

RACE, RAPE AND GENDER IN NAZI-OCCUPIED TERRITORIES

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by

Monika J. Flaschka

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Dissertation written by

Monika J. Flaschka

B.S., University of Arizona, 1997

M.A., Kent State University, 2001

M.A., Kent State University, 2004

Ph.D., Kent State University, 2009

Approved by

_____, Chair, Doctoral Dissertation Committee
Richard Steigmann-Gall

_____, Members, Doctoral Dissertation Committee
Geoffrey Giles

Shelley Baranowski

Elizabeth Smith-Pryor

Kristen Marcussen

Accepted by

_____, Chair, Department of History
Kenneth Bindas

_____, Dean, College of Arts and Sciences
John Stalvey

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CHAPTER I

INTRODUCTION

Despite the vast historiography of the Second World War, rape committed by the German military has long been overlooked by scholars, a neglect which stems in part from a belief that rape did not occur because of the race laws forbidding sexual intercourse between “Aryans” and “non-Aryans.” We know, however, from a variety of sources, including memoirs, oral testimonies, court-martial documents, and memoranda referencing sexual violence, that German soldiers did commit rape. The majority of academics have felt justified recounting the process of the war with a gruesome thoroughness; they are comfortable discussing the behavior of the soldiers, particularly in the East, but sexual violence has remained a surprisingly taboo subject. This dissertation is an attempt to rectify that neglect, an attempt to contribute to the effort to bring the level of analysis to a point commensurate with that devoted to sexual violence in other instances of war, genocide and ethnic cleansing.

The original focus of my research was to determine whether German soldiers committed rape because of or despite the fact that they believed themselves to be racially superior. Rape is one way in which a group that believes itself to be superior can

demonstrate its superiority; this occurred in the ante-bellum American South,¹ in the former Yugoslavia,² and in Rwanda.³ I wanted to know whether those German soldiers raping women considered to be inferior—Slavic, Roma, or Jewish—were doing so as a demonstration of their supposed racial superiority. The documents do not, however, lend themselves to the easy answering of that particular question. There are discussions of race, to be sure, but the interviews and testimony of the men accused of rape fail to provide an answer, primarily because they were not asked that particular question. What

¹ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Fawcett Columbine, 1975); Angela Y. Davis, *Women, Race and Class* (New York: Random House, 1981); Darlene Clark Hine “Rape and the Inner Lives of Black Women in the Middle West: Preliminary Thoughts on the Culture of Dissemblance,” *Signs* 14, 4, *Common Grounds and Crossroads: Race, Ethnicity, and Class in Women’s Lives* (Summer 1989): 912-920; bell hooks, *Ain’t I a Woman: Black Women and Feminism* (Boston: South End Press, 1981); Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York: Basic Books, 1985); Gerda Lerner, *Black Women in White America: A Documentary History* (New York: Pantheon Books, 1971); Valerie Smith, “Split Affinities: The Case of Interracial Rape,” in *Theorizing Feminism: Parallel Trends in the Humanities and Social Sciences*, ed. Anne C. Herrmann and Abigail J. Stewart (Boulder: Westview Press, 1994), 155-171; Deborah Gray White, *Ar’n’t I a Woman?: Female Slaves in the Plantation South* (New York: Norton, 1985).

² Wendy Bracewell, “Rape in Kosovo: Masculinity and Serbian Nationalism,” *Nations and Nationalism* 6, no. 4 (2000): 563-590; Euan Hague, “Rape, Power and Masculinity: The Construction of Gender and National Identities in the War in Bosnia-Herzegovina,” in *Gender and Catastrophe*, ed. Ronit Lentin (London: Zed Books, 1997), 50-63; Catherine N. Niarchos, “Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia,” *Human Rights Quarterly* 17 (1995): 649-690; Lisa S. Price, “Finding the Man in the Soldier-Rapist: Some Reflections on Comprehension and Accountability,” *Women’s Studies International Forum* 24, 2 (2001): 211-227; Allison Ruby Reid-Cunningham, “Rape as a Weapon of Genocide,” *Genocide Studies and Prevention* 3, no. 3 (December 2008): 279-296; Cindy S. Snyder, Wesley J. Gabbard, J. Dean May and Nihada Zulcic, “On the Battleground of Women’s Bodies: Mass Rape in Bosnia-Herzegovina,” *Affilia: Journal of Women and Social Work* 21, no. 2 (Summer 2006): 184-195.

³ Doris Buss, “Rethinking ‘Rape as a Weapon of War,’” *Feminist Legal Studies* 17, no. 2 (2009): 145-163; Lisa Sharlach, “Rape as Genocide: Bangladesh, the Former Yugoslavia, and Rwanda,” *New Political Science* 22 (2000): 89-102, idem “Gender and Genocide in Rwanda: Women as Agents and Objects of Genocide,” *Journal of Genocide Research* 1 (1999): 387-399; Patricia A. Weitsman, “The Politics of Identity and Sexual Violence: A Review of Bosnia and Rwanda,” *Human Rights Quarterly* 30, no. 3 (August 2008): 561-578; Stephanie K. Wood, “A Woman Scorned for the ‘Least Condemned’ War Crime: Precedent and Problems with Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda,” *Columbia Journal of Gender and Law* 13, no. 274 (2004): 274-327.

the documents do clearly demonstrate however, is the importance of gender ideology, particularly constructs of masculinity, in the determination of punishment for those men accused of rape. Men were evaluated as men; as soldiers; and as Germans, as members of the *Volk*. Women too were evaluated, and the degree to which the judges thought they acted in accordance with normative gender roles affected the determination of punishment. What had an unpredictable effect, however, was the alleged racial quality of the woman assaulted by the German soldier; it mattered less what her “racial quality” was than whether she conformed to gendered behavioral expectations, and whether the German soldier did as well. Thus, the focus of my project shifted from a question about the role of race in the act of rape, to an analysis of the ways in which gender and racial ideology interacted in the court-martial cases. Racial ideology was most definitely a factor in sex crimes cases, but more so in expectations placed upon soldiers as German men than in discussions of the “racial inferiority” of women. What the court-martial documents illustrate is that gender, concepts of masculinity and femininity, were in a constant state of flux, which previous research on gender has already argued.⁴ Also clear from the documents, however, is that Nazi racial ideology was incoherent and unstable, with high-ranking members of the Party and the military incapable of establishing who should be considered racially inferior and what that should mean in the sentencing of men accused of sex crimes. Scholars have long argued for the status of Nazi Germany as a

⁴ Judith Butler, *Undoing Gender* (New York and London: Routledge, 2004); Joan W. Scott, “Gender: A Useful Category of Historical Analysis,” *American Historical Review* 91 (December 1986): 1053-1075.

“racial state.”⁵ However, what is clear is that the “racial state” was constantly in process, or in progress, as the regime and its military arm, which in fact came into the most contact with those deemed racially inferior, constantly debated the meaning of racial inferiority and superiority, and attempted to define the most important identity of the regime, the Nazi German man.

Historiography

My dissertation is influenced by and contributes to, a number of historiographical themes, including the ways in which gender and race intersect throughout history, and more specifically to the growing body of scholarship on the intersection of gender and racial ideology under Nazism; the relationship between nationalism and heterosexual masculinity, and the position of women in nationalist discourse; the relationship between the military and masculinity; masculinity and rape; and between war and rape. Although this dissertation is specifically about rape committed by German soldiers, the topic itself provides a lens through which to view broader aspects of Nazism; more specifically, my dissertation provides a means by which to evaluate the internal coherence and implementation of Nazi racial ideology, as well as the importance of gender to the functioning of the regime. Scholars have long emphasized the importance of Nazi racial ideology in explaining the destruction of European Jews, as well as the persecutions and

⁵ Michael Burleigh and Wolfgang Wipperman, *The Racial State: Germany 1933-1945* (Cambridge: Cambridge University, 1991).

mass murders of Roma, Sinti, the physically disabled, and Slavs.⁶ In focusing exclusively on race, these scholars have largely ignored the powerful ways in which gender *and* racial ideology intersected in Nazi ideology and practice.

It is absolutely true that there existed a language of race in Nazi ideology, however, it is also true that Nazi concepts of race, like all other concepts of race, were constructed, fluid, and contested. The privileging of Nazi racism is an attempt, I believe, to make explicable that which appears inexplicable, and, I would argue, it is also an attempt to make Nazism radically different from the norm. If Nazi racial ideology was coherent and therefore explained the genocide committed by the regime and the kind of war fought by the military, then the regime itself was markedly different from everything before and after, and there is a certain safety in that distance. What this dissertation will demonstrate, however, is that Nazi racial ideology was incoherent and that concepts of race changed over the period of time the Nazis were in power. Nazi racism was influenced by external factors completely unrelated to biology, and gender ideology was of much more importance to the regime than scholars have thus far acknowledged. Moreover, the gender ideology of the regime was not so different from that which came

⁶ See for example some of the following works: Michael Berenbaum and Abraham J. Peck, ed., *The Holocaust and History: The Known, the Unknown, the Disputed, and the Reexamined* (Bloomington, IN: Indiana University Press, 1998); Burleigh and Wippermann, *The Racial State*; Edward Ross Dickinson, "Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About Modernity," *Central European History* 37 (2004): 1-48; George L. Mosse, *Towards the Final Solution: A History of European Racism* (New York: Howard Fertig, 1978); George J. Stein, "Biological Science and the Roots of Nazism," *American Scientist* 76 (January-February 1988): 50-58; Paul Weindling, *Health, Race and German Politics between National Unification and Nazism, 1870-1945* (Cambridge: Cambridge University Press, 1989); John Weiss, *Ideology of Death: Why the Holocaust Happened in Germany* (Chicago: Ivan R. Dee, 1996).

before or after; there are certain ways in which Nazism was not necessarily unique, and the cultural construction of male and female identities is one of those ways.

Because there are almost no archival sources on the topic, this dissertation does not include any in-depth analysis of the rape of Jewish women; thus there is no way to use the court documents as a lens through which to examine Nazi antisemitism. Instead, this dissertation focuses on Nazi ideology as it pertained to Slavs. It should be noted, however, that even in the case of the Jews, the primary target and victim group of the Nazi regime, the racial ideology of the Nazis was incoherent, and there were still problems in determining what racial characteristics, if any, separated Jews from gentiles.⁷ Determining racial identity was difficult in the cases of *Mischlinge*, individuals of mixed race, and when questions arose, culture, not biology, was often the measure of identity.⁸

⁷ See the recent work of Rachel Boaz, “The Search for ‘Aryan Blood:’ Seroanthropology in Weimar and National Socialist Germany,” (Ph.D. Diss., Kent State University, 2009) for a discussion of the ways in which the Nazi regime attempted to find biological traits that could be used to define what it meant to be a Jew, and further to prove the biological inferiority of the Jews.

⁸ The work of Saul Friedländer, *Nazi Germany and the Jews: Volume I: The Years of Persecution, 1933-1939* (New York: HarperCollins Publishers, 1997), clearly illustrates that, at least in the case of *Mischlinge*, those individuals of mixed race, biology was not the criterion by which racial identity was measured; rather, it was cultural practice—whether the individual in question was married to a Jew, and whether that individual a practicing member of Judaism. Raul Hilberg, *The Destruction of the European Jews*, Student Edition (New York and London: Homes & Meier: 1985) provides a definition of the various categories of *Mischlinge*: “*Mischlinge* of the second degree: Persons descended from one Jewish grandparent... *Mischlinge* of the first degree: Persons descended from two Jewish grandparents but not belonging to the Jewish religion and not married to a Jewish person on September 15, 1935... Jews: Persons descended from two Jewish grandparents belonging to the Jewish religion or married to a Jewish person on September 15, 1935, and persons descended from three or four Jewish grandparents”(38). Again, the important role of religion in defining racial membership is clear from these definitions. Friedländer examines cases in which questions of the racial identity of *Mischlinge* were addressed, and the results of these cases are rather surprising, if one initially believed that Nazi racial ideology was coherent. In one case recounted by Friedländer, “a *Mischling* of the second degree... was turned into an ‘Aryan,’” and in another, a young girl was determined to be Jewish because, despite having an Aryan father, her mother converted and she herself was a practicing Jew. Her husband, also of mixed race, was also considered to be a Jew because he married a Jew (153 and 158). It is clear that biology plays no role in the determination of racial identity in these

One could argue that the *Mischlinge*, because of the mixed ancestry, were a special case, and culture had to be the measure of racial identity. Even in the case of full-Jews, however, the measure of Jewishness was religion. When Germans had to prove their Aryan status, they did so using religious documents.⁹ Thus, even though the language invoked by the Nazi regime was racial, the method of determining racial membership was not, it was cultural. Shulamit Volkov argues the same in her work on the origins of Nazi antisemitism, writing:

A reexamination of the writings of the main ideologues of anti-Semitism...throws grave doubts on the significance of the purely racial element for their thought processes and the essence of their message. It is true that the vocabulary of anti-Semitism had been changing, but only rarely did this entail a corresponding change in content.¹⁰

I would argue that the content of Nazi antisemitism was quite similar to that which came before, although there were linguistic differences, particularly in the mobilization of a language of race, and what made Nazi antisemitism different from other periods of time was the application rather than content of the ideology.

There are very few works that acknowledge the incoherence of Nazi racial ideology, but those that do argue this so convincingly, by examining the language of the high-ranking members of the regime and the actual practice of the Party on the ground.

cases; in the first case, an individual was “turned into” something else, a process which has no biological basis, and in the second, it was cultural practice—marriage and religious affiliation—that defined identity.

⁹ Eric Ehrenreich, *The Nazi Ancestral Proof: Genealogy, Racial Science, and the Final Solution* (Bloomington and Indianapolis: Indiana University Press, 2007), 66.

¹⁰ Shulamit Volkov, “The Written Matter and the Spoken Word: On the Gap Between Pre-1914 and Nazi Anti-Semitism,” in *Unanswered Questions: Nazi Germany and the Genocide of the Jews*, ed. Francois Furet (New York: Schocken, 1989), 39.

The aforementioned works of Saul Friedländer and Shulamit Volkov address the mutability of Nazi antisemitism, but for the purposes of this dissertation, the work of John Connelly on Nazi anti-Slavism is particularly important.¹¹ Connelly argues that there was no coherent policy against the Slavs; not all Slavs were considered equal—some national groups were worthy of better treatment, and some were even allowed to join the paramilitary organizations of the Nazi regime. For example, some Ukrainians were treated comparatively well, as were Bulgarians; Poles and Russians, however, were subject to severe persecution. Despite the catastrophic treatment of Poles by the Nazi regime, there was no long-standing practice of anti-Polonism. The targeting of Poles developed in conjunction with the move to the East, and thus did not prompt the attack on Poland, but resulted from the need to justify the invasion.¹² Although the regime invoked a racist rhetoric when referring to Russians, I would argue that the content of this rhetoric was based on the Nazi hatred of Bolshevism; the Nazis hated the Russians because of their political and ideological beliefs, and this hatred was expressed in a raced language. The Russians, coincidentally, also posed the greatest military threat to Nazi Germany, and the recognition of this threat facilitated the need for the development of an anti-Russian ideology that allowed the destruction of this threat. Further evidence of the incoherence and malleability of Nazi racial ideology as it pertained to Slavs can be found in the practice of Germanization, according to which certain members of supposedly

¹¹ John Connelly, “Nazis and Slavs: From Racial Theory to Racist Practice,” *Central European History* 32, no. 1 (1999): 1-33.

¹² *Ibid.*, 13.

racially inferior groups could be absorbed into the German race if they were judged to be racially fit enough to do so; this concept is addressed in more detail in the sixth chapter. Scholars have generally acknowledged that the racism directed towards Slavs was not equivalent to that directed towards the Jews, as Connelly writes:

Because the Nazis did not understand the Poles or the Russians—let alone the Slavs—as a race, there could be no policy of complete eradication. Any proponent of complete destruction of Poles or Russians would have first stumbled upon the difficulty of defining who a Pole or Russian was in the racial sense; there was no equivalent of the Nuremberg laws for this purpose.¹³

I would argue that the Nazis *tried* to understand Poles and Russians as separate races, but this attempt failed in practice. My analysis of the discourse about sexual relationships between Germans and Slavs supports Connelly’s argument that the regime could not actually determine the ways in which Poles or Russians were “racially inferior.”¹⁴

Connelly argues that the Nazi persecution of the Jews was driven by a coherent racial ideology, but as stated above, this racial ideology was actually based on religious affiliation, and even those scientists who endeavored to prove the biological inferiority of Jews, or even the existence of biological traits that could be considered specifically Jewish, failed in their attempts.¹⁵ This dissertation will demonstrate that high-ranking members of the Nazi party, like the racial scientists, knew their racial ideology to be

¹³ Ibid., 27.

¹⁴ Quotation marks are used for the terms “racial inferiority” and “racial superiority” in instances not prefaced with a qualifier such as “supposed,” or “ostensible” to indicate that I am not accepting the validity of these terms, but using them as an indicator of Nazi beliefs.

¹⁵ Boaz, “The Search for ‘Aryan Blood.’”

flawed, and yet they engaged in conversations attempting to define race and membership in various racial groups.

In illustrating the incoherence of Nazi racial ideology, my dissertation simultaneously reveals the overwhelming importance of gender ideology to Nazism, and the ways in which expressions of sexuality were both repressed and encouraged.¹⁶ There are relatively few gender analyses of Nazism, in part because of the very recent application of gender analysis to the study German history as a whole,¹⁷ and there are a variety of reasons why gender and sexuality have not been the focus of Holocaust historians and scholars of Nazism, including the difficulty of finding sources that address issues of gender and sexuality, as well as the fear that such analyses would be considered voyeuristic or titillating.¹⁸ There have been numerous works on German women living

¹⁶ See the works of Dagmar Herzog and Elizabeth Heineman for a discussion of the Nazi approach to sexuality, and the argument that Nazism was far more permissive of certain forms of sexuality than scholars have previously acknowledged. Dagmar Herzog, "Hubris and Hypocrisy, Incitement and Disavowal: Sexuality and German Fascism," in *Sexuality and German Fascism*, ed. Dagmar Herzog (New York and Oxford: Berghahn Books, 2005), 3-21; Elizabeth Heineman, "Sexuality and Nazism: The Doubly Unspeakable," in *Sexuality and German Fascism*, 22-66.

¹⁷ Only recently have scholars undertaken gender analyses of German History, although there are some exceptions. See, Lynn Abrams and Elizabeth Harvey, ed., *Gender Relations in German History: Power, Agency, and Experience from the Sixteenth to the Twentieth Century* (Durham: Duke University Press, 1997); Karen Hagemann and Stefanie Schüler-Springorum, ed., *Home/Front: The Military, War and Gender in Twentieth-Century Germany* (Oxford and New York: Berg, 2002); Karen Hagemann and Jean H. Quataert, ed., *Gendering Modern German History: Themes, Debates, Revisions* (New York: Berghahn Books, 2007); Patricia Herminhouse and Magda Mueller, ed., *Gender and Germanness: Cultural Productions of Nation* (Providence, R. I.: Berghahn Books, 1997); Dagmar Herzog, ed., *Sexuality and German Fascism*.

¹⁸ Heineman, 22-25.

under Nazism,¹⁹ and on the treatment of Jewish women in particular,²⁰ but very little examination of what it meant to *be* a woman in this historical period of time, and how womanhood was defined and experienced by German women and the victims of Nazi persecution. What is not analyzed, however, is how that treatment affected women's own perception of their femininity, and how those particular experiences may have challenged or reinforced their own gender identities. Unfortunately, my dissertation too cannot engage with these questions, as the documents do not present women's experiences; women may have been interviewed, and their testimony may be in the documents, but they were only answering the questions asked of them, those deemed important by the participants in the trials—their experiences are presented through the filter of the legal

¹⁹ Gisela Bock, "Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization, and the State," in *When Biology Became Destiny: Women in Weimar and Nazi Germany*, ed. Renate Bridenthal, Atina Grossmann, and Marion Kaplan (New York: Monthly Review Press, 1984), 271-296; idem, "Antinatalism, Maternity and Paternity in National Socialist Racism," in *Nazism and German Society, 1933-1945*, ed. David F. Crew (London and New York: Routledge, 1995), 110-140; Claudia Koonz, *Mothers in the Fatherland: Women, the Family, and Nazi Politics* (New York: St. Martin's Press, 1986); Jill Stephenson, "Women, Motherhood and the Family in the Third Reich," in *Confronting the Nazi Past: New Debates on Modern German History*, ed. Michael Burleigh (New York: St. Martin's Press, 1996), 167-183.

²⁰ Gisela Bock, ed., *Genozid und Geschlecht: Jüdische Frauen im nationalsozialistischen Lagersystem* (Frankfurt and New York: Campus Verlag, 2005); Judith Tydor Baumel, *Double Jeopardy: Gender and the Holocaust* (London and Portland, OR: Vallentine Mitchell & Co. Ltd., 1998); Myrna Goldenberg, "Different Horrors, Same Hell: Women Remembering the Holocaust," in *Thinking the Unthinkable: Meanings of the Holocaust*, ed. Roger S. Gottlieb (New York: Paulist Press, 1990), 150-166; idem, "Lessons Learned from Gentle Heroism: Women's Holocaust Narratives," *Annals of the American Academy of Political and Social Science* 548 (November 1996): 78-93; idem, "Memoirs of Auschwitz Survivors: The Burden of Gender," in *Women in the Holocaust*, ed. Dalia Ofer and Lenore J. Weitzman (New Haven and London: Yale University Press, 1998) 327-339; Marion A. Kaplan, *Between Dignity and Despair: Jewish Life in Nazi Germany* (New York: Oxford University Press, 1998); S. Lillian Kremer, ed., *Women's Holocaust Writing: Memory and Imagination* (Lincoln and London: University of Nebraska Press, 1999); Joan Ringelheim, "Women and the Holocaust: A Reconsideration of Research," in *Feminism and Community*, ed. Penny A. Weiss and Marilyn Friedman (Philadelphia: Temple University Press, 1995), 317-340; idem, "The Split between Gender and the Holocaust," in *Women in the Holocaust*, 340-350; Roger S. Smith, "Women and Genocide: Notes on an Unwritten History," *Holocaust and Genocide Studies* 8, no. 3 (Winter 1994): 315-334.

system. Thus, we have no way to analyze what sexual violence meant to the women who experienced it. What my dissertation does illustrate, however, is what *others* involved in the court proceedings thought it meant to be a woman, how they defined femininity, and the ways in which those conceptions affected the determination of punishment. These notions of femininity may have been presented by the military judge in his final sentencing statement, but they were the product of the environment in which the judges functioned, and thus we can use the statements of the jurists, supported by other primary source material, to illustrate the cultural construction of gender identity in this historical time period. What becomes clear from my analysis of rape trials is that gender ideology was often more frequently invoked in the court proceedings than any discussion of the race of the women, and what my dissertation as a whole argues is that gender was a fundamental aspect of Nazi ideology, just as important as racial ideology, something which few scholars have acknowledged.²¹

Only very recently have scholars begun to examine concepts of masculinity, either of Jewish or German men, living under Nazism. There are more analyses of German masculinity than of femininity, although there is more overall research on the specific experiences of women than on men. Scholars have started to examine concepts of martial masculinity, focusing on German men in the military, before and during the

²¹ See Regina Mühlhäuser, "Between 'Racial Awareness' and Fantasies of Potency: Nazi Sexual Politics in the Occupied Territories of the Soviet Union, 1942-1945," in *Brutality and Desire: War and Sexuality in Europe's Twentieth Century*, ed. Dagmar Herzog (England: Palgrave Macmillan, 2009) 197-220 for further evidence of the importance of gender ideology.

