C7.P46 Pollak has the reputation of a bygone misogynist in most (feminist) criminology today, as Hogg points out.⁹⁶ However, she discusses statements concerning not only prosecutors and witnesses but also Rwandan judges, according to which such ‘chivalrous’ or otherwise favourably attuned attitudes towards women contributed to the relatively small number of women brought to justice on crimes of genocide.⁹⁷ Leaving any romantic connotations of chivalry aside, it appears that the gender coherence of Rwandan society was upheld by retroactively discarding women from the worst stigma as convicted perpetrators of genocide.

C7.P47 The corrective move to redress history by the integration of women—the now familiar rallying cry of ‘we, too!’—has, in this chapter, shown its more complex face. When the breakthrough by women consists of committing acts that today qualify as genocide, for example, a desire is aroused in various quarters to absolve the ‘women worthies’, not only of criminal responsibility but also of their ‘place in history’. In consequence, the few women who end up being prosecuted for such grave crimes get processed in a gendered discursive practice that produces and reproduces them as unnatural ‘non-women’ or dependent on men and infantilized. The ‘inclusion’ of women who perpetrate international crimes sits uncomfortably, not only with some feminist agendas but in particular with the gendered and racialized ideological discourses which inform nations and nationalisms—where women again have a particular role of their own.⁹⁸ Behind every perpetrator woman then, there stands not only her man or men, but also a nation. Victoria Woolf’s ‘outsider’ in *Three Guineas* claimed: ‘As a woman I have no country. As a woman I want no country.’⁹⁹ But the countries want ‘their’ women.

C7.N98

⁹³ Butler, *Gender Trouble* (n 9).

⁹⁴ Hogg, ‘Women’s Participation’ (n 90) 81.

⁹⁵ Hogg, *ibid.*, referring to Otto Pollak (1950) as cited in Patricia Pearson, *When She was Bad: Violent Women and the Myth of Innocence* (Viking Adult 1997) 20–1. See also Chimène Keitner, ‘Victim or Vamp? Images of Violent Women in the Criminal Justice System’ (2002) 11 *Columbia Journal of Law and Gender* 70–2.

⁹⁶ Hogg, ‘Women’s Participation’ (n 90) 81–2, fn 75.

⁹⁷ *Ibid.* 82–3.

⁹⁸ See, eg, Ida Blom, Karen Hagemann, and Catherine Hall (eds), *Gendered Nations: Nationalisms and Gender Order in the Long Nineteenth Century* (Berg 2000).

⁹⁹ Woolf, *Three Guineas* (n 74) 109.

C7.S7

Conclusion

C7.P48

In the 1990s, Christian Boltanski's mega-collage 'Menschlich' ('human') proved disturbing for many viewers. Amongst the more than 1,200 portraits Boltanski presented, there were images found at a flea market in Berlin featuring Germans in the 1940s—sometimes Nazi officers in their uniforms—in everyday situations, including smiling happily with their children. The normality of the situations depicted marks a contrast with what everyone knew was happening at that time: you could 'kill a child in the morning and kiss your own in the afternoon', to cite Boltanski.¹⁰⁰ Yet Boltanski does not seem intent on exploiting or confirming 'the narrative potential of the snapshots' of which the collage is made, but rather at destroying it.¹⁰¹ Instead of yet another tale of wicked Germans playing Mozart after a day at the camp, his work comes across as an invitation to an ever-open interpretation.

C7.P49

But who took care of the children while their fathers served prison sentences for crimes against humanity or war crimes? How could 'daddies' of young children kill or torture, to start with? The day may indeed come when these questions in histories of international criminal trials no longer seem totally incongruous. Today, it is only the women who face the double shift of household and perpetration of crimes, as the histories of the Nazi camp guards reflect. Those contribution histories present, in Tetreault's words, 'women who conform to the requirement that women who engage in activities outside the home must nevertheless remain an extension of women's nurturing role within the family'.¹⁰² If one fine day international criminal law would stop hailing women for various (gendered) purposes, that development would also mark the end of a particular need to 'search for women' in its histories. Such a change would also mean abandoning the stereotypical glorification of femininity and motherhood.