Second World War.²² Scholars analyzing military masculinity characteristic of the *Wehrmacht*, primarily those of Thomas Kühne and Stephen G. Fritz, concentrate specifically on the concept of *Kameradschaft*, and the tension between camaraderie and homosociality and homosexuality.²³ The best research on masculinity is to be found in works analyzing the Nazi persecution of homosexuals because even if the author did not intend to focus on gender, the language of persecution nevertheless lends itself to such an analysis as the Nazis themselves specifically criticize homosexuals for transgressing heterosexual norms, and thus for being unmanly and threatening the strength of the military, the nation, and the race.²⁴ Lesbians were never the target of Nazi persecution, despite engaging in homosexual contact; such behavior was not perceived as threatening

²² See Todd Richard Ettelson, "The Nazi 'New Man': Embodying Masculinity and Regulating Sexuality in the SA and SS, 1930-1939," (Ph.D. Diss., University of Michigan, 2002); George L. Mosse, *Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe* (New York: Howard Fertig, 1985), for a discussion of the First World War and concepts of masculinity. See also Karen Hagemann, "Of 'Manly Valor' and 'German Honor': Nation, War, and Masculinity in the Age of the Prussian Uprising against Napoleon," *Central European History* 30, no. 2 (1997): 187-220; idem, "German Heroes: The Cult of Death for the Fatherland in Nineteenth-Century Germany," in *Masculinities in Politics and War: Gender Modern History*, ed. Stefan Dudink, Karen Hagemann and John Tosh (Manchester and New York: Manchester University Press, 2004), 116-134.

²³ Stephen G. Fritz, *Frontsoldaten: The German Soldier in World War II* (Kentucky: The University Press of Kentucky, 1995); Thomas Kühne, "Comradeship: Gender Confusion and Gender Order in the German Military, 1918-1945," in *Home/Front: The Military, War and Gender in Twentieth-Century Germany*, ed. Karen Hagemann and Stefanie Schüler-Springorum (Oxford and New York: Berg, 2002), 233-254; idem, *Kameradschaft: Die Soldaten des nationalsozialistischen Krieges und das 20. Jahrhundert* (Göttingen: Vandenhoeck and Ruprecht, 2006).

²⁴ Geoffrey J. Giles, "The Institutionalization of Homosexual Panic in the Third Reich," in *Social Outsiders in Nazi Germany*, ed. Robert Gellately and Nathan Stoltzfus (Princeton, New Jersey: Princeton University Press, 2001), 223-255; idem, "Legislating Nazi Homophobia: The Radicalization of Prosecution Against Homosexuality by the Legal Profession in the Third Reich," *German History*, special issue on "Sexuality in Modern German History," 23, no. 3 (2005): 339-354; Stefan Micheler, "Homophobic Propaganda and the Denunciation of Same-Sex Desiring Men under National Socialism," in *Sexuality and Fascism*, 95-130; Harry Oosterhuis, ed., *Homosexuality and Male Bonding in Pre-Nazi Germany: the youth movement, the gay movement, and male bonding before Hitler's rise* (New York and London: The Hawthorn Press, Inc., 1991); idem, "Medicine, Male Bonding and Homosexuality in Nazi Germany," *Journal of Contemporary*

because women could be forced to reproduce and because the main concern about homosexual contact was the threat posed to heterosexual masculinity. This emphasis on heterosexual masculinity is also evident in studies of forced prostitution; Nazi ideology clearly equated access to heterosexual sex with masculinity, and masculinity with military strength.²⁵ This work contributes to this historiographical theme of heterosexual masculinity by examining how the military judges treated men charged with rape and the abuse of female children, which were construed as heterosexual activities, as compared to those accused of homosexual activity.

My research is strongly influenced by the historiography of rape in general, the relationship between rape and masculinity,²⁶ and more specifically, rape committed by

History 32, no. 2 (1997): 187-205; William J. Spurlin, *Lost Intimacies: Rethinking Homosexuality under National Socialism* (New York: Peter Lang, 2009); Hans-Georg Stümke, "From the 'People's Consciousness of Right and Wrong' to 'The Healthy Instincts of the Nation': The Persecution of Homosexuals in Nazi Germany," in *Confronting the Nazi Past*, 154-166.

²⁵ Annette F. Timm, "Sex with a Purpose: Prostitution, Venereal Disease, and Militarized Masculinity in the Third Reich," in *Sexuality and Fascism*, 223-255.

²⁶ Miranda Alison, "Wartime Sexual Violence: Women's Human Rights and Questions of Masculinity," *Review of International Studies* 33, no. 1 (January 2007): 75-90; Wendy Bracewell, "Rape in Kosovo: Masculinity and Serbian Nationalism," *Nations and Nationalism* 6, no. 4 (2000): 563-590; Price, "Finding the Man in the Soldier-Rapist," 211-227.

soldiers during war.²⁷ At the same time, my research adds to those historiographies by providing an analysis of rapes committed by German soldiers. There are studies on sexual violence committed by other participants during and after the Second World War, particularly the Japanese in China and the Russians in post-war Germany, respectively.²⁸ There are, however, only two other monographic works that focus specifically on sexual assaults committed by German soldiers, and thus my work contributes a new analysis of

²⁷ Christine Ball, "Women, Rape and War: Patriarchal Functions and Ideologies," *Atlantis* 12, no. 1 (Fall 1986): 84-85; Bulent Diken and Carsten Bagge Laustsen, "Becoming Abject: Rape as a Weapon of War," *Body and Society* 11, no. 1 (March 2005): 111-128; Nancy Farwell, "War Rape: New Conceptualizations and Responses," *Affilia* 19, no. 4 (Winter 2004): 389-403; Jean Franco, "Rape: A Weapon of War," *Social Text* 25, no. 2 (Summer 2007): 23-37; Nicola Henry, Tony Ward and Matt Hirshberg, "A Multifactorial Model of Wartime Rape," *Aggression and Violent Behavior* 9 (2004): 535-562; Patricia H. Hynes, "On the Battlefield of Women's Bodies: An Overview of the Harm of War to Women," *Women's Studies International Forum* 27 (2004): 431-445; Diana Mililo, "Rape as a Tactic of War: Social and Psychological Perspectives," *Affilia* 21, no. 2 (2006): 196-205; Catherine N. Niarchos, "Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia," *Human Rights Quarterly* 17

(1995): 649-690; Ruth Seifert, "The Second Front: The Logic of Sexual Violence in Wars," *Women's Studies International Forum*, 19, no. 1/2 (1996): 35-43; Inger Skjelsbaek, "Sexual Violence in Times of War: A New Challenge for Peace Operations?" *International Peacekeeping* 8, no. 2 (Summer 2001): 69-84.

²⁸ For sexual assaults committed by Japanese soldiers, see Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (New York: Penguin Books, 1997). For analyses of the sexual exploitation of women by the Japanese government, see George L. Hicks, *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in the Second World War* (New York: W. W. Norton & Co., 1995); Pyong Gap Min, "Korean 'Comfort Women': The Intersection of Colonial Power, Gender, and Class," *Gender and Society* 17, no. 6 (December 2003): 938-957; Toshiyuki Tanaka, *Japan's Comfort Women: Sexual Slavery and Prostitution during World War II and the US Occupation* (London and New York: Routledge, 2002). There are also a number of works that address rapes committed by Russian soldiers in Germany during the last days of the war and the beginning of the occupation. See Atina Grossmann, "A Question of Silence: The Rape of German Women by Occupation Soldiers," *October* 72, Berlin 1945: War and Rape "Liberators take Liberties" (Spring 1995): 42-63; James W. Messerschmidt, "The Forgotten Victims of World War II: Masculinities and Rape in Berlin, 1945," *Violence against Women* 12, no. 7 (July 2006): 706-712; Helke Sander and Barbara Johr, ed., *BeFreier und Befreite: Krieg, Vergewaltigungen, Kinder* (Munich: Verlag Antje Kunstmann, 1992); Hsu-Ming Teo, "The Continuum of Sexual Violence in Occupied Germany, 1945-49," *Women's History Review* 5 no. 2 (1996): 191-218. James Mark analyzes rape committed by Soviets in Hungary, "Remembering Rape: Divided Social Memory and the Red Army in Hungary 1944-1945," *Past and Present* no. 188 (August 2005): 133-161.

masculinity, war, and rape to the existing historiography of rapes committed during war in general, and during the Second World War in particular.

It is difficult to understand how one *cannot* discuss concepts of masculinity when analyzing rape. Scholars have persuasively argued for the relationship between rape and masculinity, from the early and problematic work of Susan Brownmiller, who writes that rape is a political act of violence, one by “which all men keep all women in a state of fear,”²⁹ to the more nuanced work which has emerged since, by scholars studying incidences of mass rape. What we see in the trial documents of German men accused of rape is what Euan Hague, in his work on the role of rape in the creation of identities during the war in Bosnia-Herzegovina, calls “hetero-nationality.”³⁰ Hague, arguing that “gender and national identities...are totally intertwined,”³¹ maintains that perpetrators of rape, even men raping other men, are coded as masculine, and through rape, they assert a specific identity, their hetero-nationality. Similarly, Lisa S. Price clearly articulates how rape functioned to reinforce masculine gender identity in former Yugoslavia when she writes that rape, for the man, expresses the following: “I AM only to the extent that you are not—male because you are female, Serb because you are Muslim, soldier because you are civilian. Your absence marks, verifies my presence and your pain becomes my

²⁹ Brownmiller, 15.

³⁰ Hague, 55.

³¹ *Ibid.*, 55.

power.”³² There was no political or military plan for rape to be committed by German soldiers, as there was in the former Yugoslavia. However, rape still functioned as an expression of a specific national heterosexual masculinity, in that it was German soldiers raping women of defeated nations or defeated ethnic groups—it was a manifestation of hetero-nationality.

The occurrence of rape during wars or genocides is also facilitated by the depiction of woman, particularly enemy women. Women “belonging” to the enemy are portrayed as ‘whores,’ as “uniformly characterized as sexually promiscuous and available.”³³ This objectification of women can be seen in Nazi discourse about women; German women were to be protected as the mothers of the race,³⁴ although we will see this was not always the case, while racially foreign women were ideologically considered “always the worst of their *Volk*,”³⁵ although again, in practice this was not a constant. This public, almost institutional, lack of respect for women—the objectification of women—in addition to beliefs about the racial superiority of German men occupying particular nations, facilitated sexual violence.

³² Price, 213, emphasis in the original.

³³ Jamie Munn, “The Hegemonic Male and Kosovar Nationalism, 2000-2005,” *Men and Masculinities* 10, no. 4 (June 2008): 440-456 writes about the depiction of “Serbian women and the ‘common knowledge they are whores’” as facilitating the rape of Serbian women. Tutsi women were also presented as threats to Hutu men, to Hutu power, and as whores.

³⁴ Timm, “Sex with a Purpose,” 246.

³⁵ BA-MA, RS 3-8-78, SS-Kav.Division VI, Div.Gef.St., den 30.7.43, *Der SS-Mann und die Frau aus fremden Volkstum*.

According to philosopher Ann Cahill, in her work *Rethinking Rape*, the “threat of rape is a formative moment in the construction of the distinctly feminine body...”³⁶ She argues that rape creates, for the female victim, the identity of feminine, that “[t]he sexual meanings of rape from the perspective of the victim have everything to do with the construction of the particularly feminine body.”³⁷ Cahill also writes that “sexuality is not just another site of discursive power, but a particularly trenchant one,”³⁸ and that “bodies are texts that we may read in order to discern the (sometimes implicit) claims of the dominant discourse.”³⁹ Using Cahill’s arguments that rape in part creates a feminine identity, that sexuality is the site of the writing of a discourse about power, and that rape is written on the body, then the rape and child abuse court-martial cases may be used as a lens through which to examine the creation and negotiation of particular feminine identities, for example the “good” women who were traumatized by sexual violence and the “bad” women who deserved rape. The reflection of the power differential between men and women, Germans and non-Germans, and soldiers and civilians, as written on the body, will also be clear. What the court documents demonstrate is that rape and child abuse, not just to the female victim, but also in the eyes of the male perpetrator and the male observer (the judge), also create the feminine body. It is clear from the court-martial documents that the judges also saw the body of the woman marked as feminine

³⁶ Ann J. Cahill, *Rethinking Rape* (Ithaca and London: Cornell University Press, 2001), 143.

³⁷ *Ibid.*, 163.

³⁸ *Ibid.*, 149.

³⁹ *Ibid.*, 151.

through the act of rape, a contention further supported by the fact that the law against rape applied specifically to women—men and male children could not legally be raped. The participants in the trial also saw rape as an expression of masculine power over feminine weakness, an expression of power that could sometimes be forgiven if in accordance with the behavior expected from soldiers, or could be punished if violating the norms of masculinity.

Of those works examining sexual assaults committed by German soldiers during the war, the best is that of German scholar Birgit Beck, whose book, *Wehrmacht und sexuelle Gewalt*,⁴⁰ was the first comprehensive analysis of sexual violence committed by German soldiers; it was also the first to utilize the collection of sex crimes cases now housed at the *Bundesarchiv-Militärarchiv* in Freiburg, Germany.⁴¹ In a massive undertaking, Beck attempted to place the sex crimes committed by German soldiers in the context of rape committed during other wars, from the Napoleonic wars to the rapes committed during the civil war in Yugoslavia. She also provides one of the most comprehensive discussions of German military law and punishment for sexual violence,

⁴⁰ Birgit Beck, *Wehrmacht und sexuelle Gewalt: Sexualverbrechen vor deutschen Militärgerichten, 1939-1945* (Paderborn: Ferdinand Schöningh, 2004).

⁴¹ Wendy Jo Gertjeanssen, “Victims, Heroes, Survivors: Sexual Violence on the Eastern Front during World War II, (Ph.D. Diss., University of Minnesota, 2004) also analyzes sexual assault committed by German soldiers on the Eastern Front. She examines prostitution, sexually transmitted diseases, sexual slavery in the camps, and conducts oral interviews with survivors and witnesses of sexual assault. While Gertjeanssen’s work is well-done, it encompasses such a variety of sexual relationships, and a large geographic territory as well, that conclusions about the nature of sexual violence in the East are difficult to draw; there are too many kinds of sexual violence, committed by and against too many kinds of people, and there is a difference between rape committed by soldiers as they move eastward, and prostitution supported by the regime. What Gertjeanssen’s work does illustrate, however, is that sexual violence was much more frequent than scholars have thus far acknowledged, and she is also one of the first scholars to focus on women’s experience of sexual violence, although she does so only during the chapter examining the oral interviews.

and a chapter on prostitution. In her book, Beck highlights various issues considered important during the trials, including the believability of the witnesses and the degree of evidence required to prove a sexual assault occurred; the ways in which soldiers attempted to challenge the accusation of rape, primarily achieved by arguing that the woman in question did not resist or that she reciprocated in some way; and the various ways in which the determination of punishment was affected by the issues of the reputation of the *Wehrmacht*, the effect of alcohol, the sexual emergency of the soldier (*Geschlechtsnot*), and the sexual honor of the women in question. Beck believes that the reputation of the *Wehrmacht* was a real military issue particularly in France, where Germany was the occupying power; also affecting punishment, she believes, is the possibility that sexual violence would, as the judges sometimes argued, cause support for partisan movements. In her discussion of sexual honor, Beck argues that the military judges believed Slavic women, particularly Russian women, to have less sexual honor than German women. It is true that the judges sometimes said this, although rather infrequently and there are cases in which the sexual honor of “racially inferior” women was not an issue and in fact, the men were criticized for acting in particularly brutal ways against them. What becomes clear when cases of sexual violence against German women are examined is that the judges occasionally thought very little of them as well—rape of a German woman did not necessarily result in a severe punishment. Beck concludes, in various publications of her research, that German soldiers were more severely punished for committing rape against women in France, in part because of the need to maintain

good relations with the French during the occupation period.⁴² By contrast, men convicted of committing rape in the East were less severely punished, Beck argues, because of “unambiguously National Socialist and racist ways of thinking about ‘non-Aryan’ women.”⁴³

Whereas Beck’s work attempts to place sexual violence committed by German soldiers in the very broad context of rape committed during war as well as providing a discussion of prostitution and its “importance” to the success of the military, the second major text on sexual violence committed by German soldiers, David Raub Snyder’s book *Sex Crimes under the Wehrmacht*, has a much narrower focus—the analysis of prosecutions of sex crimes as a lens through which to examine the justice system of the German army (*Wehrmachtjustiz*).⁴⁴ Using primarily the same sources as Beck, although also including cases from Germany, Snyder examines cases of rape; child abuse; *Rassenschande*; and violations of §175, the law against homosexual contact, and in a sub-clause, against bestiality. He attempts to determine whether court decisions were motivated by adherence to Nazi ideology, and draws two important conclusions from his work: first, contra Beck, Snyder argues that the punishment for German soldiers accused of raping Eastern European women could be severe, but “not for reasons of compassion

⁴² Birgit Beck, “Sexual Violence and its Prosecution by Courts Martial of the *Wehrmacht*,” in *A World at Total War: Global Conflict and the Politics of Destruction, 1937-1945*, ed. Roger Chickering (German Historical Institute, Washington, DC: Cambridge University Press, 2005), 325-326.

⁴³ Birgit Beck, “Rape: The Military Trials of Sexual Crimes Committed by Soldiers in the *Wehrmacht*, 1939-1944,” in *Home/Front*, 268.

⁴⁴ David Raub Snyder *Sex Crimes under the Wehrmacht* (Lincoln and London: University of Nebraska Press, 2007).

but rather for the protection of immediate military interests.”⁴⁵ Second, that military interests were of more importance than ideology in the determination of punishment.

Both Snyder and Beck, in attempting to determine whether men were punished more or less severely for the rape of Eastern and Western European women, are implicitly accepting the validity of Nazi racial ideology. I use the terminology of the Nazis, specifically in my discussions of racial “inferiority” and “superiority,” but I do so in an attempt to prove that such categories did not actually exist in any concretized form. What becomes clear through the analysis not just of the court-martial documents, but also other military and Party memoranda about race, is that there was no coherent definition of racial inferiority, and that Nazi racial ideology was fluid and fraught with tension. If race alone was not the axis around which military jurisprudence rotated, then other reasons for punishment and mitigation thereof remain to be determined. My work argues that gender ideology was a significant factor explaining the reasons the judges meted out the punishments they did. Like Beck, I see the issues of sexual emergency, concepts of sexual honor, the reputation of the *Wehrmacht*, soldierly ability and the maintenance of military discipline to be of great importance in the determination of punishment. Sexual honor and the belief that men faced a sexual emergency in the absence of sex are clearly gendered concepts, but the reputation of the *Wehrmacht*, evaluations of soldierly ability, and concerns about military discipline operated on a level beyond that of pragmatic military concern, and that is the maintenance of the *Wehrmacht* as a masculine

⁴⁵ Ibid., 139. The work of Christoph Rass, *‘Menschenmaterial!’: Deutsche Soldaten an der Ostfront: Innenansichten einer Infanteriedivision 1939-1945* (Paderborn: Ferdinand Schöningh, 2003) also suggests that punishment for men accused raping Russian women was not uniform.

organization. At times, Beck acknowledges the importance of gender, writing about the sexual honor of women (*Geschlechtsehre*) and the masculinity of German soldiers in her discussion of sexual emergency, but she analyzes the former primarily as it related to race—German women were assumed to have a particular kind of sexual honor, and “racially inferior” women a less developed sense of honor. The latter, however, she examines without the context of race, failing to recognize that it was *German men*, not just any men, who required access to sex; the issue of sexual emergency was not a factor in sentencing Polish or ethnic German men who had committed sex crimes. Moreover, Beck accepts that concerns about military interests were really at the heart of judicial discussions about reputation, discipline and ability, whereas my dissertation argues that these concepts were expressions of military masculinity, and were evaluated as such. The examination of these concepts of discipline, honor, cowardice, and soldierly ability help define masculinity during this particular period of time.⁴⁶ Snyder, and to a lesser degree Beck, privilege Nazi racial ideology in their analyses, attempting to explain punishment primarily through the lens of Nazi racism. What the court documents demonstrate, however, is that the gender and racial ideology of the Nazi regime and the German military were inextricably related, and evaluations of masculinity and femininity were just as important to the determination of punishment as were concepts of racial superiority and inferiority.

⁴⁶ As argued by Kimberly Hutchings, “Making Sense of Masculinity and War,” *Men and Masculinities* 10, no. 4 (June 2008), “courage, rationality, and discipline” can be considered “as different aspects or gradations of masculinity” (401).

Snyder devotes a full chapter to men accused of violating §175, as do I; Beck, because she focuses on sexual assault, does not discuss charges of homosexuality. In one way, to include a chapter on homosexuality in my dissertation implicitly suggests an acceptance that such contact should be a crime. Moreover, because the majority of the relationships in these cases were consensual or non-violent, the analysis of these documents produces a rather jarring shift in analysis of sexual violence to sexual relationships. These cases are included nonetheless, because I examine all the German laws as they were applied at the time, and because it is necessary to analyze the language the judges used to condemn or absolve men accused of same-sex contact, as it demonstrates the importance of heterosexual masculinity to the military and the Nazi regime. Men accused of rape and the abuse of female children were treated differently by the court than men accused of same-sex contact, and the courts formed different opinions of their masculinity, which could affect the sentencing proceedings.

One cannot focus alone on masculinity, but must also include an analysis of how women were portrayed by the regime and the military as well, because constructs of masculinity were negotiated not only within the category itself, but also in relation to constructs of femininity. Thus, this dissertation examines how women were described by the military judges, and the effect of those evaluations on sentencing decisions. What becomes clear from the analysis not only of rape cases, but also cases of child abuse, is that the judges often blamed women and children for sexual abuse, arguing that they provoked violence through their behavior, and had they acted in accordance with gender norms, the sexual violence would never have occurred. Like Snyder, I include an

analysis of child abuse, which Beck does not specifically do, but I do so to demonstrate the pervasiveness of gender ideology, to demonstrate that there were gendered differences in the ways in which men accused of the sexual abuse of female and male children were punished. Race was not a factor in child abuse cases, but acting in ways coded as normal was.

Both Beck and Snyder focus on rapes committed by German soldiers, either in the field or in Germany. This dissertation, however, also includes an analysis of court documents in cases of rape committed by Poles in the Warthegau, and by ethnic Germans in occupied Poland. These cases demonstrate that the judges believed sexual violence committed by Poles was a product of what they thought was their inherent racial inferiority, and these men were very harshly punished, most often with the death penalty, for their behavior, particularly if assaults were perpetrated against German women and children. The cases of ethnic German men charged with sexual violence illustrate the fluidity of Nazi racial ideology. These men who were to be included in the *Volksgemeinschaft* had, through their behavior and not any biological quality, proven that they did not belong to the German race. My work demonstrates the intersection of gender and racial ideology, and the inextricable relationship between gender and race. The examination of documents from occupied territories demonstrates that Polish men were considered a grave danger to the *Volk* because they had the potential to tarnish the honor of German women, who were representatives of the *Volk*. The analysis of those cases in which ethnic Germans were accused of rape illustrate that the military *adjusted* the identity of German man to exclude those whose behavior was considered

objectionable—thus demonstrating the mutability of the very concept of race in the Nazi worldview.

In order to demonstrate the pervasiveness and importance of gender ideology, and to further illustrate the ways in which the identity of German man in the Nazi period was negotiated, I also analyze clemency applications written by soldiers and family members of the accused. These letters reveal that the negotiation of the concept of masculinity occurred not just in the state-sponsored military legal system, but at the level of the individual as well, as soldiers and their family members attempted to understand what it meant to be a German man, and how to best use that understanding and identity to their benefit. Snyder and Beck, with their focus on Nazi racial ideology, do not examine these sources in any detail, but these documents do clearly show tensions in the construction and understanding of masculine identity.

Because I use the same archival collection as Birgit Beck and David Snyder, *Bestand Ost*, and also the same collection of courts-martial occurring in Germany proper as Snyder, *Wehrmacht Kommandantur*, there are a number of occasions when we all use the same court cases, and even the same passages. Occasionally, the point of my using a particular passage overlaps with either Beck or Snyder, or both, and I acknowledge those instances. However, the analytical method I employ, a discursive analysis of the language of the military judges, differs from Beck, who, I would argue, is performing more of a social than cultural history, although she does cross the boundaries between the two approaches. My methodology differs more significantly from Snyder, who is simply examining the court cases to determine the role of Nazi ideology in the military judicial

decisions. I ask different questions of the source material, specifically focusing on issues of gender, but more generally attempting to demonstrate the incoherence of Nazi racial ideology and the fluidity of gender ideology. I also draw significantly different conclusions than both Beck and Snyder. I argue that in the documents, we can see the attempt to *create* a particular national identity, and that we can see the tensions in both racial and gender ideology. I also demonstrate that the degree to which these ideologies were specifically Nazi was questionable, which is why I argue for the attempted creation of identity and ideology, as well as their negotiation. By contrast, Beck and Snyder present Nazi ideology as already present and defined, implicitly accepting the validity of Nazi racial terminology, and proceed from this starting point with their analysis.

From German to Nazi Ideologies

One of the greatest challenges of this research, with its focus on heterosexual masculinity and the intersection of gender and racial ideology, has been to understand the extent to which concepts of masculinity in the German military and under the Nazi regime differed. Historians have already demonstrated the degree to which the German military was a masculine entity. Scholars such as Ute Frevert have argued that the military, at least in the Imperial period, operated as a “school of manliness,” in which the army “transform[ed] the ‘youth’ into a ‘man’.”⁴⁷ This “school of manliness” functioned as a “bastion of ‘morality’” while at the same time was characterized by the publicization

⁴⁷ Ute Frevert, *A Nation in Barracks: Modern Germany, Military Conscription and Civil Society*, trans. Andrew Boreham with Daniel Brückenhuis (Oxford, New York: Berg), 170 and 173.

of sexuality.⁴⁸ That is, sexuality, sexual conquest, and treatment of women were discussed openly and crudely, by soldiers.⁴⁹ What is unclear, however, is whether this concept of German masculinity changed under the Nazi regime—whether there existed a new Nazi German masculinity that can be differentiated from the pre-Nazi period. The German military functioned as the military arm of the Nazi regime, and scholars have attempted to demonstrate the extent to which soldiers in the *Wehrmacht* were ideologically indoctrinated. The majority of scholars suggest that *Wehrmacht* soldiers did internalize Nazi ideology. Alexander Rossino argues that although the “war against Poland lacked the explicitly ideological dimension that was central to Nazi Germany’s animus toward the Soviet Union,”⁵⁰ it is clear that German soldiers, writing in letters and diaries, believed Polish gentiles and Jews to be racially inferior “subhumans.”⁵¹ According to Rossino, German soldiers had internalized Nazi racial ideology to the extent that they believed they were engaged in a war “against their bitter racial enemies,” enemies who were not even human, but “whose behavior and appearance resembled that of beasts.”⁵² Omer Bartov, in numerous works, also argues that German soldiers were strongly indoctrinated with Nazi ideology, as evidenced by the increasing cruelty

⁴⁸ Ibid., 173.

⁴⁹ Ibid., 173 and 175. Frevert writes: “Talking about relationships with women in crude imagery, often violent, induced an almost cathartic effect: apparently reassuring each other that one ‘could “use”’ women sexually...(175).

⁵⁰ Alexander B. Rossino, *Hitler Strikes Poland: Blitzkrieg, Ideology, and Atrocity* (Lawrence, Kansas: University Press of Kansas, 1997), 191.

⁵¹ Ibid., 203.

⁵² Ibid., 212 and 214, the reference to Poles as beasts includes both Polish Jews and Gentiles.

exhibited by the German army as it moved into the Soviet Union.⁵³ Bartov's acceptance of the success of the ideological indoctrination of the German soldier is evident in many of his scholarly works,⁵⁴ and his argument that the war in the East was an ideological war to which the German soldier ascribed is persuasive, as is his suggestion that the acceptance of this ideology depicting the enemy as racially inferior, even subhuman, functioned to increase the barbarity of the behavior of the German soldier.⁵⁵ The problem is, however, as the various communications of Nazi and military officials, as well as the court documents demonstrate, that Nazi racial ideology was not coherent. It could not have been Nazi racial ideology alone that caused the excessive brutality of German soldiers, particularly in the East, because the regime, and thus the military, could not determine who was and should be considered racially inferior, and how that identity should be defined.

In his work *Ordinary Men*, Christopher Browning, argues that ideological indoctrination is an insufficient explanation for why ordinary German soldiers, like those

⁵³ Omer Bartov, *Hitler's Army: Soldiers, Nazis, and the War in the Third Reich* (New York and Oxford: Oxford University Press, 1992); idem, *The Eastern Front, 1941-45, German Troops and the Barbarisation of Warfare*, 2nd ed. (Oxford: Palgrave, 2001).

⁵⁴ Omer Bartov, "Daily Life and Motivation in War: The *Wehrmacht* in the Soviet Union," *Journal of Strategic Studies* 12 (1989): 200-214; "Soldiers, Nazis, and War in the Third Reich," *The Journal of Modern History* 63, no. 1 (March 1991): 44-60; "The Conduct of War: Soldiers and the Barbarization of Warfare," *The Journal of Modern History* 64, *Supplement: Resistance Against the Third Reich* (December 1992): S32-S45; "Operation Barbarossa and the Origins of the Final Solution," in *The Final Solution: Origins and Implementation*, 119-136.

⁵⁵ Bartov, *Hitler's Army*, 4.

charged with rape in the court-martial documents, would participate in mass murder.⁵⁶

Although he does not use the word masculinity, Browning nonetheless proves that adhering to norms of masculinity was of fundamental importance to the “success” of the soldiers carrying out executions. Browning argues that one of the reasons men participated in murder was so they would not be considered “‘too weak’ or ‘cowardly’”⁵⁷—concepts associated with military masculinity.⁵⁸ This is an important point because it is not just any man killing civilians, but the German man. Browning, writing about why men did not refuse to participate, suggests that “To break ranks and step out, to adopt overtly nonconformist behavior, was simply beyond most of the men.”⁵⁹ He continues:

therefore, most of those who did not shoot only reaffirmed the ‘macho’ values of the majority—according to which it was a positive quality to be ‘tough’ enough to kill unarmed, noncombatant men, women, and children—and tried not to rupture the bonds of comradeship that constituted their social world... Only the very exceptional remained indifferent to taunts of ‘weakling’ from their comrades and could live with the fact that they were considered to be ‘no man.’⁶⁰

⁵⁶ Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Collins, 1992).

⁵⁷ *Ibid.*, 72.

⁵⁸ Joane Nagel, “Masculinity and Nationalism: Gender and Sexuality in the Making of Nations,” *Ethnic and Racial Studies* 21, no. 2 (March 1998): 242-269.

⁵⁹ Browning, 184.

⁶⁰ *Ibid.*, 185-186.

The role of masculinity, the conformity to expectations of masculinity, was central to the military endeavor, and to the mass murders German soldiers carried out.⁶¹ What Browning demonstrates is that previously existing concepts of masculinity were being mobilized in a new direction, the elimination of a racial enemy. In this shift from the focus on the enemy, to the focus on the “racial enemy,” we can see the development of a particular Nazi German masculinity—one which relied on pre-existing behaviors coded masculine as the means for the success of Nazi racial ideology. However, because we now know that Nazi racial ideology was incoherent, and that concepts of masculinity and femininity are always subject to tension and under negotiation, then what occurred during the Second World War was an *attempt* to create a hegemonic Nazi masculinity.

Analytical Framework and Purpose

Hegemony, the “winning and holding of power and the formation (and destruction) of social groups in that process,” is maintained through the “persuasion of the greater part of the population, particularly through the media, and the organization of social institutions in ways that appear ‘natural,’ ‘ordinary,’ ‘normal.’ The state, through punishment for non-conformity, is crucially involved in this negotiation and enforcement.”⁶² With the development of a new Nazi masculinity, incorporating the old

⁶¹ See the work of Karen Hagemann, “Military, War and the Mainstream: Gendering Modern German Military History,” in *Gendering Modern German History*, 63-85 for a discussion of the evolution of German military masculinity from the nineteenth century to the Second World War. See also Fritz, *Frontsoldaten*; Kühne, *Kameradschaft*, for discussions of masculinity and homosocial bonding in the German military.

⁶² Mike Donaldson, “What is Hegemonic Masculinity?,” *Theory and Society* 22, no. 5 Special Issues: Masculinities (October 1993), 645.

and devoted to a new goal, we see the attempt to create a hegemonic Nazi masculinity. The concept of gender hegemony, as developed by Robert Connell, and analyzed by Mimi Schippers in her work, “operates not just through the subordination of femininity to hegemonic masculinity, but also through the subordination and marginalization of other masculinities,”⁶³ which was also the case under Nazism. Women were publically sexually objectified as mothers of the *Volk*, while at the same time relegated to the private sphere. Furthermore, the existence of marginalized masculinities, “those of subordinated classes or racial/ethnic groups” also existed under Nazism—men who did not fit in the *Volk*, the “racially inferior” men of the East or those ethnic Germans whose behavior excluded them from membership, were considered less masculine, but their presence was required in order to negotiate the identity of hegemonic masculinity. My examination of marginalized masculinities, defined as members of specific racial or religious groups at this particular historical moment, negates one of the early criticisms of the concept of hegemonic masculinity—that it ignored race and located the origin of power “solely conceptualized in terms of sex difference...”⁶⁴ In my analysis of the development of a Nazi hegemonic masculinity, race is at the crux of identity formation. There also exist subordinate masculinities, those of homosexuals,⁶⁵ again necessary to the maintenance of hegemonic masculinity: “Heterosexuality and homophobia are the bedrock of hegemonic

⁶³ Mimi Schippers, “Recovering the Feminine Other: Masculinity, Femininity, and Gender Hegemony,” *Theory and Society* 36 (2007), 87.

⁶⁴ R. W. Connell and James W. Messerschmidt, “Hegemonic Masculinity: Rethinking the Concept,” *Gender and Society* 19, no. 6 (December 2005), 831.

⁶⁵ Schippers, 87.

masculinity,”⁶⁶ which was true of the Nazi regime. My focus on children and men accused of homosexual contact also ensures that I have not presented an “essentialized” concept of masculinity, but rather demonstrate the fluidity of and challenges to Nazi masculinity; I do not present it as a “fixed, transhistorical model [whose] usage violates the historicity of gender and ignores the massive evidence of change in social definitions of masculinity.”⁶⁷

The construct of hegemonic masculinity is fluid, it “is always in a tense—potentially unstable—relationship with other masculinities...” and it allows us to “see how the core practices of hegemonic masculinity discriminate against men as well as women.”⁶⁸ This is of particular importance in this dissertation because men were frequently being evaluated against the behavior of other, more appropriately manly men, and not necessarily against women, particularly in charges of homosexuality. Moreover, hegemonic masculinity is composed of “the masculine norms and practices which are most valued by the politically dominant class and which help to maintain its authority.”⁶⁹ The negotiation of the identity of Nazi man, as undertaken in the courts-martial, was one way in which members of the military attempted to understand and define that identity, and in so doing, provide support for the power, the hegemony, of the Nazi regime.

⁶⁶ Donaldson, 645.

⁶⁷ Connell and Messerschmidt, 838.

⁶⁸ John Tosh, “Hegemonic Masculinity and the History of Gender,” in *Masculinities in Politics and War*, 43 and 47.

⁶⁹ *Ibid.*, 48.

The court-martial documents demonstrate the constant negotiation of both identities—Nazi and man. There is perhaps no better context in which to view the negotiations of German masculinity than in the sex crime court-martial documents, as the determination and negotiation of gender identity is constitutive and reflective of power differentials. Rape, particularly rape during war, is a concrete manifestation of a difference in power—between men and women, soldier and civilian, racially “inferior” and “superior,” and victor and defeated. According to Schippers, gender identity is constantly in flux, “The production, proliferation, and contestation of the quality content of masculinity and femininity are on-going, dynamic, social processes...”⁷⁰ She further writes:

Masculinity and femininity are conceptualized here as produced, contested, and transformed through discursive processes, and therefore embedded within and productive of power relations. In this model then, power dynamics are central, not only in the conceptual focus on the hierarchical relationship between masculinity and femininity rather than the specific characteristics idealized, but also in terms of the dynamics of the production, proliferation, and contestation of discourses articulating what men and women and their relationship to each other is and should be.⁷¹

Using Schippers’ model, the language of the military judges is the discursive process through which gender identities were negotiated and mobilized to confirm the hegemony of the “racially superior” German man, as compared to *all* others—male and female. Thus, it is in the court documents where one can see the discursive manipulations of gender and racial identity, the attempt to create that concept of hegemonic Nazi German

⁷⁰ Schippers, 93.

⁷¹ *Ibid.*, 94.

masculinity in opposition to subordinate masculinities, such as the masculinity of the homosexual, as well as to the subordinate masculinities of the “racially inferior” man, which in this historical period, was every non-German man. The negotiation of German masculinity was also manifested in the language describing women, the “racially superior” German woman who was nonetheless inferior simply because she was a woman, and the more complexly inferior non-German women, relegated to the role of inferior as a result of their sex and racial “quality.” If “To sustain a given pattern of hegemony requires the policing of men as well as the exclusion or discrediting of women,”⁷² then the courts-martial are an excellent lens through which to observe the negotiations of hegemonic masculinity because men are “policed” and women are “discredited.” My discussion of how women and female children were portrayed by the court, and how those constructions affected the determination of punishment, addresses one of the major criticisms of hegemonic masculinity—the devaluation of constructs of femininity and the absence of an analysis of relationality, which is necessary because “Gender is always relational, and patterns of masculinity are socially defined in contradistinction from some model (whether real or imaginary) of femininity.”⁷³

According to scholars of gender and nationalism, the national state is a “masculine institution,” ruled by men, and protected by soldiers operating in a military

⁷² Connell and Messerschmidt, 844.

⁷³ *Ibid.*, 848.

that relies masculine ideals such as “honour, patriotism, cowardice, bravery and duty.”⁷⁴ German soldiers in particular were frequently called upon to forfeit their lives for the survival of Germany, a practice that relied on a “powerful myth that portrayed the army as a direct expression of the nation,” a myth with its origins in the particular history of the German military during the wars of the 19th century.⁷⁵ Scholars of Nazism have already explored the relationship between concepts of masculinity and sexuality, and established that the regime believed in the importance of heterosexual intercourse to the maintenance of masculinity, the prevention of homosexual contact, and the improvement of soldierly ability.⁷⁶ It is also clear that Nazism was characterized both by calls for moral purity and sexual permissiveness. Men were exhorted to have frequent sexual intercourse with racially suitable women in order to increase the population; German women were to refrain from sex with inappropriate men lest they be forever spoiled and their children racially unfit;⁷⁷ prostitution was permitted because the Nazi regime believed these kinds of women could not be reformed, and men needed access to sex to maintain and even

⁷⁴ Nagel, 251 and 252. See also her discussion of the relationship between the hegemonic masculinity of the military and the subsequent hegemonic masculinity of the nation. R. W. Connell, “The Big Picture: Masculinities in Recent World History,” *Theory and Society* 22, no. 5 Special Issue: Masculinities (October 1993) also argues for a strong relationship between masculinity and the institutions of the State, writing that “It is not too strong to say that *masculinity is an aspect of institutions*, and is produced in institutional life, *as much as it is an aspect of personality*, or produced in interpersonal transactions” (602). Emphasis in the original.

⁷⁵ John Horne, “Masculinity in Politics and War in the Age of Nation-States and World Wars, 1850-1950,” in *Masculinities in Politics and War*, 28. See also in the same volume, Karen Hagemann, “German Heroes,” 116-134.

⁷⁶ Heineman, 22-66; Annette F. Timm, “The Ambivalent Outsider: Prostitution, Promiscuity, and VD Control in Nazi Berlin,” in *Social Outsiders in Nazi Germany*, ed. Robert Gellately and Nathan Stoltzfus (Princeton and Oxford: Princeton University Press, 2001), 192-211; idem, “Sex with a Purpose,” 223-255.

⁷⁷ Friedländer, 152.

improve soldierly ability.⁷⁸ That there was a specifically racial aspect to Nazi masculinity is clear, but this does not mean that the concept of Nazi masculinity was concrete. Rather, as a hegemonic masculinity, it was constantly under negotiation.

When read through the lens of gender analysis, what the court-martial documents clearly reveal is that the “racial quality” of the female was only part, and contrary to the suggestion of other scholars, not the most important part of determining the punishment for those men accused of rape. It was not consistently part of the legal discourse during sentencing proceedings. To be sure, the judges sometimes mentioned the “racial quality” of women, and in some cases, the belief that the woman was “racially inferior” affected the determination of punishment. But it is important to note that it was not only “racially inferior” women whose sexual honor and testimony was questioned, who were harshly interrogated by the military courts. It was all women—including German women. What the military courts always discussed, however, was the degree to which the accused man had transgressed the boundaries of acceptable behavior; these transgressions can, and should be read as violations of concepts of German masculinity. The behaviors I have characterized as violating the norms of masculinity include disobeying orders, mistreating women, damaging the reputation of the *Wehrmacht*, and committing crimes in uniform, among others. This dissertation does not argue that race was not a factor in the determination of punishment; rather, it argues that the race of the perpetrator was more important than that of the victim, that rape was an expression of both heterosexual

⁷⁸ Timm, “Sex with a Purpose,” argues that German soldiers were encouraged to have sex with prostitutes to ensure their virility. She writes: “National Socialism...equate[d] sexual gratification with masculine power to a degree unprecedented in Germany” (227).

masculinity and racial superiority. The rape of an individual who was both female and not a member of one's own group, reaffirmed concepts of masculine dominance and ethnic/racial superiority.

Methodology

This dissertation examines court-martial documents from men accused of committing sexual violence or sexualized violence, the latter including cases not falling under the legal definition of a sex crime, but which involved some aspect of sexuality in the commission of the crime—a beating involving a woman forced to strip naked, or a charge of insult that had its basis in the attack on a woman's sexuality. The laws according to which German soldiers were charged were those from the 1871 German Penal Code dealing with crimes against morality (*Sittlichkeitsverbrechen*), §173-184.⁷⁹ With the exception of §175, the law against homosexual contact, which was changed under the Nazi regime, as will be discussed in the fourth chapter, there were no changes made to any of the other laws, including those against rape, child abuse, and forced lewd contact. I do not examine only cases of rape, which required penetration, but also attempted rape, forced sexual contact, and child abuse. The majority of the cases come from an archival collection of sex crimes cases, *Bestand Ost*, accumulated into one collection at the end of the war. Other cases come from the court of the *Wehrmacht Kommandantur*, and include those crimes which occurred in Germany; I also include

⁷⁹ Beck in "Sexual Violence," explains that soldiers were charged according the civilian law, 321; *The German Penal Code of 1871*, Trans. Gerhard O. W. Mueller and Thomas Buergenthal, with an introduction by Dr. Horst Schröder (South Hackensack, N.J.: Fred B. Rothman & Co. and London: Sweet & Maxwell Limited, 1961), 101-106.

some cases from particular units, but the sheer number of these records, and their organization by unit instead of crime, precluded a comprehensive analysis of the disciplinary records of every military unit. The sex crime cases from the occupied territories come from the special court for the Posen area of the Warthegau, an area which belonged to Poland in the interwar period.