C7.P50

This chapter was not inspired by an antagonism between 'men' and 'women', but rather curiosity about the tenacity of the gendered understandings of individuals who commit international crimes. Where do these particular kind of stereotypes come from, and are they a-historical, immutable? In this brief chapter, I cannot pretend to advance more than an impression: perpetrator stereotypes *both* reflect cultural knowledge that may be referred to as myths which are challenging if not impossible to historicise *and* build on lived experiences which have temporalities and could, to some extent, be contextualized. The social, economic, and political oppression of individuals or groups of the female sex, as well as the stigmatizing and ostracizing of their sexuality, have of course been subject to countless studies. The stereotypes are not random or 'irrational', as such. They tell stories of power, or lack of power, in their peculiar manner, such as suggesting that women are too powerless to qualify as perpetrators. For their part the ideological tropes of selfless motherhood and women's natural peacefulness also contribute to the mystification of the

C7.N100

¹⁰⁰ <https://recollectingthearchive.wordpress.com/menschlich-by-christian-boltanski/>.

¹⁰¹ Ibid. ¹⁰² Thompson Tetreault, 'Rethinking Women' (n 7) 171.

oppression of women in most if not all societies, or so one could claim. Stereotypes of women perpetrators then are not just any stereotypes present in cultural norms and narratives, of Lippmann's analysis or the later rich scholarship on the matter. They reflect the struggles over the power for mastering violence and the power over women, of what they stand for, for (their) men, family, society, and nation. These struggles take place not only in trials but in history books, academic conferences, and today of course on a plethora of screens.

C7.P51 What would be the opposite of stereotypes? Lippmann referred to 'individualised understanding'. A shortcut would stage stereotypes in a historical understanding as antithetical to the notion of history as objective, or rather the fantasy of its objectivity, in a yet another antagonism. Even if it has long been acknowledged that 'true objectivity is impossible, the point is to get as close to it as possible', as Joan Scott writes.¹⁰³ If only we could today reconstruct via perfect archives, photos, films, and objects to the minutest detail exactly what went on in the life of Herta Oberheuser who conducted often lethal experiments involving vivisection, high altitude, freezing, typhus, or malaria on women detained in concentrations camps, then what? Sooner or later, we would face the barriers of other disciplines of knowledge and expertise prone to gender stereotypes: criminological psychology, psychoanalysis, and so forth.

C7.P52 Lippmann viewed stereotypes as 'the fortress of our tradition', behind whose defences 'we continue to feel ourselves safe in the position we occupy'.¹⁰⁴ Perhaps next to Lippmann's fortress, stereotypes of women and femininity can also be configured as a lighthouse in the moral map by which means 'we'—men and women—orientate ourselves in the world. Because moral qualifications of 'right and wrong', 'good and bad' are too weak, there is a need for substantive parameters, personifications on which articulations of value are dressed, both in histories and in everyday lives. That is a role which 'women' as an ideological category appears to serve well: to personify the dichotomy of good and evil. The positive side is of course personified by the mother, her nurturing, care, and selfless love, followed by the devoted wives and the pure, tender daughters, nurses, and assistants.

C7.P53 Negative values are handily carried by women, too, as negations or perversions of the positive personifications: the loveless mother, the obscene wife, the dangerous nurse. Such stereotypical projections on perpetrators have little to do with how individuals behave or not, in the past or present. What counts is that they are deeply anchored, and called upon when 'reality' suddenly loses its bearings. In particular in crisis situations, wars, and other dark moments when landmarks are extinguished, people orientate themselves by being conscious of the proximity to—or distance from—the lighthouse. Less explicably, the same intuitive gendered coordinates are at times in use in courthouses and university faculties. This is a good moment to start reflecting on the transformation towards reconceptualizing (the history of) international criminal law.

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¹⁰³ Joan Scott, 'History-Writing as Critique' in Keith Jenkins, Sue Morgan, and Alun Munslow (eds), *Manifestos for History* (Routledge 2007) 22.

¹⁰⁴ Lippmann, *Public Opinion* (n 49) 64.