I focus on sex crimes cases because, as discussed above, concepts of masculinity are produced through institutional and social structures; the construction of masculinity is a discursive process, and in the trial documents, judges are very clear in their statements about what behavior is and is not characteristic of the German man. Trial documents can “take the researcher beyond the crime itself into the social and cultural worlds in which the act took place.”⁸⁰ Court documents can be limiting, however, because the testimonies of those involved are circumscribed by the type of questions being asked and the type of people asking the questions. Still, the participants in a trial bring with them to their testimonies, accusations, defenses, and decisions the cultural context in which they operate. Thus, the courts-martial documents provide information about the gendered and raced landscape in which the soldiers, judges, and women were operating, and a lens through which to examine the discursive creation and negotiation of Nazi hegemonic masculinity. These trials were public performances, although with a limited audience, of the contestation of gender and racial identity in this specific period of time. The majority of my analysis is based on the field decision (*Feldurteil*) of the courts-martial, a

⁸⁰ Stephen Robertson, “What’s Law got to do with it? Legal Records and Sexual Histories,” *Journal of the History of Sexuality* 14, nos. 1/2 (January/April 2005), 161-162.

document written by the head judge, with the input of two other judges, one an officer and one the same rank as the accused; at least two of the three judges had to agree to the sentence, and the decision had to be affirmed by the “*Gerichtsherr*, the military commander possessing supreme legal authority over the court decision.”⁸¹ Thus, I use the terms court and judge interchangeably because they can be referred to as either a court decision, because of the majority vote, or the determination of the head judge, as he was responsible for writing the final decision. When possible and useful, I incorporate the other documents of the trials, including interviews with participants, medical evaluations, evaluations of soldiers from their superiors, and clemency applications from the convicted soldiers or their families, because, as Stephen Robertson, writing in the context of his research on trials of sex crimes in New York argues: “The outcome of a case alone reveals little; it is in the process that produced the result that relationships between different narratives and groups can be seen.”⁸² Using a wider variety of sources allows the broader examination of the language used by trial participants can be included in the analysis of the intersection of the gender and racial ideologies of the German military and Nazi regime.

The German military, during the period of Nazism, was using laws written during the Imperial period. This implies a continuity in understanding and enforcement of the law, but there are also breaks in that continuity wherein we can see the effect of Nazi ideology, thereby demonstrating the negotiations of the boundaries of Germanness and

⁸¹ Snyder, 40.

⁸² Robertson, 179.

Nazism. According to Manfred Messerschmidt, scholar of German military law, attempts to coordinate German law and Nazi ideology were under way as soon as the regime came into power in 1933.⁸³ He further argues that the effect of those involved in this process of coordination “should not be underestimated in the decisions of military courts during the Second World War.”⁸⁴ New laws were created, resulting specifically from the influence of Nazi ideology, including the “‘law against enemies of the people’ (*Verordnung gegen Volksschädlinge*),” as well as other military orders delineating acceptable prosecution by the German military trials.⁸⁵ The judges had a modicum of leeway in interpreting the laws, although, according to Messerschmidt, they “were very well aware of the kind of ideological mission the political system intended them to fulfil [sic].”⁸⁶ The judges did not “live in a vacuum; their independence was only relative,”⁸⁷ and thus I examine the decisions of the judges as reflecting the environment in which they operated, both the military and ideological environment. Messerschmidt argues that “military justice became a strong link between the National Socialist system and its armed forces, working for the sake of the German *Volksgemeinschaft*.”⁸⁸ The problem is, however, how that

⁸³ Manfred Messerschmidt, “German Military Law in the Second World War,” in *The German Military in the Age of Total War*, ed. Wilhelm Diest (Leamington Spa, Warwickshire, UK; Dover, N.H.: Berg, 1985), 324.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, 325 and 327.

⁸⁶ *Ibid.*, 326.

⁸⁷ *Ibid.*, 327.

⁸⁸ *Ibid.*, 328.

Volksgemeinschaft was defined, and that is at the crux of the courts-martial documents—the determination of how male members of the military arm of that *Volk* were to be treated when accused of a crime. Messerschmidt goes on to acknowledge the synchronicity of military law and Nazi ideals, but points out that the idea of the *Volksgemeinschaft* existed before the rise of Nazism; he ultimately concludes that “Whether the people responsible for the maintenance of the military legal system were Nazis or not, it is plain that its philosophy was underpinned by its compliance with Nazi war aims and ideology.”⁸⁹ What the court-martial documents demonstrate however, is that the judges sometimes could not determine what Nazi ideology was, nor could they separate entirely pre-Nazi ideas from the current environment. Thus, what the trials reveal is the negotiation of several identities, all under pressure externally and internally.

Given that the judges did have some latitude, and given that it is sometimes unclear whether the accused served their complete sentence, or were paroled in some fashion, it seems of little use to discuss actual severity or leniency of punishment. Every judge would have a different idea of what would be considered a severe punishment, and providing the decision was confirmed, the result is a wide range of punishments for crimes punished according to the same penal code. Thus, this dissertation does not use the severity of punishment as a measure of adherence to or divorce from ideology, both gender and racial. Rather, I examine those issues the judges, and when possible other participants in the trial, considered to be reasons for mitigating or increasing the severity of punishment. I analyze what the judges said affected punishment, not what the

⁸⁹ Ibid., 333.

punishment was, although there are some exceptions when the punishment was considered particularly harsh by a superior, when multiple trials occurred, or in the comparison of sentences issued by military courts as compared to occupation courts. What the documents demonstrate is that the sentence for a particular crime could be unpredictable, but there were particular themes associated with gender that continually appear throughout the cases; it is these themes that I analyze in order to demonstrate the importance of gender ideology to the determination of punishment, as well as the ways in which the trials functioned as a mechanism for the negotiation of identities.

Chapter Outline

The purpose of this dissertation is, using the court-martial documents, to demonstrate the fluidity of Nazi racial and gender ideology, the largely unacknowledged importance of the latter, as well as the ways in which the concept of Nazi German masculinity was negotiated. The documents illustrate that the judges, as well as the other participants in the trials, were attempting to define what it meant to be a German man, a German soldier, under this particular political regime, with its attendant racial ideologies, however unstable they were. The second chapter, on constructs of femininity, specifically addresses the claims of Beck and Snyder that there were differences in punishment for the rape of women from Eastern and Western Europe. It is in this chapter that I examine the discourse of Nazi racial ideology, demonstrating that even high-ranking Nazi officials and members of the military did not understand Nazi racism, and could not enforce it with any regularity and predictability. Because racial ideology does not explain determinations of punishment, the chapter then argues that women, including

German women, were evaluated according to the degree to which they adhered to gender norms. More important than the “racial quality” of the women in question was their “gender quality,” and the latter did, in the words of the judges themselves, have an effect on the determination of punishment. This chapter ultimately argues that gender was a more important factor in affecting sentencing than any discussion of race.

The third chapter analyzes the negotiation of German masculinity in cases of soldiers accused of rape. There were particular issues associated with a martial masculinity, mobilized toward the goal of a successful *Volksgemeinschaft*, that affected punishment. Men who were believed to have acted in accordance with concepts of masculinity were offered mitigating circumstances, whereas poor soldiers and officers faced criticism and more severe punishments, as explained by the individual judges.

In the fourth chapter on men charged with violating §175, I argue that men accused of homosexual behavior were evaluated according to the degree to which they embodied the norm of heterosexual masculinity. Men were judged not just on military ability, but also appearance, affect, and language, and men found wanting in this evaluation could face harsher punishment. This chapter also demonstrates that, according to the Nazi regime, and the German military, there was no true identity of homosexual; the regime inadvertently acknowledged that sexuality is a fluid identity, subject to change. Clemency applications in this chapter, and the previous chapter on men accused of rape, show the ways in which the participants in the trial mobilized gender and racial ideologies in the attempt to lessen or eliminate their sentences.

The fifth chapter examines cases of men accused of abusing male and female children, demonstrating once again the tremendous importance of concepts of normative gender roles in the determination of punishment. Of note is that the race of the children was never a factor in the proceedings, but gender was—female children were subject to the same gendered evaluations of their behavior, and were frequently blamed for having provoked the sexual violence, regardless of their age. Male children, by contrast, were never blamed for the sexual abuse they experienced, and the men who abused them were criticized for damaging the strength of the nation and the military, because it was feared that this instance of homosexual contact would push them from the path of “normal” sexual development and turn them into homosexuals.

The sixth chapter analyzes sex crimes trials from occupied territories, including those charging Polish men and ethnic German men for sexual violence. What these cases demonstrate is that the judges believed Polish men abused women and children because of an inherent racial inferiority. Whereas the courts could not determine what women were to be considered racially inferior, and moreover could not divorce the idea of racial inferiority from a long-standing ideology requiring the protection of women, the courts in the occupied territories easily accepted that Polish men had committed their crimes because of an inherent racial inferiority, although the evaluation of that status was dependent on behavior, not biology. This chapter also examines the cases against men classified as ethnic Germans, thus clearly illustrating the fluidity, and fragility, of Nazi racial ideology.

All of these chapters achieve the three overarching purposes of this dissertation—to illustrate the overall fluidity of both racial and gender ideology, to demonstrate the importance of gender ideology to a scholarly establishment that continues to argue for the primacy of racial ideology, and lastly to reveal that the ways in which race and gender were constantly contested and under tension reflected attempts to create and negotiate the boundaries of a new identity—German man. It mattered little the race of the woman or child assaulted, but it did matter the race of the man accused of assault. German men who transgressed the (shifting) boundaries of masculine identity were punished for so doing, and in recording the conversation about why men should or should not be punished for committing a variety of crimes, the trial documents illustrate the discursive creation of the identity of Nazi German man.

CHAPTER II

“[A]LWAYS THE WORST OF THEIR *VOLK*”: CONSTRUCTIONS OF FEMININITY

In the 1941 case against two German soldiers accused of raping a young Russian woman, the judge made the following statement about the Russian woman:

Also to be considered as mitigating circumstances is that the high punishment associated with violations of §176⁹⁰ is dependent on the German concept of the sexual honor of German women. This punishment cannot be invoked when...the ‘injured party belongs to a people for which the concept of women’s sexual honor has more or less entirely vanished’.”⁹¹

In other words, the sexual abuse of a Russian woman need not be punished severely because she, as a Russian woman, had no sexual honor. In this instance, the court was obviously operating under the influence of Nazi racism, but not racism alone. What this case demonstrates is the interconnection between gender and race—it is the sexual honor of the Russian *woman* that is in doubt. In this case, the racial bias of the

⁹⁰ §176, in this case §176, 1 reads as follows: “A Punishment consisting of confinement in a penitentiary for a term not to exceed ten years shall be imposed upon any person who: 1) by force commits lewd acts upon a woman or who by threatening immediate bodily harm compels her to submit to lewd acts...” *The German Penal Code of 1871*, Trans. Gerhard O. W. Mueller and Thomas Buergenthal, with an introduction by Dr. Horst Schröder (South Hackensack, N.J.: Fred B. Rothman & Co. and London: Sweet & Maxwell Limited, 1961), 102.

⁹¹ Bundesarchiv-Militärarchiv (hereafter BA-MA) Bestand Ost (hereafter S) S269, Gericht der 7. Panzer-Division, Strafsache gegen den Obergefreiten Heinz P. and Gefreiten Gerhard L., 19.8.1941, wegen §176 section 1, latter part quoted directly from Beck, “Rape: The Military Trials of Sexual Crimes Committed by Soldiers in the *Wehrmacht*, 1939-1944,” in *Home/Front: The Military, War and Gender in Twentieth-Century Germany*, ed. Karen Hagemann and Stefanie Schüler-Springorum (Oxford: Berg, 2002), 263.

judge is clear, however this was not always the case. Race did play a role in what the judge said affected the determination of punishment, but the effect of race in the courts-martial was not predictable and not uniform. Thus, contrary to the assertions of Birgit Beck and David Snyder, race was not the axis around which punishments revolved; one cannot say that men were punished more severely for raping Eastern European women as compared to Western European women, or vice versa. To argue the primacy of race is to ignore the importance of gender ideology, and the intersectionality of gender and race in the determination of punishments. Although “racial inferiority” was sometimes a factor, it was frequently not invoked as a mitigating circumstance for rape, and often in cases involving Polish and Russian women who were ostensibly racially inferior, judges made no reference to race, and instead harshly criticized the German soldier for mistreating or sexually abusing a woman. This is of particular importance because the courts-martial cannot be read simply for what was present, which occasionally but not predictably included a discussion of the racial quality of various women, but for what was absent as well, and that was frequently a blatant discussion of race. There were other factors that affected the proceedings, namely the degree to which the woman in question adhered to the expected behavior of women—when women were perceived as transgressing their normative gender roles, that had a negative effect on the sentencing; the judges considered the good behavior of the woman as a mitigating factor, and often cited such behavior as a reason for milder punishment. Military judges frequently discussed several kinds of feminine identities—the proper woman, who did not deserve to be raped, and the improper woman who, in transgressing gender norms, provoked rape and was not

traumatized by the assault. Because there was no concrete definition of “racial inferiority,” the concept was only inconsistently invoked in the rape cases as a mitigating factor for the accused German soldier, and moreover, the effect of mobilizing race as a means of exoneration was unpredictable. What mattered more than the race of the woman assaulted was what *kind* of woman she was.

This chapter first examines debates about “racial inferiority” engaged in by high-ranking Nazi officials and members of the German military. It is not surprising that the judges could not agree on the concept of race or “racial inferiority,” given that they had no coherent ideology on which to draw. After establishing the fluidity of Nazi racial ideology, this chapter will then present a number of themes identifiable in the court documents as reflecting assumptions about normative gender roles for women. The following linguistic analysis of the sentencing proceedings will demonstrate that all the judges understood how a woman should act, and could identify behavioral transgressions, but not all the judges knew who was, or should be considered, “racially inferior.”

The Debates about “Racial Inferiority”

It has long been supposed that Nazi racial ideology created a hierarchy of races, with Germans at the top, members of various nations in the middle, and Slavs and Jews at the bottom. All people of Slavic descent were considered to be subhuman, a belief that rationalized the brutal treatment of the civilian populations of both Poland and Russia.⁹²

⁹² Omer Bartov, *Hitler's Army: Soldiers, Nazis, and War in the Third Reich* (New York and Oxford: Oxford University Press, 1991), 6; Alexander B. Rossino, *Hitler Strikes Poland: Blitzkrieg, Ideology, and Atrocity* (Lawrence, Kansas: University Press of Kansas, 2003), 3.

During the Second World War, according to Omer Bartov: “Slavs...were considered subhuman’s [sic] (*Untermenschen*), to be either murdered, worked and starved to death, or used as slave labour for the German colonisers of their lands.”⁹³ Hitler had an idealized vision of the agricultural man, and his concept of *Lebensraum* evolved from an emphasis on the importance of “blood and soil,” of Germany as the fatherland, and Social Darwinian concepts of the struggle for survival.⁹⁴ Eastern Europe was meant to be a living space for the racially superior Germans,⁹⁵ and this ideology fueled Hitler’s move into Poland and the Soviet Union,⁹⁶ and came to be, in varying degrees, internalized by the officers and soldiers fighting on the Eastern Front.⁹⁷

According to John Connelly, however, Nazi treatment of and actions against Slavs were the result of “constant improvisation.”⁹⁸ There were, suggests Connelly, gradations in the “racial quality” of groups of Slavs, and these groups were treated differently by the Nazi regime. Russians, for example, were from the beginning

⁹³ Omer Bartov, “Savage War,” in *Confronting the Nazi Past: New Debates on Modern German History*, ed. Michael Burleigh (New York: St. Martin’s Press, 1996), 126.

⁹⁴ Uli Linke, *Blood and Nation: The European Aesthetics of Race* (Philadelphia: University of Pennsylvania Press, 1999), 198-199.

⁹⁵ Woodruff D. Smith, *The Ideological Origins of Nazi Imperialism* (New York and Oxford: Oxford University Press, 1986), 242.

⁹⁶ Mike Hawkins, *Social Darwinism in European and American Thought, 1860-1945* (Cambridge: Cambridge University Press, 1997), 274.

⁹⁷ See again the work of Omer Bartov.

⁹⁸ John Connelly, “Nazis and Slavs: From Racial Theory to Racist Practice,” *Central European History* 32, no. 1 (1999), 4.

“subjected to policies of annihilation,”⁹⁹ while Ukrainians in Galicia and Bulgarians were treated rather well; there was even a Ukrainian *SS* troop. While Connelly clearly demonstrates that not all Slavs were created and to be persecuted equally, what is more important for the purposes of this chapter is the fact that Nazi racism was incoherent, unstable, and fluid; racial ideology was also influenced by non-biological factors and pragmatic considerations. These should not have had an effect on an ideology that should have been, according to the Nazi’s own language, based on inherent, biological, and immutable factors. For example, Connelly suggests that the Nazi need for goods necessary to the war effort resulted in a “more balanced policy towards the Czech lands”;¹⁰⁰ Croats, allies of Germany, could be “assimilated” into the German population;¹⁰¹ and Ukrainians could be used to persecute the Poles, and thus received better treatment. Even more striking, there was no anti-Polish ideology before 1939. Persecution of the Poles, and the racial ideology that supported it, developed largely as a result of need—Germany had invaded this territory and needed it for expansion, and thus its inhabitants had to be eliminated.¹⁰² Russians were, before the war, considered racially inferior, but it should not be forgotten that they were also politically objectionable—

⁹⁹ *Ibid.*, 6.

¹⁰⁰ *Ibid.*, 9.

¹⁰¹ *Ibid.*, 14.

¹⁰² Connelly writes “Soon after launching war against Poland in September 1939, the Nazi leadership and the supporting scientific community convinced themselves of Polish racial inferiority” (13), and before 1939, there had “no set National Socialist policy towards Poland” (11).

Bolshevism functioned as one of the primary reasons for annihilation, as did again desire for land.

The majority of historians agree that the war in the Soviet Union was not only a war of ideology, but also one of annihilation.¹⁰³ Although the German invasion of Poland was not characterized by the blatant ideological cruelty and barbarity of the move into Russia, there was an ideological component to the *blitzkrieg* war in Poland. According to Alexander Rossino, historian of the German invasion of Poland, Polish civilians, particularly “political leaders, socialists, intellectuals, members of the nobility, the Catholic clergy, and Jews,” were ideological targets of Nazi extermination.¹⁰⁴ Hitler’s desire for *Lebensraum* was first manifested in the move into Poland, and thousands of Poles were moved from one location to another to make room for Germans from Germany proper.¹⁰⁵ Although not characterized by the same degree of ideological vehemence as the war in Russia, no country lost a greater number of Jews than Poland,¹⁰⁶ and further, half the Polish population to die at the hands of the Nazis were gentiles.¹⁰⁷ Documentary evidence describing the occupation policies in Poland indicates the degree to which treatment of civilians was determined by racial ideology. Jeremy Noakes and

¹⁰³ Christian Streit, “The German Army and the Policies of Genocide,” in *The Policies of Genocide: Jews and Soviet Prisoners of War in Nazi Germany*, ed. Gerhard Hirschfeld (London, Boston, Sydney: The German Historical Institute, Allen & Unwin, 1986), 2.

¹⁰⁴ Rossino, 1.

¹⁰⁵ *Ibid.*, 2.

¹⁰⁶ *Ibid.*, 227.

¹⁰⁷ Richard C. Lukas, *The Forgotten Holocaust: The Poles under German Occupation, 1939-1944* (Lexington, Kentucky: The University Press of Kentucky, 1986), 90.

Geoffrey Pridham, in their collection of documents from the occupation of Poland, argue that Poland became a “laboratory for Nazi racial ideology,” a place where Polish Jews and gentiles were slaughtered, but also the destination for the deportation of Jews from all over Europe.¹⁰⁸ At least one author argues that “the Poles were to be subjected to a program of extermination and enslavement.”¹⁰⁹ The position that the Polish population was, like the Jewish population of Europe, to be completely annihilated is an issue of great historical debate. Most historians do not agree with the suggestion that Poles were to be exterminated on a level commensurate with European Jews. Instead, the majority of scholars, while not denying the harsh persecution of Poles, point out that Poles were never the primary targets of Nazi extermination policies,¹¹⁰ and that “[o]nly in the case of the Jews did Nazi racial ideology overpower every other consideration, whether of the economy, of military strategy...”¹¹¹

In Nazi ideology, Germans and Jews were at the top and bottom of the hierarchy, respectively. However, Slavs occupied a more liminal position, and ultimately, defining the category “Slav” proved quite difficult. Given the difficulties in figuring out who the Slavs were, how “racially inferior” they were or should be, and what non-biological factors could be invoked to mitigate inferiority, it is ultimately not surprising that this

¹⁰⁸ Jeremy Noakes and Geoffrey Pridham, ed., *Documents on Nazism, 1919-1945 Volume 3: Foreign Policy, War and Racial Extermination, A Documentary Reader* (University of Exeter Press, 1998), 922.

¹⁰⁹ Lukas, 4.

¹¹⁰ Israel Gutman, “The Victimization of the Poles,” in *Mosaic of Victims: Non-Jews Persecuted and Murdered by the Nazis* (New York and London: New York University Press, 1990), 96-100.

¹¹¹ Connelly, 26.

incoherence appears in the sex crimes trials as well. Slavs were not the only groups subject to racial evaluation:

As for the French, and even more so the English, Nazi racial ‘experts’ remained rather vague, whether because of what they perceived as racial affinities with the German ‘Aryans’, or because of the ‘higher’ culture of Western Europe. Thus, while France was seen as a ‘degenerate’ civilization, it was not marked for subjugation...¹¹²

According to Jill Stephenson, soldiers and civilians from occupied Western Europe, “such as Norway, Denmark, Holland and Flemish Belgium were regarded as ‘racially valuable,’” whereas “French and Walloons were not.”¹¹³ The court-martial documents demonstrate that French and Italian women were occasionally subject to racial evaluations, as were some Slavic women, but that women as a category were more often evaluated according to gender norms than were individual women evaluated according to racial ideology.

Even when racial policy finally became more coherent, even when the regime finally decided that it would persecute Poles and Russians, and others to various extents, there was still confusion about sexual contact between Germans and non-Germans. It was never clear with whom German soldiers could have sexual relations, and non-racial factors often played a role in affecting rules about sexual intercourse. Despite the fact that laws designed to prevent sexual contact between Germans and non-Germans

¹¹² Omer Bartov, “Savage War,” 126.

¹¹³ Jill Stephenson, “Germans, Slavs and the Burden of Work in Rural Southern Germany during the Second World War,” in *Nazism, War and Genocide: Essays in Honour of Jeremy Noakes*, ed. Neil Gregor (Exeter: University of Exeter Press, 2005), 94-95.

existed,¹¹⁴ sexual contact continued to occur, it was not consistently punished, and the laws were unpredictable in their implementation. Part of the reason these laws were inconsistently applied is that the Nazi regime and German military could not agree on what constituted “racial inferiority” and whether German soldiers should be punished for sexual contact with members of various races whose “racial quality” was ultimately unclear.

In occupied Poland, there were orders prohibiting sexual contact. In June of 1941, a letter from the office of the *Reichsführer-SS und Chef der Deutschen Polizei* stated that every violation of an order prohibiting sexual contact between Poles and members of the *SS* would be emphatically punished.¹¹⁵ In another order, Heinrich Himmler said that he understood the difficulties faced by *SS* men in the General Government, and thus gave them leave to visit brothels regulated by German physicians, but also said that he himself would determine whether sex between members of the *SS* and women of other races should be punished.¹¹⁶ Moreover, a bulletin about appropriate conduct in occupied Poland again reminded soldiers that they were representatives of the German empire and its strength, warned against the strength of Polish schnapps, and

¹¹⁴ For example, there were laws against sexual contact between members of the “German community” and Poles in the occupied territory. See Noakes and Pridham, 954.

¹¹⁵ National Archives Records Administration (hereafter NARA) Record Group (hereafter RG) 242, T580, 213, June 21, 1941, letter from the office of the Reichsführer-SS und Chef der Deutschen Polizei.

¹¹⁶ NARA RG 242, T175, 175, July 10, 1942, letter describing Reichsführer-SS Himmler’s guidelines about sexual relations between members of the *SS* and police and women of other racial populations.

ordered restraint against Polish women and children.¹¹⁷ This latter memo demonstrates Nazi assumptions about men—that they needed and would try to have sex, even if the women were considered unsuitable partners.

Sexual relations between SS men and Russian women were also subject to investigation and punishment,¹¹⁸ as were relations between German volunteer corps and women of other racial populations.¹¹⁹ The *Waffen SS* also forbade sexual contact, called racial violations, between SS men and female members of non-German racial populations.¹²⁰ These orders may have seemed straightforward and clear cut; however, defining the inferiority of Slavic peoples was fraught with difficulties. Himmler was aware of these problems of definition, and he ordered that each suspected case of sexual relations between SS members and women of other racial populations “Russian, Ukrainian, etc.” be submitted to him for investigation.¹²¹

Not only was race difficult to define, but definitions were affected by non-biological, pragmatic considerations as well. Some military and Nazi officials were surprisingly frank about the absence of a coherent definition of “racial inferiority.” According to a 1945 letter about the *Reichsführer-SS*’s decision regarding sexual

¹¹⁷ BA-MA RH 50/156, July 1941, Merkblatt für Wehrmachtangehörige, from Kommandantur Krakau.

¹¹⁸ NARA RG 242, T580, 213, October 25, 1941, letter from SS-Obersturmbannführer Bender.

¹¹⁹ NARA RG 242, T580, 213, October 25, 1941, letter to the Kommandeur der SS-Freiwilligen-Standarte “Nordwest” from SS-Obersturmbannführer Bender.

¹²⁰ NARA RG 242, T354, 153, 78014/40, 1944, bulletin about discipline and justice from the SS Panzer Division Frundsberg.

¹²¹ NARA RG 242, T580, 213, October 14, 1941, letter from Himmler to Bender.

relationships with Croatian women, these relationships between Germans and Croats were not forbidden, only undesired, because:

[T]he question, whether someone is racially valuable or not, will be answered differently each time by the average soldier, so that in most cases a subjective [guilt] of the wrongdoer [can] hardly be proven, even when objective racial inferiority exists.¹²²

It is rather unclear why sex with Croatian women would be undesired, given that there was no consensus about the “inferiority” of Croats. However, I suspect it was easier to say that sex between German soldiers and Croatian women was undesired, rather than forbidden, precisely because every soldier had a different concept of “racial inferiority,” and because it was not always possible to determine when an “objective racial inferiority” existed. One could not forbid relationships between Germans and people whose racial quality ultimately could not be defined. Moreover, what this order also makes clear, in stating that every soldier will have a different concept of “racial value,” is that there existed no single, concrete definition of “inferiority,” and the Nazi regime knew it—the regime was acknowledging the fluidity of its own racial ideology. Every soldier brought his own understanding of race into every encounter, and the same holds true for the military judges. Given this fact, it is not surprising that the military judges also lacked a coherent understanding of the “racial inferiority” of women of various Eastern European nations.

There were also practical concerns that influenced Nazi racial ideology, such as whether those members of the supposedly racially inferior race were assisting the

¹²² NARA RG 242, T580, 213, January 21, 1945, letter to SS-Oberführer Bender.

German military endeavor. For example, there was confusion about whether sexual contact with Ukrainian women should be allowed. There was to be no sex with Russian women, but it was unclear whether this prohibition also applied to Ukrainian women because Ukrainians were fighting against Bolshevism.¹²³ Thus, it is quite clear that definitions of race were fluid and malleable, and influenced by external conditions.

Another practical concern was the fear that restricting sexual access to the women of the occupied territories would cause an increase in violations of §175, the law against same-sex contact. Commander-in-Chief of the Army von Brauchitsch and Hermann Göring were both concerned that there would be an increase in cases of homosexuality if alternate opportunities were not available;¹²⁴ both men allowed sexual contact with women of occupied territories. Göring allowed contact with Russian women, arguably the group longest considered inferior by the regime according to Connelly. Again, racial practice was being dictated by non-racial concerns. Thus, it is already clear, even before the examination of the court-martial cases, that “racial quality” included a strong behavioral or cultural aspect, a fact that is also evident in the sexual violence cases examined in this chapter, as adherence to gender norms for men and women was a more frequently invoked factor in determining punishment than race.

¹²³ NARA RG242, T580, 213, November 24, 1941, letter from SS-Sturmbannführer Dr. Klare to Hauptamt SS-Gericht, SS-Rechtsamt, München.

¹²⁴ BA-MA RH 12-23 1371, July 31, 1940, Oberbefehlshaber des Heeres. NARA RG 242, T312, 1599, September, 1942, letter from Reichsmarschall und Oberbefehlshaber der Luftwaffe Hermann Göring. It should be noted that Göring was not considered an ideologue of the Nazi regime, and over the years, his power in the Party decreased, Alfred Kube, “Hermann Goering: Second Man in the Third Reich,” in *The Nazi Elite*, ed. Ronald Smelser and Rainer Zitelmann, Trans. Mary Fischer (Washington Square, New York: New York University Press, 1989), 62-73. However, Göring’s fear that a lack of access to heterosexual sex would lead to homosexuality was shared by a number of high-ranking Nazis.

The main reasons for preventing sexual contact between German soldiers and women in the occupied territories appears to have been the concern that women worked as agents for the enemy, that children resulting from this relationship would grow to hate Germany, and that German soldiers should save themselves for German girls:

Germany possesses enough hereditary healthy girls who have proven themselves in difficult times for their *Volkstum*. These girls wait for their soldiers in order to prepare for them a home and to give them healthy children.

Moreover, according to this document, “The victory of the German army must be assured through the victory of the German cradle,”¹²⁵ although we will see that the judges treated German women no better than the women of Eastern Europe, despite their alleged importance to the regime and the success of the nation.

At the same time that these documents were suggesting that sexual contact between German soldiers and civilians should be, but could not possibly be entirely prohibited, bulletins about the expectations of German soldiers were also issued. According to these announcements, “racial pride and duty prohibits sexual contact with women of a foreign population,” and

...girls who offer themselves are always the worst of their *Volk*, it is unworthy of a German soldier to maintain intimate contact with weak girls because the reputation of the entire *Wehrmacht* suffers at the same time.¹²⁶

Note, as will be further discussed, the reference to the reputation of the *Wehrmacht* as something amorphous, not related to military prowess, but personal conduct of the soldier.

¹²⁵ BA-MA RS 3-8-78, SS-Kav. Division VI, 30.7.1943, *Der SS-Mann und die Frau aus fremden Volkstum*.

¹²⁶ Ibid.

Considerations about prohibitions on sexual contact with women from other racial populations applied not only to members of the SS, but to German military troops as well. In September of 1942, *Generalfeldmarschall* Keitel issued an order in which he charged the German soldiers to be “representatives of the German Reich and its power,” and further ordered that they should “feel and act accordingly.”¹²⁷ Keitel further said that the long duration of the occupation brings with it the danger that the contact with the civilian population, and especially the female sex, in a series of cases, become closer than desired and permissible according to the circumstances.

At the same time, however, Keitel acknowledged that “A ban on sexual contact between soldiers and women of the occupied territories cannot bring an effective remedy [to the existence of sexual contact].” In April of 1942, a secret order was issued outlining acceptable interactions between German soldiers and the civilian population: soldiers were forbidden from having private contact with Russian civilians; from living with Russian civilians; and from going on walks, visiting or receiving visits from Russian civilians; and soldiers were told that contact with Russian women was “unworthy of a German soldier.”¹²⁸ Again, this order demonstrates the expectations of German soldiers as “racially superior” men and suggests that transgressions of such behavior were considered violations of masculinity to be punished.

¹²⁷ BA-MA RH 20/18 1050, ArmeeOberKommando 18, September 12, 1942, *Verkehr des deutschen Soldaten mit der Zivilbevölkerung in den besetzten Ostgebieten*.

¹²⁸ NARA RG 242, T312, 1599, Letter from von Boeckmann, AOK 18, to General Kommando L.A.K., April 16, 1942.

The Rape of Jewish Women

Nazi racial ideology applying to the Jews would seem to be more coherent—it existed from the beginning of the regime’s time in power, and the cumulative persecution of Jews ending in their annihilation suggests a clearer understanding of the “racial quality” of Jews as compared to Slavs. However, Nazi antisemitism was not actually monolithic and coherent. Saul Friedländer’s work, particularly his discussion of the Nuremberg Laws, demonstrates that it was not only one’s supposed racial affiliation, but behavior and cultural membership as well, that determined whether one would be treated as a Jew.¹²⁹ Friedländer’s discussions of the ways in which the regime negotiated the category of *Mischlinge* illustrates the fluidity of racial ideology, even as it pertained to the Jews. Burleigh and Wippermann also illustrate the absence of racial biology in the Nazi discussion of *Mischlinge*, writing about the Nuremberg Laws: “[the] criteria were based upon a religious, rather than a scientific, definition of race.”¹³⁰

While there are very few documents referring to the rape of Jewish women by German soldiers, there are a number of sources that indicate such sexual violence did occur. There are numerous memoirs that mention soldiers raping Jewish women, and there are dozens of oral testimonies that also describe, in various degrees of specificity, rapes committed in ghettos, camps, and during invasions. Rape undoubtedly happened, although we do not know and will never know how many Jewish women were raped.

¹²⁹ Saul Friedländer, *Nazi Germany and the Jews: Volume I: The Years of Persecution, 1933-1939* (New York: HarperCollins Publishers, 1997), 145-173.

¹³⁰ Michael Burleigh and Wolfgang Wippermann, *The Racial State: Germany 1933-1945* (Cambridge: Cambridge University Press, 1991), 45.

Before the war on the Eastern Front, rape by the German military or members of the Nazi party, specifically members of the SS, was punished severely if the victim was Jewish. For example, during the violent events of *Kristallnacht*, the anti-Jewish pogrom in Germany on November 9 and 10, 1938, several members of the Nazi Party raped Jewish women. The Party accused these men of violating both racial and moral law, expelled them and handed them over to the criminal court.¹³¹ These men were the only members of the Nazi Party to be expelled. By contrast, those men who had murdered Jews during the riots of *Kristallnacht* were not ordered to leave the Party, and did not face criminal charges.¹³²

There are also cases, after the start of the war, that suggest that the rape of a Jewish woman was considered *Rassenschande*, the legal term for a racial violation. In one instance in 1941, an intoxicated SS-man raped a Jewish woman and was sentenced to 10 years in prison for rape and *Rassenschande*.¹³³ However, in the *Bestand Ost* collection, there was no case in which a soldier was charged with raping a Jewish woman. In one instance, a German soldier did rape a Jewish woman, but he was charged with drunkenness, rather than with rape and *Rassenschande*.¹³⁴ In another case, chronicled by the historian Alexander Rossino, the defendants argued that they raped a

¹³¹ PS-3063, Office of United States Counsel for Prosecution of Axis Criminality, *Nazi Conspiracy and Aggression* (Washington: United States Government Printing Office, 1946).

¹³² Raul Hilberg, *The Destruction of the European Jews* (Chicago: Quadrangle Books, 1961), 29.

¹³³ BA-MA, N756, 48b, Der Reichsfuehrer-SS und Chef der Deutschen Polizei, Hauptamt SS-Gericht, Mitteilungen über die SS- und Polizeigerichtsbarkeit, heft 4, Juni, 1941.

¹³⁴ BA-MA S391, Gericht der Oberfeldkommandantur 379, Strafsache gegen den Gefreiten Ernst H., 23.6.1942, wegen §330a (drunkenness).

Jewish woman despite her racial status. One of the soldiers Rossino describes defended his actions by saying that he did not think he was committing a crime because German law did not recognize Jews.¹³⁵ When asked if he understood the Nuremberg Laws, the accused man responded: “The Nuremberg Laws are known to me. I nevertheless attempted to have sex with her because at the moment I did not think that this act was punishable.”¹³⁶ Because the Nuremberg Laws applied only to consensual relationships, the accused did not know that the rape of a Jewish woman was prohibited, and subject to disciplinary measures. The soldier and his accomplices were charged with rape and race crimes.¹³⁷ They were handed over to the secret police; the case then disappears from the records. This case suggests there might have been some confusion among soldiers, who did not know whether rape counted as sex, and was punishable, or as violence towards the inferior enemy, and would thus be tolerated, particularly given the brutal nature of the war in the East.

The Intersection of Gender and Race in Assaults on Non-German Women

Considering their inability to define “racial inferiority” in conversations about ostensibly consensual relationships, it is not surprising that military judges issued unpredictable punishments for German soldiers accused of raping “racially inferior” women. Even though the application of racial theory was inconsistent, gender ideology

¹³⁵ Alexander B. Rossino, “Destructive Impulses: German Soldiers and the Conquest of Poland,” *Holocaust and Genocide Studies* 11, no. 3 (1997): 357.

¹³⁶ *Ibid.*, 357.

¹³⁷ *Ibid.*, 358.

appears to have been more uniformly invoked in these court cases. The perception of the moral quality of the woman affected the determination of punishment, and women were judged morally sound only if their behavior conformed to ideas about the proper behavior for women. Gender ideology was more influential in the trial proceedings because it existed before Nazi racial ideology and was thus more easily understood and mobilized in the determination of punishment. There existed a long history of assuming men had to have sex, and a long history questioning the behavior of women, of victim-blaming, and a shorter history of invoking Nazi racial ideology.¹³⁸

Testimonies from women who acted in a manner that conflicted with the court's preconceived notions of womanhood were often dismissed. In these cases, there is rarely explicit mention of racial quality, only of gender quality. The only factors considered of importance were whether the actions of the woman, and the female child, as will also become clear, adhered to normative gender roles. Examination of court cases of men accused of rape demonstrates that racial quality was a point of consideration in cases involving *both* Western and Eastern European women.

In the 1940 case against two men accused breaking into a home and raping a French woman, the judge harshly criticized the defendants:

The damnability of their acts was especially marked because of the brutality and brazenness of its perpetration, as well as the tenacity and single-mindedness of the

¹³⁸ Tanja Hommen, "Körperdefinition und Körpererfahrung: 'Notzucht' und 'unzüchtige Handlungen an Kindern' im Kaiserreich," *Geschichte und Gesellschaft* 26 (2000): 577-601.

criminal will, and moreover, particularly through the brutality against the state of marriage and a mother of five children.¹³⁹

The French woman in question in this case adhered to expected gender norms—she was married and she had children. Moreover, her husband was in the adjoining room during the assault, and thus her assault was considered particularly objectionable—she was assaulted before the man to whom she belonged, an assault against her and her husband, which rendered the assault more offensive. The “quality” of the woman was also important in the case against *Gefreite* Werner K., convicted of raping a French woman.¹⁴⁰ He threw the French woman to the ground, and when she attempted to fight him, he threatened her with his weapon, and completed his assault. According to the court, the woman made a believable, solid and orderly impression. Moreover, the woman was considered to be a good mother, who was raising her two young children according to good principles, and thus her rape should be severely punished.

The judges often inferred that women, and children as will be discussed later, were not traumatized by sexual abuse. *Gefreite* Erwin W. was given what the judge considered to be a mild sentence for the attempted rape of a fourteen-year old French

¹³⁹ BA-MA S4, Feldgericht des Höheren Kommandeurs der Post.-Flak-Art. III, Strafsache gegen den Gefreiten Wilhelm H. und den Gefreiten Hans W., 4.11.1940, wegen §123 1 und 2 (erschwerten Hausfriedensbruch), §149 MStG (rechtswidrigen waffengebruch), and §177. §177 reads as follows: “Anybody who by force or threat of immediate bodily harm forces a woman to submit to extra-marital sexual intercourse or who misuses a woman for extra-marital sexual intercourse after he has for that purpose placed her into a state where she lacks any will power to resist or brought about her unconsciousness, shall be punished by confinement in a penitentiary,” *The German Penal Code of 1871*, 103.

¹⁴⁰ BA-MA S233, Gericht der 1. Panzer-Division, Strafsache gegen den Gefreiten Werner K., 29.8.1940, wegen §177.

girl.¹⁴¹ The accused held the girl by the breast and throat, opened his pants, and removed his penis. The victim fought him, and said “no”; the assault was interrupted by other soldiers. The judge wrote the following: “[T]he girl [is] strongly retarded in her development. Her sex drive is not yet awakened. Therefore, she did not recognize what the accused wanted to undertake with her, but assumed that he wanted to kill her.” The judge further wrote that because the girl ostensibly did not understand what the accused intended, although there is no evidence for why the judge believed this, “a trauma was not perpetrated against the child.” The judge concluded by arguing: “[S]ince the accused did not display a particular brutality, and the damage done was not particularly great, the court did not deny him mitigating circumstances...”¹⁴²

Mitigating circumstances were offered to the accused when women were believed to have transgressed appropriate behavior. In the 1942 case of *Unteroffizier Fritz M.*, accused of raping a French woman, the court initially cited as reasons for a severe punishment the fact that the woman was employed, that she and her husband had a happy marriage, and she was not, the judge specifically noted, a prostitute.¹⁴³ In his testimony, the accused said that because he thought the woman was a prostitute, he “without further

¹⁴¹ BA-MA S390, Gericht der 7. Panzer-Division, Strafsache gegen den Gefreiten Erwin W., 13.10.1942, wegen §177 (versuchter Notzucht).

¹⁴² Birgit Beck, “Sexual Violence and its Prosecution by Courts Martial of the *Wehrmacht*,” in *A World at Total War: Global Conflict and the Politics of Destruction, 1937-1940*, ed. Roger Chickering, Stig Förster, Bernd Greiner (Washington, D.C: German Historical Institute and Cambridge University Press) suggests that “Although the military courts attached great importance to examining the details of each case (in France), the sex crime itself, the victim, and the traumatic effects were not the decisive issues in determining the verdict or penalty” (324).

¹⁴³ BA-MA S251, Gericht der 159. Res. Div, Strafsache gegen den Unteroffizier Fritz M., 16.11.1942, wegen §177, §129 Plünderung und §123 (Hausfriedensbruchs).

ado entered the apartment, even though she resisted him.” This case very clearly demonstrates that conceptions of appropriate conduct for women influenced the behavior of the perpetrator and the determination of punishment. The accused’s belief that the woman was a prostitute allowed him to think he could enter her apartment, despite her opposition, because, as is implied, prostitutes have no right to refusal and cannot be raped. Because the victim was not a prostitute, and thus had the right to refuse sex, but was in fact a good wife, the court considered the defendant’s advances unwanted, and therefore considered them rape. Fritz M. was, however, eventually retried after it was suggested that the woman had committed adultery while her husband was a prisoner of war. The court eventually decided that her testimony was not believable. The rape charges were dismissed with the explanation that “It is quite possible, perhaps even probable, that the witness looked for an excuse to put the sexual contact...into a better light.” Again, it was the fact that the judge believed this woman had violated expectations of a proper woman, that she had cheated on her husband, that caused a reconsideration of the charges.¹⁴⁴

¹⁴⁴ Birgit Beck, “Sexual Violence,” writes about the prosecution of men accused of raping French women: “As was common in peacetime trials for sexual assault, the victim, her lifestyle and particularly her moral character came under thorough scrutiny...younger women, unmarried women without children, and especially the wives of French prisoners of war were widely suspected of living “loose” lives...” (323). It is true that the French women were subject to investigation; it is also true, however, that the court also investigated German women as well. When cases against men accused of assaulting German women are included in the analysis of sexual violence, it becomes clear that it was not the fact that the women were French that mattered, but rather that they were women. Moreover, while married women adhered to gender norms, and soldiers could be criticized for assaulting a married woman, and a married woman with children, if the behavior of a married woman did not adhere to expectations, her testimony could also be doubted. It was not that she was married alone that mattered, but that she acted as a married woman should.

Unteroffizier Franz H. was accused of three crimes, including the rape of a French woman, and the attempted rape of another woman. On the first count, the judge suggested that the woman accused the soldier of rape to avoid explaining to her parents that she had allowed the soldier to have sex with her. On the second count, the court argued that the woman had only accused the soldier because they had been observed together on the street, and she was afraid that her countrymen would take revenge on her for her inappropriate behavior; the case was suspended.¹⁴⁵ In this case, the perceived behavior of the women did not just function to mitigate the determination of punishment, but resulted in the complete dismissal of the charges.

There were some instances when race became a factor in the determination of punishment. In a 1940 case against a German soldier accused of raping a French woman, the presiding judge gave two primary reasons that the accused should receive a mild sentence.¹⁴⁶ The judge first justified the behavior of the soldier as a result of abstinence, saying that the conditions of war “require a state of sexual abstinence that seduces strongly sexualized men into impetuous and unwise sexual decisions.” However, the judge then cited as further mitigating circumstances the fact that the moral senses (*Sittlichkeitsempfinden*) of the French are not so sharply pronounced as are the moral senses of the Germans. Because of his belief in this difference in moral sensibility, the judge had a rather interesting interpretation of the victim’s testimony. He argued that the victim, in her own testimony, had attempted to make her rape sound less severe—for her,

¹⁴⁵ BA-MA S221, Gericht der 189 Res. Div., Verfügung, 26.6.1944.

¹⁴⁶ BA-MA S167, Gericht der 7. Panzer-Division, Strafsache gegen Oberkanonier Ludwig D., 16.7.1940, wegen §177.

the rape was not as offensive an act as it would have been for a German woman because they had different concepts of morality. The intersection of gender and race is particularly clear in this case; it was the French woman, a member of a “degenerate” nation and the “inferior” sex, who was un-traumatized by the sexual violence.

Unlike the case above, in which French women were believed to be morally lacking, the 1940 case against *Soldat* Henry B., accused of the attempted rape of a French woman, demonstrates the tensions in the constructions of gender and race—there was no one understanding of the moral quality of French women. Sometimes, beliefs about racial quality functioned to the benefit of the women. Henry B. was criticized by the judge because of his “unchecked brutality against a delicate French woman.”¹⁴⁷ The accused was criticized because he had not controlled himself, because he had abused a “delicate” woman, and implied in the determination of punishment is that French women are particularly delicate.

In the following case, an Italian woman was blamed for a violent encounter, and her supposed responsibility for the crime greatly affected the determination of punishment. In the 1944 case of *Gefreite* Gustav S., accused of raping an Italian woman, the court was quite clear in its ideas about acceptable female behavior. According to the testimony of the victim, Gustav S. asked to go to her apartment to see her record player. Once in the apartment, he made advances toward her, and when she responded that she was not a “street woman,” he raped her. This case demonstrates again that violence

¹⁴⁷ BA-MA RH 69/1099, Gericht der 18. Armee, Strafsachge gegen Soldaten Henry B., 30.6.1940, wegen §177 (versuchter Notzucht).

towards particular kinds of women was considered acceptable, those women who transgressed norms were considered unrapable because one cannot rape someone whose job it was to have sex. The defendant acknowledged that the woman had strongly resisted him, but he maintained that her resistance had prevented sexual intercourse. The court dismissed the charges against Gustav S. arguing:

That an attempted sexual violation occurred cannot be proven. It is, after all, unusual when a woman takes a strange man secretly into her apartment shortly after meeting him for the first time, shows him the bedroom, treats him to some food, sits down with him and permits him to hug and kiss her.

Because the woman had allowed him into her house, she was, wrote the judge, “probably not reluctant to have sex with him.”¹⁴⁸ The judge further wrote that the accused, because the woman had invited him into her home, did not take her resistance seriously; once he realized she was earnestly resisting him, he released her. The judge in this case obviously believed the testimony of the accused, that the woman had initiated and permitted all contact except sexual intercourse. The judge, believing the woman’s actions transgressed the boundaries of acceptable behavior, dismissed her testimony completely, thus demonstrating the importance of the adherence to gender norms in the determination of punishment.

In the case against three German soldiers accused of raping a young Italian woman, the judge was particularly harsh in his condemnation.¹⁴⁹ The three defendants

¹⁴⁸ BA-MA S60, Feldgericht des Kommandeurs, Der Luftflottentruppen 2, Einstellungsverfügung, Strafsache gegen den Gefreiten Gustav S., 16.8.1944, wegen versuchter Notzucht. The case was suspended (eingestellt).

¹⁴⁹ BA-MA S161, Gericht der 29 Pz. Gren. Div., Strafsache gegen Gefreiten Martin V., Kanonier Karl J., Pionier Kasimir M., 9.2.1944, wegen §177 (gemeinschaftlicher Notzucht, gang-rape).

encountered a young Italian girl, fifteen or sixteen years old; one of the accused proposed using the girl sexually, and the other two agreed. Although the girl initially resisted, by the third man, she was too weak to fight off the sexual assault. The judge decided that since the three soldiers did not have poor records, and that even though one soldier had been punished, he had made up for his crime, and a penitentiary sentence was not an appropriate punishment. At the same time, the judge also admitted that being raped by three men had caused “severe physical and psychological damage” to the young woman, and because the Italian people “place great value on the sexual abstinence of young girls,” the soldiers deserved a jail sentence. This case demonstrates that the judge believed the Italian people had a particular understanding of sexual honor, that there were certain characteristics inherent in particular national cultures; the soldiers had damaged this specific sense of sexual honor in their assault of this young girl. Moreover, in the eyes of the judge, the girl did nothing to incite the sexual assault, and in fact fought it as long as she was able. The soldiers had violated the expectations of German soldiers in Italy, which according to a 1943 order, required the German soldier to exhibit restraint against Italian woman, and in so doing, protect his honor.¹⁵⁰

Even in cases in which race appears to be a point of consideration, there are often other factors, relating primarily to gender ideology, that are invoked in opposition to arguments about the “racial inferiority” of the woman in question. Birgit Beck firmly argues that men who raped women in Russia were less severely punished than those who

¹⁵⁰ BA-MA RH 34-223, Der Detusche General beim hauptquartier der Ital. Wehrmacht, July 1943, *Der deutsche Soldat in Italien*.

raped women in the West, and that race was an important factor in this disparity. There were, however, severe sentences for rapes of Russian women, and less severe punishments for the rape of Western European women. What is of note, and what will become clear, however, is that race was not always a factor in the punishment proceedings, and Eastern European women were often described in exactly the same way as Western European women—as deserving of protection, as having sexual honor, or alternatively, as failed women with no sexual honor, who thus did not deserve protection from and redress for. It is too simple to say that the judges believed Russian women to have little sexual honor when compared to German women, particularly when it becomes clear that not all German women were treated equally—sexual honor was not inherent in German women, but was rather bestowed upon them if their behavior called for it.

An example may be found in the decision in the case against Dr. R., who was punished for beating his Russian servant. The judge criticized the doctor because “one may not hit a girl out of blind anger, even when dealing with a Russian girl.”¹⁵¹ Although this statement can by no means be interpreted as reflecting the judge’s belief in racial equality, it is important to recognize that “even” Russian women were worthy of protection from violence, something that runs rather counter to current scholarly presumptions of how Slavs were to be treated by German soldiers. Even though the woman was Russian, she was still a woman, and thus deserving of some of the

¹⁵¹ BA-MA S103, Gericht des Pz.A.O.K.3, Strafsache gegen Oberstabsarzt d.R. Dr. Walther R., 5.12.1944, wegen §223a (gefährlicher Körperverletzung, aggravated battery). He was accused of thrice hitting her on the backside with a riding crop; once accused of bending her over his knee and hitting her with the riding crop; and once accused of forcing her to strip off her clothing, bending her over his knee, and hitting her with the crop.

protections afforded more “racially superior” women. The judges had difficulty divorcing the idea of protecting women, all women, from the belief that some women did not deserve protection because of their “inferiority.”

In the 1944 case against two soldiers accused of, among other crimes, raping a Russian woman, the judge argued that “the rules for the protection of the honor of women, which are in effect in Germany, are not to be applied...in the same strength...”¹⁵² It seems clear at this point that the judge believed that the protections afforded the sexual honor of German women should not be offered to Russian women. However, the judge then continued: “the rapes deserve severe punishment because they are incompatible with the deportment of the German soldier against civilians and against Russian women...” There was no specific mention of this particular woman’s racial quality, or her sexual honor. In fact, there was the suggestion that a modicum of respect was to be afforded Russian women, such that rape should be considered a punishable offense. The judge ultimately concluded first that there are particular expectations of German soldiers, and second, that “even” Russian women may expect a particular kind of behavior from German soldiers, behavior which does not include sexual violence, despite their supposed racial inferiority and attendant lack of sexual honor.

In the 1941 case against *Panzerschützen* Alfred M., accused of raping a Russian woman, racism and expected treatment of women battled for primacy in the determination of punishment. The judge made the following statement:

¹⁵² BA-MA S313, Gericht der 82. Infanterie-Division, Strafsache gegen Obergefreiten Halmuth K., 30.1.1944, wegen §177 (versuchter Notzucht), §149 (rechtswidrigen Waffengebrauchs), and §223, (Körperverletzung, battery) and Anton S., 30.1.1944, wegen §177.

In the determination of punishment, the following considerations were important: Even if one considers that the ideas of the sexual honor of Russian women differ from German ideas...the acts of the defendant were so shameless that they caused the Russian women to feel greatly shamed.¹⁵³

Despite the “shamelessness” of the German soldier’s acts, the judge cited as a mitigating circumstance the race-based differences in sexual honor. However, the soldier was ultimately given a three-year penitentiary sentence because, among other reasons, he was a poor soldier and had a hopeless character [*unverbesserlicher Charakter*], factors that will be discussed in the following chapter.

After examining the language used to criticize soldiers for their actions, it becomes clear that racial quality was not always a factor in the determination of punishment. Frequently, there is no discussion of “racial quality,” particularly where one might expect it, if Nazi racial ideology was actually coherent and an important aspect of military jurisprudence—in cases in which Russian or Polish women were raped. Rather, the very fact that a rape occurred, regardless of who the victim was, is what mattered. For example, in the 1939 case against two men accused of raping a young Polish girl, the judge stated that the crime was beastly (*gemein*) and that the soldiers had acted like animals.¹⁵⁴ There was no mention of the “racial quality” of the Polish woman, no discussion of her sexual honor, only a discussion of how the soldiers had not acted like

¹⁵³ BA-MA S243, Gericht der 7. Panzer-Division, Strafsache gegen Panzerschützen Alfred M., 27.8.1941, wegen §177.

¹⁵⁴ BA-MA S411, Gericht der 29. Division, Strafsache gegen Unteroffizier Georg R. and Schützen Otto K., 13.10.1939, wegen §177. Sentenced to 3 years *Zuchthaus*. A penitentiary sentence, *Zuchthaus* was a more severe sentence than a jail (*Gefangnis*) sentence. Georg R., as the instigator, was sentenced to three years in a penitentiary, and Otto K. to one year and six months in a penitentiary.

proper German men, but rather had acted like animals. Poles were ostensibly considered racially inferior, and the absence of a discussion about the racial quality of the woman is striking.

In the case against *Reiter* Walter U., accused of trying to force a young Russian woman into a cellar in order to rape her, there was similarly no discussion of race. The judge stated: “Especially aggravating is the fact that while his comrades risked their lives, the defendant believed his unrestrained sexual drive allowed him to attack a Russian girl.”¹⁵⁵ The soldier was criticized for his actions, for his unrestrained treatment of a woman—a Russian woman. The fact that she was supposedly a racially inferior Russian woman was not part of the discussion, in fact, the judge said the woman made a “believable impression” and did not contradict herself during the interview.

In 1944, five German soldiers were accused of raping two young Russian women; they were sentenced to a combined three-year penitentiary sentence. In the determination of punishment, the judge made no comment about the racial quality of the women, and in fact seemed to invoke a sense of sexual honor, even though the young women were Russian. The judge wrote: “...the accused were completely unknown [to the girl]. Such a girl does not just let herself be used by five soldiers, one after the other, especially in the house of her parents and in the presence of adult relatives.”¹⁵⁶ Rather than assuming

¹⁵⁵ BA-MA S254, Gericht der 82. Inf. Div, Strafsache gegen Reiter Walter U., 23.7.1942, wegen §177.

¹⁵⁶ BA-MA S258, Gericht der Korps-Abteilung E., Strafsache gegen Obergefreiten Anton H., Obergefreiten Theodor M., Obergefreiten Wilhelm L., Obergefreiten Jacob C., Stabsgefreiten Johannes L., 5.5.1944, wegen §177 (gemeinschaftlicher Notzucht).

that these girls, as “racially inferior” Eastern Europeans, had no sexual honor, the judge instead wrote that the defendants had acted with “unmatched bestiality, not like German soldiers.”¹⁵⁷ The judge further wrote: “the girls were in no way willing to allow five unknown German soldiers, who in the night unlawfully broke into their house, to have sex with them.” It is notable that it is in this case wherein the sexual honor of the Russian women was not impugned, that the judge decided to issue a penitentiary rather than jail sentence—the rape of these “kinds” of women deserved punishment.

In the 1944 case against *Obergefreite* Josef Z., he was criticized for his behavior toward a Polish woman. According to the Judge, Josef Z. knew that he was to conduct himself decently and in a civilized manner with the Polish civilians. Thus, the judge criticized him for transgressing these expectations, stating that “the behavior of the accused was like a wild man.”¹⁵⁸ Again, there is no mention of the racial quality of the Polish woman, only that the soldier needed to be punished for his behavior.

Similarly, there was no discussion of “racial quality” in the case against two soldiers accused of raping a Ukrainian woman.¹⁵⁹ *Obergefreite* Alfred S. and *Gefreite* Paul K. were convicted of rape; they saw a Ukrainian woman sitting in her house, and K. said “the little one is alone in the house, the moment is favorable.” They went into the

¹⁵⁷ BA-MA S258, Gericht der 3. Kav.Brigitade, Rechtsgutachten 8.5.1944, gegen Obergefreiten Anton H., Obergefreiten Theodor M., Obergefreiten Wilhelm L., Obergefreiten Jacob C., Stabsgefreiten Johannes L. wegen §177.

¹⁵⁸ BA-MA S84, Gericht der 208. Inf. Division, Strafsache gegen den Obergefreiten Josef Z., 10.28.1944, wegen §177.

¹⁵⁹ BA-MA RW 55/4222, Gericht der Wehrmachtkommandantur Berlin, Strafsache gegen den Obergefreiten Alfred S. und den Gefreiten Paul K., 24.8.1944, wegen §177.

house and raped the young woman. They both admitted to the crime, further admitted that they meant to rape her, and that they knew their act was punishable.¹⁶⁰ The soldiers were particularly criticized for the brutality of their act, and the abuse of a weak woman by the force of their bodily strength. Again, there was no mention of race, only of the delicacy of the woman assaulted as cause for harsh punishment.

The court was clearly influenced by gendered concepts of womanhood and the appropriate behavior of women. What is also interesting, however, is that the women themselves also invoked concepts of womanhood in their defense. In one case, a woman who was about to be attacked told the soldier she was married with children—the attacker left her house and subsequently raped a different woman.¹⁶¹ In another case, in which two men were accused of rape, the woman pleaded with her attackers saying that the men should leave her alone because she had three children.¹⁶² According to the testimony of a Polish woman assaulted by two soldiers, she had pleaded with her attackers to leave her cousin alone, saying that her cousin was no “whore.” She then told the soldiers to leave and go find a brothel,¹⁶³ again demonstrating the belief, not just held by men, that men needed sex and that there were certain kinds of women to provide it.

¹⁶⁰ Both soldiers admitted their guilt in their statements: BA-MA RW 55/4222, Vernehmung Gefreiten Paul K., 19.11.1943, Vernehmung Obergefreiten Alfred S., 19.11.1943.

¹⁶¹ BA-MA S247, Gericht der 214 I.D, Strafsache gegen Stabswachtmeister Richard E., 28.12.1944, wegen §330a.

¹⁶² BA-MA S190, Gericht der 29. Panz. Gren. Division, Strafsache gegen den Stabsgefreiten Helmut W. und Stabsgefreiten Albert H., 11.9.1944, wegen §177 (gemeinschaftlicher Notzucht).

¹⁶³ BA-MA S392, Vernehmungsniederschrift, 12.27.1941.

It is evident that racial quality could be a point of discussion in the trials for almost all women, not just Eastern European women. It is true that Eastern European women were sometimes referred to as racially inferior, however, it is clear that Western European women also faced racial evaluations. Furthermore, the belief in the differing racial quality of Russians, Italians and the French was expressed in a gendered language—the experience of rape differed for women depending on the evaluation of their supposed racial quality.

Mothers of the Race

German women were of great importance to the Nazi regime, although they had, arguably, little agency under Nazism. They did have, however, a particular role to fulfill as mothers.¹⁶⁴ According to Leila J. Rupp, “as men served the state by fighting, so women served by bearing children,”¹⁶⁵ and they were to act in accordance with the expectations of the regime. They were to have sex only with men of suitable racial quality, and they were to have as many children as possible. As mothers of the race, their sexual honor, which we will see did not belong to them, but to the race and the male members thereof, was to be protected. For example Ulrich Herbert, in describing sexual contact between German women and foreign laborers, writes that German women caught having sex with non-German men were to be severely and publicly punished, because

¹⁶⁴ The position of women as mothers of the nation is not unique to Nazism. See, among many other works, Joane Nagel, “Masculinity and Nationalism: Gender and Sexuality in the Making of Nations,” *Ethnic and Racial Studies* 1, no. 2 (March 1998): 242-269, for a discussion of the place of men and women in nationalism.

¹⁶⁵ Leila J. Rupp, “Mother of the *Volk*: The Image of Women in Nazi Ideology,” *Signs: Journal of Women in Culture and Society* 3, no. 2 (1977), 363.

they had “‘disgraced their honor’,” and had “‘offended not only German honor in general, but the honor of German males in particular.’”¹⁶⁶ This idea, that the sexual honor of women belonged as much to men and to the nation as to the woman herself will be explored in further detail below. The final chapter on sexual violence committed by “racial others” against German women demonstrates that sexual honor was really only an issue when German women were sexually abused by non-German men—the topic of sexual honor was not commonly discussed in rape cases committed by German soldiers. Rape by a “racial other” was an attack on the German men to whom the women belonged, which was more objectionable than attack by fellow German men, because the women belonged, to some degree, to all German men.

The analysis of the interactions of German women and non-German men demonstrate that those women who had sexual contact with Polish men were considered much more transgressive both of gender and racial ideology than the German men, who could not be expected to control their sex drive, even if it facilitated contact with “racially inferior” women. For the most part, scholars suggest that German women living in Germany were expected to stay at home, to become mothers, and to raise “racially superior” children.¹⁶⁷ Given such an idealized status, which George Mosse argues

¹⁶⁶ Ulrich Herbert, *Hitler's Foreign Workers: Enforced Foreign Labor in Germany under the Third Reich*, trans. William Templer (Cambridge: Cambridge University Press, 1997), 77.

¹⁶⁷ Ute Frevert, *Women in Germany History: From Bourgeois Emancipation to Sexual Liberation*, trans. Stuart McKinnon-Evans in association with Terry Bond and Barbara Norden (Oxford and New York: Berg, 1989), 220.

simultaneously puts women in their “place,”¹⁶⁸ one would expect that any violence towards German women, particularly sexual violence, would be severely punished. What the court documents demonstrate, however, is that only certain kinds of German women, and children were worthy of protection. Men who raped German women acting in accordance with gender norms were subject to severe criticism, and the judges often refused to grant mitigating circumstances. By contrast, if a woman transgressed expectations, she could be blamed for whatever had transpired, and mitigating circumstances could be offered; this also obtains in cases of German soldiers accused of sexually abusing German children, as will be discussed in a later chapter.

The court documents illustrate that despite being cast as the representatives of the race and nation, German women were quite poorly treated by the Nazi regime. German women were subject to both pro- and antinatal policies employed by the Nazi government, but Gisela Bock argues that women, as propagators of both superior and inferior races, were more frequently the victims of Nazi antinatalism than men.¹⁶⁹ For example, the Nazi program of eugenic sterilization targeted both men and women, but because it was believed inferior women were out-reproducing superior women, these women, more so than inferior men, then became the target of sterilization efforts. Women were not only persecuted for racial reasons, but for sexist reasons as well. The

¹⁶⁸ George L. Mosse, *Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe* (New York: Howard Fertig, 1985), 90.

¹⁶⁹ Gisela Bock, “Antinatalism, Maternity and Paternity in National Socialist Racism,” in *Nazism and German Society, 1933-1945*, ed. David F. Crew (London and New York: Routledge, 1995), 110-140.

regime encouraged German women to have children; in fact abortion was made illegal to prevent the “murder” of social and ethnically acceptable children. Thus, according to Bock, these women were the victims of “...racist sexism, since their procreation is urged not just because they are women, but because they are women of a specific ethnicity or social position declared superior.”¹⁷⁰ Inferior women were the victims of “sexist racism” because, as ‘racial inferiors,’ they were prevented from having children, but more importantly, they were persecuted “...on the grounds of their real or supposed deviation, as women, from social or ethnic standards for superior women.”¹⁷¹ Bock strongly argues that Nazi policies were “anything but gender-neutral.”¹⁷² She further maintains that “just as National Socialist race policy was not gender-neutral, so national Socialist gender policy was not race-neutral.”¹⁷³ Women were subjected to more invasive surgery, forever deprived of procreative abilities, a fact the author argues was more important to women than men; and childbearing and sexuality were forever divorced after sterilization, again

¹⁷⁰ Gisela Bock, “Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization, and the State,” in *When Biology Became Destiny: Women in Weimar and Nazi Germany*, ed. Renate Bridenthal, Atina Grossmann, and Marion Kaplan (New York: Monthly Review Press, 1984), 288.

¹⁷¹ *Ibid.*

¹⁷² Bock, “Antinatalism,” 116.

¹⁷³ *Ibid.*, 113.

argued to be more objectionable for women than men.¹⁷⁴ Bock maintains that the antinatalist policies of the Nazi regime were more prevalent than the oft cited pronatalist attempts to increase the birthrate of racially superior individuals. Women were, in fact, not the focus of the pronatalist movement according to Bock. Rather, men received the majority of rewards for having racially superior children: “The ‘duty’ of begetting was considered more valuable than that of bearing and rearing children, women’s contribution to procreation inferior to men’s.”¹⁷⁵ Some scholars argue that German women benefitted from pro-natal policies; Jill Stephenson, for example, argues that women were the targets of a Nazi program of pronatalism, encouraged to give birth and rewarded for large numbers of children.¹⁷⁶ Stephenson does not disagree that the Nazi regime instituted antinatal policies, but instead focuses the majority of her attention on how German women benefitted from the pronatal policies of the Nazi government, rather than how non-German women, or ‘racially inferior’ women, were treated by the Nazi government. Whether German women were the beneficiaries or victims, they were treated as passive subjects, not valued on any level of individuality, but only for their reproductive potential, a degree of misogyny also illustrated in the court documents, wherein German women were often treated quite poorly by the military justice system. The court documents reveal that *all* women were subject to gender evaluations, and even when the

¹⁷⁴ Ibid., 116-117.

¹⁷⁵ Ibid., 124.

¹⁷⁶ Jill Stephenson, “Women, Motherhood and the Family in the Third Reich,” in *Confronting the Nazi Past*, 167-183.

decision was to the benefit of the woman in question, it was because of her supposed adherence to an idealized status, not for any personal value afforded the individual woman.

In 1940, *Soldat* Theodor H. was charged with violating §174 section 1, which punished lewd contact with a person under the “guardianship or supervision” of the accused.¹⁷⁷ He was accused of touching the fourteen-year old German girl who worked for his family (*Pflichtjahrmädel*).¹⁷⁸ According to the charges, he touched her under her clothes and attempted to pull down her underwear; the next day, he touched her genitals; and the day after that, he lay on top of her and had sex with her. She did not call for help during any of these incidents, because, as she testified, it did not occur to her to cry for help because she was so dazed (*benommen*) by the behavior of the accused. The accused admitted to sexual contact, but maintained that the girl agreed with his actions.

Ultimately, the court decided not to charge Theodor H. with rape or violation of §176 section 1, but rather with violating §174 section 1. The court made this decision because it doubted the behavior of the young girl; she had, according to witnesses, not acted in accordance with expectations of German girls: she had not called for help, she did not tell her mother what happened, and she may have had previous sexual contact.¹⁷⁹ Therefore,

¹⁷⁷ This law punishes “Anybody who uses for lewd purposes 1) a person under twenty-one years of age, with whose guardianship or supervision he has been entrusted,” *The German Penal Code of 1871*, 101.

¹⁷⁸ BA-MA S176, Gericht der 73. Inf.-Division, Strafsache gegen Soldaten Theodor H., 13.11.1940, wegen §174, 1.

¹⁷⁹ The wife of the accused, in her clemency letters, wrote that the girl, had allowed a soldier into her apartment (BA-MA S176 letter from Frau H. to the *Kriegsgericht*, September 16, 1940), and that she was known to go on walks with soldiers (letter from Frau H., to the *Kriegsgericht*, November 3, 1940). Frau H. also wrote that the mother of the girl believed that she had had contact with one soldier in particular.

the court assumed that she was in agreement with the sexual contact, but the soldier still had to be punished for have sexual contact with someone under his supervision.

In another case, a seventeen-year-old soldier was charged with having sexual contact with a fifteen-year-old girl.¹⁸⁰ In this case, the accused persuaded the girl to manually stimulate him until he ejaculated. The court acknowledged that the accused knew his actions were punishable, as he told the girl not to tell anyone what had happened. Despite this, however, the court concluded:

Furthermore, his youth had to be considered a mitigating circumstance, as it appears the incident was a result of a rash, boyish stupidity and not a planned moral violation. After all, [the girl], according to her own statements, did not absolutely object to his intentions, but gladly went along. Obviously, she was, at that time, in spite of her youth, already a frivolous and precocious girl without any sense of shame. In the meantime, a criminal proceeding for forbidden contact with a French prisoner of war is pending against her. Considering this situation, the accused has hardly corrupted her morally.

It is not clear from the documents whether the girl consented to sexual contact, but clearly the judge found her lacking in moral quality. The judge dismissed any potential severity of abuse by arguing that the girl was sexually knowledgeable and apparently prone to sexual relationships, because she had engaged in subsequent sexual contact, with a French prisoner of war no less. Thus, because she did not adhere to normative gender roles and appeared to have sexual knowledge, the judge concluded that the sexual contact had not been particularly traumatic. The judge's comments demonstrate a particular understanding of gender norms and acceptable behavior—the female child's behavior

¹⁸⁰ BA-MA S156, Gericht der 189 Res. Div., Strafsache gegen den Grenadier Michael H., 13.8.1943, wegen §9 Jugendgerichtsgesetz. The accused was, as a minor himself, charged with breaking German juvenile law.

was a measure of her morality, while the soldier's behavior was a reflection of "boyish stupidity."

Obergefreite Rudi R. was charged with grabbing a young German girl and forcing her into his car.¹⁸¹ Despite the fact that the girl was not yet fourteen years old, the accused was charged with attempted lewd contact, not child abuse, because she looked older than fourteen. This was actually not a rare occurrence—actual age did not matter, it was how old the girl appeared to be that mattered. The accused was criticized for because, as the judge wrote: "the crime of the accused was the act of an uncontrolled [sex] drive (*Triebhandlung*), which was particularly reprehensible because it was undertaken against a girl who was not yet fourteen years old." At the same time however, the judge believed the configuration of the back seat of the car made sex difficult, and thus did not believe the witness's testimony that she had fought the accused. They must have remained outside the car, he concluded. This may explain why the judge made the following statement about the accused, and considered mitigating circumstances. The judge wrote:

...the crime obviously had no severe consequences for the witness. She appeared little affected by the crime and knew, according to her testimony, enough about sexual things that she obviously had a certain amount of understanding about the wish underlying the actions of the accused.

The judge decided to accord the accused mitigating circumstances, because he regretted his crime, and asked his superior for a transfer because "he could no longer look his comrades in the eyes." It is of note that the accused did not regret his actual behavior

¹⁸¹ BA-MA S55, Kommandierenden Generals Befehlshabers im Luftgau III/IV, Strafsache gegen den Obergefreiten Rudi R., 3.3.1942, wegen §176, 1.

toward the girl, but rather how his behavior affected his relationship with his fellow soldiers, which indicates the importance of comradeship, a topic examined in the following chapter.

In 1941, *Feldwebel* Franz R. was accused of insulting (*Beleidigung*) a woman in Zeltweg, Austria; he was not accused of rape according to §177, but rather violating §185,¹⁸² the judge writes the following:

[T]he accused has made himself guilty of violating the law against insult...[he] harassed [the victim] in entirely outrageous ways and offended her sexual honor...he caused immoral impertinences, for which she had given him not the least justification. Also, the grabbing of the witness under her skirt must be considered an assault against her sexual honor. The witness is 18 years old...she is engaged and must have felt the handling of the accused to be an extraordinary wound against her honor.¹⁸³

The judge also wrote that “...the witness still has a childlike character and in sexual things is doubtless very sensitive and inexperienced. Therefore, she had to have found the offense of the accused all the more degrading.” This case demonstrates that the judge believed there could be instances in which the woman incited sexualized behavior on the part of the soldier, but that in this case, because the woman conformed to expectations—engaged (and thus belonged to someone else), unaware, and resistant to the abuse—the woman gave “not the least justification” for the abuse. Moreover, the fact that the

¹⁸² §185 is separate from crimes against morality: “Insult is punishable by a fine or imprisonment for a term not to exceed one year and, if the insult has been committed by means of violence, by a fine or by imprisonment for a term not to exceed two years,” *The German Penal Code of 187*, 107. This case is included in this chapter because it was included in the sex crimes collection, and because the case involved violent sexual contact, and could have been treated as a sex crime had the judge wished. Moreover, the language of the judge is similar to that of sexual violence cases.

¹⁸³ BA-MA S52, Feldkriegsgericht des Höheren Fliegerausbildungskommandeurs 17, Wien, Strafsache gegen den Fw.d.R. Franz R., 15.10.1941, wegen §185.

woman was young, that she likely had no sexual experience, that she was engaged, that she was living her life in accordance with expectations of what a woman should be doing, rendered the assault all the more traumatic and worthy of punishment.

When judges did criticize soldiers and mete out punishments they themselves considered harsh, they often did so not because of the damage done to woman herself, but to those to whom she belonged. *Feldwebel* Stanislaus B. was accused of raping a fourteen-year old German girl.¹⁸⁴ The judge decided on a penitentiary sentence in part because the accused chose the daughter of a subordinate for his crime, and therefore shook the trust of this man in superiors. The judge's concern was not for the young girl, but rather for the ways in which the behavior of the accused affected another soldier, the soldier to whom the girl, as his daughter, belonged. Her sexuality, her sexual honor, belonged not to her, but to her father.

The case of Hermann B., charged with attempted rape in 1942, further demonstrates that women's sexual honor did not belong to them, but rather was a product of to whom they belonged.¹⁸⁵ B., who had been a soldier, but was released from the *Wehrmacht* in 1940, and then worked as a baker in Hohensalza, in the *Warthegau*, was accused of the attempted rape of a woman the court referred to as *Soldatenehefrau* S. The fact that the woman was the wife of a soldier serving in France was of particular importance both to the woman and to the court. When the accused began his assault on

¹⁸⁴ BA-MA Pers 15/480, Gericht der Kommandantur Berlin, Strafsache gegen den Feldwebel Stanislaus B., 1.10.1941, wegen §177.

¹⁸⁵ United States Holocaust Memorial Museum (hereafter USHMM) RG 15.014M, Sondergericht Hohensalza, Strafsache gegen den Hermann B., 7.10.1942, wegen §177 (versuchter Notzucht).

Frau S., she begged him to release her, saying “I am a soldier’s wife, and that one may not do.” She also told the accused that what he was doing was punishable, and that she would report him. The defendant was sentenced to death because he had violated §4 of the *Volksschädlingsordnung*, which called for punishment for those men accused of taking advantage of the conditions of war in the commission of a crime.¹⁸⁶ Because the victim’s husband was in the field, and because the accused waited until her Polish laborers were gone from the home to begin his assault, he was charged with taking advantage of the conditions of war—had the husband been present, the crime would not have occurred. In his explanation for the sentence of death, the judge stated:

This crime is so reprehensible and has the legal peace of the *Volksgemeinschaft* so endangered, that the accused, for the sanity of the sensibility of the *Volk*, deserves only one punishment, the death sentence. The soldier on the front must have the assurance that his wife in the homeland is not suffering, and that the *Volksgemeinschaft* protects her before all attacks against sexual honor, which soldiers’ wives are particularly exposed to. Whoever assaults a soldier’s wife risks his head, even if he is otherwise a commendable man.

It was not the crime against the woman that required punishment; rather that she belonged to her husband, and to the *Volk*, that made the assault on her sexual honor so reprehensible.

Not only did judges evaluate the degree to which women adhered to expected gender norms, they also assessed the physical development, the morality, and the intelligence of women. The conflation of physical development with sexual knowledge more often occurred in cases of child abuse, as will be explored in a later chapter, but did

¹⁸⁶ See David Raub Snyder, *Sex Crimes under the Wehrmacht* (Lincoln and London: University of Nebraska Press, 2007), 41 for further discussion of this law.

occur in cases involving adult women as well. In the 1944 case against *Schütze* Richard L., the accused was charged with violating §185, after the judge decided that because L. had not used force to touch a fourteen year-old German girl, he could not be charged with violating §176 section 1, and presumably because the girl was fourteen, he could not be charged with §176 section 3.¹⁸⁷ The accused came up behind the girl, touched her hip above her clothes, and the put his hand under her skirt and touched her genitals. The accused then guided the young girl into a room, and said, “Don’t be afraid, you are now old enough.” According to the accused, the girl, of her own accord, lay on a sofa, he attempted to pull her underwear off, and she helped him so they would not tear. He then lay on top of her, and placed his penis between her upper thighs. Sexual intercourse did not occur because at this point, the young girl resisted and told the accused that he was hurting her; he let her go. The accused attempted to exonerate himself by saying that he did not know how he ended up having sexual contact with the young girl, but did say that he became sexually aroused because her skirt was so short. The judge said the following about the accused and the victim:

The accused makes a much older impression than he actually is. He is small, frail and if anything seems more like an old man than a man in his 40s. He makes a tentative, weak-minded, softish impression. In contrast, the witness is somewhat larger than him, is developed beyond her age, slender and strong. She makes a sensual impression and according to the opinion of the youth evaluator, one must expect from her a very strong sexual curiosity. Her teacher, with whom she was a student in the Elementary School for 7.5 years, identified her as “not absolutely credible.”

¹⁸⁷ BA-MA S40, Gericht der Division Nr. 404, Strafsache gegen den Schützen Richard L., 26.6.1944, wegen §185.

The judge seems to be casting doubt on the masculinity of the accused, calling him “tentative,” “weak-minded,” and “soft,” almost as if he was not manly enough to have committed the crime. The girl, however, was, in the opinion of the judge, to blame for the sexual contact, particularly given that the soldier was so weak and tentative—someone had to act, and according to the accused, the victim never said no, laid on the couch herself, took off her own underwear, and until the very end, never resisted. At the same time, however, in his attempt to penetrate her, the accused was criticized for damaging her sexual honor (*geschlechtsehre*). However, the damage done to her sexual honor was not construed as severe because the girl was so young, it was not entirely clear that she knew what had happened was a crime. Although “she was possibly aware of the crime as an immoral act,” she was so young, argued the judge, that she was not aware she possessed a sense of sexual honor, thus it could not truly be damaged by the acts of the accused.

Conclusion

The linguistic analyses of the court-martial documents demonstrates the importance of gender ideology to the sentencing proceedings. It is true that the racial quality of the woman sometimes affected the punishment, with the judges assuming that Eastern European women had little sexual honor simply because they were Slavic, and thus “racially inferior.” However, it is also true that the judges made assumptions about the sexual honor of French and Italian women, which demonstrates that Eastern and Western European women were subject to racial evaluation. More often than not, the judges could not determine who was to be considered “racially inferior,” and how that

categorization should affect the determination of punishment. This inability to define race is a product of the overall fluidity of Nazi racial ideology—even high-ranking Nazis and military officials could not agree on who was “racially inferior” and whether sexual relations with those individuals should be prohibited. Concerns about homosexuality, discussed in detail in a later chapter, also affected implementation of racial ideology.

More important than discussions of race, were assumptions about the normative behavior of women. When women acted in ways the court believed conflicted with normative gender roles, the court questioned whether their testimony was truthful, whether they had actually been raped, and their motives for accusing soldiers of rape. At the same time, when women acted in accordance with these preconceived gender roles, the court considered their testimony as inherently believable, and often cited this as a factor for severe punishment. This holds true for both Eastern and Western European women. The testimony of Slavic women was not automatically dismissed, and conversely, the testimony of Western European women was not automatically believed. Even German women were subject to the same gendered evaluation by the judges. Sexual honor was not an inherent attribute, even in German women, but rather had to be earned, or more accurately stated, had to be constructed, through proper behavior. Thus, one cannot argue, as Beck does, that Russian women were, in toto, believed to possess less sexual honor than other “kinds” of women, because all sexual honor, and its attendant effects, such as believability, trauma, not being blamed sexual violence, was bestowed only on those women who deserved it, regardless of whether they were Russian, Polish, French, *or* German.

The role of gender in the determination of punishment had a significant effect on the determination of punishment— concepts of femininity and transgressions thereof cast doubt on the women, or rendered their testimony inherently believable, and the soldier worthy of punishment, and concepts of masculinity, as will be demonstrated, were invoked to excuse or require harsh punishment of German soldiers. The race of the woman in question was of little importance, but her conduct as a woman was one of the most important factors in the courts-martial.

CHAPTER III

“NOT LIKE GERMAN SOLDIERS”: CONSTRUCTS OF HETEROSEXUAL MASCULINITY IN CASES OF RAPE

In February 1941, two German soldiers were accused of raping a Polish woman in Zeronice, Poland. The judge in the case made the following statement:

If [the accused] had admitted their crimes as men, they would have received a lighter sentence...[they were asked] to stand to their crime as men; if they offered only denials, they could not count on clemency from the court...

The judge further stated:

Whoever, as a member of an armed battalion and thus as a wearer of a uniform symbolizing the honor of a soldier, damages the esteem of the entire nation through such a hideous dishonor, as the accused have done, forfeits his right to life and sets himself outside the German community (*völkische Gemeinschaft*). The accused have done this in the most frivolous and loathsome way, disregarding the most primitive human rights, by jumping like brutal beasts on an open road upon a helpless female person, by letting their uncontrolled desire run rampant and forgetting completely their duties as the head of the family (*Familienvater*), servants of the state, and as members of the German race (*deutsche Volksgenossen*).¹⁸⁸

The two men in this case were sentenced to death for the rape of a Polish woman.

In a 1940 case, a man was accused of throwing a woman in Rambouillet, France to the ground and assaulting her. The judge in this case, arguing that the accused should

¹⁸⁸ USHMM RG 15.014M, Sondergericht III Hohensalza, Strafsache gegen Hilfszollbetriebsassistent Oskar S. and Karl K., 8.2.1941, wegen §177.

receive a mild sentence, stated that the conditions of war “require a state of sexual abstinence that seduces strongly sexualized men into impetuous and unwise sexual decisions.”¹⁸⁹

These cases exemplify the competing ideologies inherent in the Nazi regime and the German military’s treatment of rape committed by German soldiers. Previous studies of rapes committed by the German *Wehrmacht* tend to focus primarily, although not exclusively, on the punishment for rape, and the influence of Nazi racism on the determination of punishment. These works do not specifically address the role of gender ideology in the court-martial proceedings. It is evident, however, that concepts of masculinity were fundamental in determining punishment. For example, the two soldiers accused of the rape of a Polish woman were criticized most harshly for transgressing the boundaries of German masculinity, for failing as heads of the family, as Germans, as subjects of the Reich—as men. The judge even says as much—had they acted like men, they would have received a lighter sentence, but their failure to act in accordance with concepts of German masculinity resulted in the death sentence. At the same time, however, the second court case demonstrates that a different concept of masculinity existed, one that could be invoked to mitigate a severe sentence for rape—men had sexual urges that needed to be met, particularly in wartime, and rape was one possible way in which men could assuage their sexual desire—it was only an “unwise” decision.

¹⁸⁹ BA-MA S167, Gericht der 7. Panzer-Division, Strafsache gegen Oberkanonier Ludwig D., 16.7.1940, wegen §177.

This chapter will examine how concepts of heterosexual masculinity were negotiated in sex crimes trials, and how they affected the determination of punishment in cases of rape and attempted rape. The language of the military judges in their explanations of the sentencing decisions demonstrates that they were negotiating the boundaries of the identity of German man. They were comparing the behavior of the accused to what it should have been, an ideal of German military masculinity, and attempting to determine whether and how severely the accused soldiers had transgressed the boundaries of the behavior expected of members of the “racially superior” German nation. Military judges could not coherently and consistently define what it meant to be racially inferior, as the previous chapter demonstrated, because they were not provided a concrete definition of racial inferiority, and because there was not a long history of this kind of racism on which to draw. By contrast, the judges could more easily mobilize the existing language of militarism, masculinity, and German identity in an attempt to define what it meant to be a German soldier at this particular historical moment. The most important aspect of the identity of German man at this point was heterosexuality. The court-martial documents indicate that the judges believed that some kinds of sexual violence were more acceptable, more understandable, than others. Heterosexual sexual violence, while considered worthy of punishment, was considered less objectionable than same-sex contact. Among cases of heterosexual violence, however, there were observable tensions in the concept of German military masculinity—it was constantly negotiated and highly fluid. As a result, the punishments meted out to those men accused of rape were unpredictable—sentences ranged from release to death, and various

notions of masculinity were invoked to condemn men for rape or absolve them of responsibility.

The Tensions Surrounding Abstinence and Rape

The idea that sex was necessary, and that German men were members of a racial elite can be found throughout the court cases. One of the most frequent mitigating circumstances is that the soldiers needed, indeed were entitled to sex, and thus rape could be excused. At the same time, German men could be criticized for not acting as German men should—as elite members of the *Volksgemeinschaft*—and thus their actions were subject to severe punishment.

In the second case mentioned at the beginning of this chapter, the court clearly presented a gendered explanation for rape, arguing that the war caused a “state of sexual abstinence.”¹⁹⁰ This excuse for rape can be found in several cases. It is also clear that the court was not necessarily surprised by instances of rape, believing that the soldiers had no other outlet for sexual release. The court frequently, but not always believed that men had sexual needs that had to be met, and men could not be expected to control these needs in the face of what the courts called “states of sexual emergency.”¹⁹¹

This assumption that the absence of access to sex logically results in sexual violence can also be seen in the 1940 case against *Soldat* Theodor H. The defendant in

¹⁹⁰ BA-MA S167, Gericht der 7. Panzer-Division, Strafsache gegen Oberkanonier Ludwig D., 16.7.1940, wegen §177.

¹⁹¹ BA-MA S254, Gericht der 82. Inf. Div, Strafsache gegen Reiter Walter U., 23.7.1942, wegen §177. In this case, the court did not accept the argument that rape was caused by a state of sexual emergency, but it is in this case that this particular phrase is used.

this case was accused of the sexual abuse of young German girl working for his family. The court cited as a mitigating circumstance the fact that the defendant's wife was ill and that, for long periods of time, he had no access to marital relations. The court argued that he was thus under a great temptation to seek out other avenues of sexual release.¹⁹² The court also considered it in the favor of the accused that he had fulfilled his duty as a soldier. The sentence was one year and three months in jail; the judge felt he needed to issue what he considered a rather severe sentence, despite the aforementioned mitigating circumstances, because the defendant had mistreated a young girl (*Pflichtjahrmädel*) who was serving her year of domestic duty, as required by the Nazi regime. The accused was criticized because he had severely abused the trust placed in him by the regime, and because these children were to be as safe and protected in the homes of other families as in their own.

In another case, however, the court rejected the argument that rape was caused by abstinence. In the 1942 rape case against *Reiter Walter U.*, the judge criticized the accused for damaging the reputation of the *Wehrmacht*, but then stated that it "is out of the question that a special sexual state of emergency existed because the defendant had only served 6 weeks in the military in the east."¹⁹³ The judge then called the accused a "terrible, useless, undisciplined and unmilitary soldier." Despite these criticisms, the

¹⁹² BA-MA S176, Gericht der 73. Inf.-Division, Strafsache gegen Soldaten Theodor H., 13.11.1940, wegen §174, 1. This law punishes "Anybody who uses for lewd purposes 1) a person under twenty-one years of age, with whose guardianship or supervision he has been entrusted," *The German Penal Code of 1871*, Trans. Gerhard O. W. Mueller and Thomas Buergenthal, with an introduction by Dr. Horst Schröder (South Hackensack, N.J.: Fred B. Rothman & Co. and London: Sweet & Maxwell Limited, 1961), 101.

¹⁹³ BA-MA S254, Gericht der 82. Inf. Div, Strafsache gegen Reiter Walter U., 23.7.1942, wegen §177.

judge believed that “the behavior of the defendant was not so brutal, and the application of brutality not so great, that a reasonable atonement can be made with only a penitentiary sentence.” The judge argued that “one can think of more heinous and more brutal forms of sexual crimes,” but ultimately called for a punishment that exceeded the minimum particularly because “while his comrades risked their lives, the defendant believed his unrestrained sexual drive allowed him to attack a Russian girl.” What should be noted here is that the defendant was most harshly criticized not for the rape, which could have been worse, but for his lack of control, for his bad conduct as a soldier. We see here a tension in the concept of masculinity—the court often accepted that abstinence explained rape, but this was apparently not always the case, particularly if the man was a poor soldier. Furthermore, even though men could sometimes be excused for rape because of abstinence, they could also be criticized for not controlling their sexual desires.

Another case further demonstrates this tension. In this instance, however, the judge, as in the earlier case, accepted that sexual violence resulted from forced abstinence. In 1944, two men were accused of rape, attempted rape, and bodily harm. The judge stated: “The long period of sexual abstinence, which here [in Russia] is normally forced upon [them], brings with it the danger of violence to relieve the sexual drive.” The judge implies that had the length of deployment been longer, the excuse of abstinence would have been considered to the benefit of the accused. The judge further argued, however, that the “rapes deserve severe punishment because they are incompatible with the deportment of the German soldier against civilians and against

become a point of serious consideration in sentencing proceedings. At the same time, however, if the judge believed that the soldier had access to a brothel, or had visited one in the recent past, then the mitigating circumstances of a “state of sexual emergency” did not obtain, and the *need* for sex was not a valid excuse for rape. Interestingly, German soldiers sometimes used the lack or closure of a brothel as an excuse for having raped a woman. In one case, an *Unteroffizier* accused of raping a French woman maintained that he went out on the evening in question looking for a brothel. The first one he found was closed, at which point he began to look for another. He said to his comrade that he wanted to “fuck”¹⁹⁸ a young woman, and when challenged by a fellow soldier, replied “I don’t give a shit. The French did nothing else in the Rhineland.”¹⁹⁹

In another case, the judge, considering the punishment for two men accused of raping a French woman, acknowledged that the accused were looking for a brothel, but did not have the necessary medical permission to visit one. The judge continued: “The accused are married men who needed sexual intercourse, but did not find the opportunity in France.” Despite this mitigating circumstance, the judge ultimately rendered what he considered to be a rather harsh sentence, because the accused had damaged the reputation

Books, 2005), 223-255 has clearly established that the Nazi regime believed the establishment of brothels to be an important aspect in the maintenance of masculinity.

¹⁹⁸ The actual word used by the soldier was *knicken*, which means to break, as in to break a branch. *Knicken* does sometimes, however, have the colloquial meaning of “to fuck.”

¹⁹⁹ BA-MA S208, Gericht der 1. Panzer-Division, Strafsache gegen Unteroffizier Siegfried F., 21.6.1940, wegen §177. This is the only case in which I have seen revenge as a motivation for rape.

of the *Wehrmacht* in the eyes of the woman and the French people, and because their crime against a 57-year-old woman was both common and crude.²⁰⁰

There are some cases that are even clearer in their condemnation of German soldiers not just as men, but as human beings as well. In a case of two men accused of raping a young Polish girl, the judge stated that the soldiers had acted like animals.²⁰¹ The German soldiers were not just unmanly, but their actions had made them inhuman. In another case, against five men accused of raping a young Russian woman, the animalistic behavior of the German soldiers was also an issue. In this case, the judge ordered what he considered to be severe punishment, a three-year penitentiary sentence.²⁰² After the trial, however, another judge argued that the defendants had acted with “unmatched bestiality, not like German soldiers,” and for this reason, among others, a higher sentence, perhaps even the death sentence, should be applied.²⁰³ A week later, however, a higher-ranking judge disagreed with the call for the sentence of death, stating: “a judgment of death would...only be in order, had the behavior of the criminals been inhuman and animalistic” but “that cannot be said here, particularly since as soldiers, the

²⁰⁰ BA-MA RH 69/2429, 6. Infanterie Division, Strafsache gegen Obergefreiten Wilhelm F. and Schützen Hermann D., 15.10.1940, wegen §177. The accused were offered mitigating circumstances because they were drunk.

²⁰¹ BA-MA S411, Gericht der 29. Division, Strafsache gegen Unteroffizier Georg R. and Schützen Otto K., 13.10.1939, wegen §177.

²⁰² BA-MA S258, Gericht der Korps-Abteilung E., Strafsache gegen den Obergefreiten Anton H., Obergefreiten Theodor M., Obergefreiten Wilhelm L., Obergefreiten Jacob C., Stabsgefreiten Johannes L., 5.5.1944, wegen §177 (two counts of gemeinschaftlicher Notzucht).

²⁰³ BA-MA S258, Gericht der 3. Kav.Brigade, Rechtsgutachten 8.5.1944, gegen Obergefreiten Anton H., Obergefreiten Theodor M., Obergefreiten Wilhelm L., Obergefreiten Jacob C., Stabsgefreiten Johannes L. wegen §177.

perpetrators were judged as orderly.”²⁰⁴ These differing opinions demonstrate the individuality of the judicial decisions, and further illustrate the need to look for themes that all judges draw on, rather than at the length of punishment decided upon by each individual judge.

Soldierly Ability

The excuse offered by the third judge in the previous case demonstrates the importance attributed to being a good soldier. A good soldier, a good German man, followed orders and conformed to the discipline and ideology of the *Wehrmacht*. The evaluation of soldierly conduct and ability was frequently cited as a mitigating circumstance in the punishment proceedings. Judges took into consideration whether soldiers had fulfilled their duty, and whether, most importantly, they were judged as good fighters on the frontline. Considering descriptions of the duties of the German soldier, that bravery and courage were vital components of a successful soldier, and were an example of manly strength (*männlicher Kraft*), along with concepts such as honor, duty, and discipline, it is clear that soldierly ability was not simply a practical military consideration, but also an ideological construct of masculinity.²⁰⁵

²⁰⁴ BA-MA S258, Gericht AOK 2, Rechtsgutachten 20.5.1944, gegen Obergefreiten Anton H., Obergefreiten Theodor M., Obergefreiten Wilhelm L., Obergefreiten Jacob C., Stabsgefreiten Johannes L. wegen gemeinschaftlicher Notzucht.

²⁰⁵ The expectations of the German soldier as a member of a “racially superior” military elite are demonstrated in a 1934 pamphlet entitled *Pflichten des deutschen Soldaten* (Duties of the German soldiers), which outlined, point by point, the duties of the German military and individual soldiers. According to this pamphlet, among other behaviors, the *Wehrmacht* was first and foremost the weapon-bearer of the German *Volk*, whose strength lay in a glorious past, in the German *Volkstum*, the German earth and German work. The honor of the soldier lay in absolute dedication of one’s self to the *Volk* and Fatherland, even to the loss of life. The highest soldierly virtue was his fighting courage (*kämpferische Mut*), which demanded

It is, of course, true that the German military wanted those evaluated as good soldiers to remain at the front, or in some fighting capacity, rather than in jail or penitentiary. However, it is also true that following orders and acting in accordance with military discipline, were aspects of military masculinity. In fact, the word used to connote military discipline, *Manneszucht*, originally meant “masculine discipline, which had become synonymous with military discipline over the nineteenth century.”²⁰⁶ Thus, the concept of soldierly ability, as referred to as acting in accordance with military discipline, functioned on two levels: a concept necessary to the pedantic, bureaucratic success of the military, and the ideological construct of masculine discipline, *Manneszucht*, with a rather more amorphous meaning. At the most basic level, “...discipline [was cast] as masculine and indiscipline as feminine.”²⁰⁷ The violation of the concept of *Manneszucht*, which the military judges invoke frequently in their deliberations, was not only punishable for endangering the success of a particular military endeavor, but also because such transgressions endangered the masculinity of the individual soldier, and the military as a whole.

There is a sense in which these concepts of discipline and ability can mean whatever the military wants them to mean. For example, German soldiers were

hardness and grit. Cowardice was dishonorable, and indecision unsoldierly. Self-assured and yet modest, upright and true, God-fearing and truthful, reticent and incorruptible the soldier should be an example for the entire *Volk* of manly strength (*männlicher Kraft*), BA-MA RWD 200/3.

²⁰⁶ Eleanor Hancock, “‘Only the Real, the True, the Masculine Held Its Value’: Ernst Röhm, Masculinity, and Male Homosexuality,” *Journal of the History of Sexuality* 8, no. 4 (1998), 618.

²⁰⁷ *Ibid.*, 619.

considered honorable and as having performed their duty when they brutally murdered civilians,²⁰⁸ something other military forces, if not directly prohibiting, at least did not encourage to the same degree as did the German military. Thus, the meaning of the terms honor and duty vary according to the military force in question, and in the case of the German military, the performance of one's duty, adherence to military discipline, and exhibition of courage was considered expression of manly strength. Furthermore, that bravery, orderliness, and discipline were mobilized as mitigating circumstances despite the fact that the soldier was on trial specifically for violating military law and disobeying orders not to assault women of occupied territories, suggests again that soldierly ability was more constructed than concrete.

Soldat Henry B., charged with the attempted rape of a French woman, was not punished severely according to the judge of his trial because of his conduct as a soldier. Despite the damage done to the *Wehrmacht* by his actions, "his conduct needed no punishment [because] as a soldier he was otherwise quiet, diligent, willing to perform his duty, has conducted himself well, and that as a comrade he was one of the upright, and it is not evident that he tends toward criminal actions."²⁰⁹ In this case, the military masculinity ideals of duty and soldierly ability were more important than the violation of

²⁰⁸ See Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Collins, 1992), for a discussion of honor and duty among those soldiers charged with killing Jews.

²⁰⁹ BA-MA RH 69/1099, Gericht der 18. Armee, Strafsache gegen Soldaten Henry B., 30.6.1940, wegen §177 (versuchter Notzucht).

masculinity involved in the rape of a French woman; the latter was not as severe a violation since men needed sex and were supposed to have heterosexual intercourse.

In 1943, *Obergefreite* Julius K. was charged with attempted rape.²¹⁰ The judge maintained that the accused could not have “expected that this woman, who did not know him, could immediately be willing to have sex with him.” The judge recognized, then, that the accused “knew from the beginning that he could reach his objectives only by force,” and because of the “brutal and unscrupulous actions of the accused, a very severe punishment must be reached.” This was particularly the case because the accused was “of the age when he must have been fully aware of the consequences of his actions.” The judge, despite calling for severe punishment, then stated:

If the court did not decide on a penitentiary sentence, but allowed for mitigating circumstances...it was only because the accused was a soldier from the beginning of the war and in this time was almost always with the front battalion, and except for his disciplinary punishment, in general has always fulfilled his duty. The court thus decided to save this old front-soldier at least from the dishonorable punishment of the penitentiary. Furthermore, it was to his benefit that for about two years before his crime, he had had no home leave.

The soldierly ability of the accused, combined with forced abstinence, functioned to mitigate what otherwise would have been a severe punishment, according to the judge himself.

Part of being evaluated as a good soldier was the willingness to admit guilt and remorse for the crime. Those soldiers who denied either committing a sexual offense, or denied the severity of that offense, were more harshly criticized than those who openly

²¹⁰ BA-MA S31, Gericht der 30. Division, Strafsache gegen den Obergefreiten Julius K., 17.4.1943, wegen §177 (versuchter Notzucht).

admitted their guilt. In the case against *Oberkanonier* Ludwig D., accused of assaulting a French woman, was criticized by the judge for his actions, but the judge also said: “After all, D. has, according to his un-refuted statement, never been accused of a crime and he now confessed remorsefully to his deed.”²¹¹ *Schütze* Richard L., accused of assaulting a 15-year old girl, was exonerated in part because the judge considered it to the benefit of the accused that he was “unpunished and well evaluated [and] that he demonstrates remorse.”²¹²

Sometimes, soldiers were criticized by the judge, but ultimately excused for their behavior. The judge decided that *Stabwachtmeister* Richard E., accused of assaulting a 90-year-old woman, should not be punished for threatening the discipline of the troop because no one would imitate his behavior, and thus punishment as a deterrent was not necessary. In fact, punishment for the sexual aspects of the crime, which included forcing a woman to fellate him and attempting to rape an elderly woman, was unnecessary. Rather, Richard E. was punished for drunkenness; the judge decided that a harsh punishment was ultimately unnecessary:

When determining the severity of the sentence, one had to examine whether it sufficed to punish the accused's unbelievable crime as determined by law,

²¹¹ BA-MA S167, Gericht der 7. Panzer-Division, Strafsache gegen Oberkanonier Ludwig D., 16.7.1940, wegen §177.

²¹² BA-MA S40, Gericht der Division Nr. 404, Strafsache gegen Schützen Richard L., 26.6.1944, wegen §176, 1. According to this law, punishment meted out to those who “by force commits lewd acts upon a woman or who by threatening immediate bodily harm compels her to submit to lewd acts,” *The German Penal Code of 1871*, 102.

or whether according §5a KSSStVO²¹³ a punishment exceeding the ordinary was necessary for maintaining military discipline and the security of the troop. The court denied the latter. Exceeding the ordinary limits of punishment in order to maintain military discipline is particularly necessary, if the example of the accused is apt to make others imitate it. According to the opinion of the court, this is not the case here, since the crime of the accused is so outside of any normal regard, that another person would hardly get the idea to assault a frail, almost 90 year old woman.²¹⁴

The court decided that Richard E. was too drunk to be considered responsible for his actions because “a man in his right mind, who has done no wrong deed in his life, who has a family with five children, and who otherwise also makes a completely normal and very quiet impression, could hardly come to assault such a frail, almost 90-year old woman.” The judge called the accused a “fully respectable man [who] was well evaluated during his long military service.” The accused was believed to have damaged the reputation of the *Wehrmacht*, but the judge argued that “it should not be forgotten that, according to the experiences of the court, the civilian population bore a large part of the blame for such alcohol abuse, because they always sell alcohol to soldiers at a high price.” Richard E., as a father of five children, as a soldier who received good evaluations for his military service—as a respectable German man—did not deserve punishment for his crime, despite the damage done to the reputation of the *Wehrmacht* in the occupied territories. His actions were excused with the understanding that no normal

²¹³ This is the May 1944 addendum to the Kriegssonderstrafverordnung (KSSStVO), the set of laws dictating punishment for German soldiers during the war. This addendum requires severe punishment for endangering warfare or the security of the Reich (*Gefahr für die Kriegführung oder die Sicherheit des Reichs*) or if the maintenance of discipline or the security of the troops requires it (*Aufrechterhaltung der Manneszucht oder die Sicherheit der Truppe erfordert*). Franz W. Seidler, *Die Militärgerichtsbarkeit der Deutschen Wehrmacht, 1939-1945: Rechtsprechung und Strafvollzug* (München: Herbig, 1991), 19.

²¹⁴ BA-MA S247, Gericht der 214 I.D, Strafsache gegen Stabswachtmeister Richard E., 28.12.1944, wegen §330a (drunkenness).

German man would commit crimes as he had done without the influence of external factors, in this case the excessively strong and expensive alcohol provided by the local civilian population, which according to the court, deserved more of the blame than the accused himself. The military masculine ideal of the respectable German soldier and father to which Richard E. adhered rendered his transgressions against duty and normality largely unobjectionable. However, Richard E. received a five-year jail sentence for committing his crime despite the fact that the judge further says:

[G]reat regard should be given to the amount of penalty for rape offenses committed under the particular circumstances of the area of the military operation. Therein it was determined as not appropriate to punish a one-time lapse in the moral realm always in the same way as appropriate if committed under normal circumstances. In the case in question, there are no special circumstances noticeable for the maintenance of military discipline or security of the troop, requiring a more severe punishment than the usual amount.

It is true that Richard E. did receive a multi-year sentence, but it was within the limit of punishment for §330a. It should also be noted, however, that E. was given a jail sentence, rather than a penitentiary sentence, and it was considered mild by the judge *himself*. The severity of punishments, it must be remembered, was so variable so as to be of very little help in determining what the broader effects of concepts of gender and race. What matters in this case is the degree to which the judge outlined the mitigating circumstances of Richard E.'s sentence, and the fact that the judge himself issued what he considered to be a mild sentence.

It should be noted that in the majority of these cases, the rape was considered a one-time lapse in acceptable behavior. Those men accused of rape were not believed to be fundamentally different from men who had not committed rape; this is most likely a

result of the fact that the Nazi regime and the German military considered heterosexual intercourse to be necessary to the success of the German soldier and the military, and thus although deserving of punishment, was so only because it was a violation of military law, not military masculinity. Soldiers accused of having a predisposition for sexual violence, however, were more harshly criticized by the military judges, although again, mitigating circumstances were often offered to counter the severity of the crime and the criminal.

Gefreite Phillip W. was severely criticized because his assault was not a one-time lapse, and because previous charges against “did not lead him to master himself,” a severe punishment was necessary “so that in the future he can fight his sex drive and refrain from committing similar crimes.” Ultimately, however, Phillip W. was afforded mitigating circumstances because “he has been wounded four times during deployment and was diligent and willing in his duty. His open confession could also be considered to his benefit.”²¹⁵ *Obergefreite* Arnulf W. was also criticized because he had been previously punished, and the judge considered him “delinquent in moral areas.” The accused was then described as a “completely unstable person in sexual things.” Again, however, mitigating circumstances were offered because the court “considered the particular circumstances under which the accused lived as a soldier in a foreign country.” As discussed above, abstinence also functioned to the benefit of the accused because “the separation of many months from one’s wife, necessitated by the war conditions, makes it

²¹⁵ BA-MA S355, Gericht der 82. Inf. Division, Strafsache gegen Gefreiter Philipp W., 8.6.1943, wegen §177.

seem justifiable to assume that in a particular case, a certain emergency in sexual areas exists.”²¹⁶

The case against *Unteroffizier* Ernst S. demonstrates all of the factors discussed as mitigating circumstances thus far. The judge wrote:

The field court allowed the accused mitigating circumstances, since he has not been legally punished before and disciplinarily punished only insignificantly. To his benefit was considered his good conduct and his brave behavior before the enemy. Further, the fact that he had not had, for a long time before, the opportunity for sexual contact, makes his aggressive behavior appear understandable, although not acceptable. The fact that the accused had beforehand drunk quite an amount of alcohol may have likewise increased his sexual desire, which can be considered a mitigating circumstance, even if the accused is fully responsible, as already mentioned, for his actions. Finally, the accused was given credit for making a confession, even if it was only in the very last moment and after initial denial. Because of all these reasons, the legal minimal punishment of one year in prison was decided upon.²¹⁷

Ernst S. was favored with all the mitigating circumstances that could be afforded a German soldier accused of rape—absence of previous punishments, a lack of access to sex, the role of alcohol, his soldierly ability, and his confession—despite the fact that he raped a German woman.

Those accused of being poor soldiers could face severe sentences. For example, in the case of four men charged with raping a Russian woman, the man accused of instigating the rape and previously judged as a poor soldier was given the most severe

²¹⁶ BA-MA S300, Feldkriegsgericht der 52. Inf. Division, Strafsache gegen den Obergefreiten Arnulf W., 9.5.1941, wegen Nötigung zur Unzucht (no specific law was mentioned).

²¹⁷ BA-MA S265, Gericht der Division Nr. 159, Strafsache gegen den Unteroffizier Ernst S., 13.6.1941, wegen §177.

sentence of two years in a penitentiary; the other three received lighter sentences.²¹⁸ The judge wrote the following about the poorly evaluated soldier:

[*Gefreiten*] L. is exceedingly poorly evaluated. He has a significant disciplinary record. He made every conceivable poor impression. In the trial, he was impudent and demonstrated an unsoldierly attitude (*unsoldatische Haltung*), which one seldom comes across. With his behavior the accused demonstrated in no way the standards that an orderly soldier must aim for. He had, in common ways, overpowered the woman and forced her submit to extramarital sex. Such conduct can according to the opinion of the court not be punished harshly enough.

Again, the military would obviously want to keep good soldiers on the frontline, but L. was criticized most severely because he was “unsoldierly” and “in no way demonstrated the standards that an orderly soldier must aim for.” He was punished because he had transgressed the expectations of a German soldier, not simply because he broke military law. The judge wrote further that “it had to be considered that he constantly exhibited poor behavior, that he has been extensively disciplined, and that because of his brutality, he is rejected by his comrades.” Given the importance accorded camaraderie in the military context, L.’s violation of this norm of military masculinity was important in the determination of his more severe sentence. L.’s application for clemency was rejected on the grounds that he was such a poor soldier, he was a danger to his troop. He was described as having “consistently poor conduct,” and criticized because he had previous punishments on his record. The judge ultimately concluded that the defendant “was not worthy to continue being a soldier.”

²¹⁸ BA-MA S150, Gericht der 95. Inf-Division, Strafsache gegen Obergefreiten Gustav T., Gefreiten Johan L., Obergefreiten Heinrich L. und Obergefreiten Heinrich G., 25.2.1944, wegen §177 (gemeinschaftlicher Notzucht).

In the case against *Obergefreite* Josef Z., accused of rape, the judge found the behavior of the defendant to be that of a “wild man.” The judge further criticized the accused because his “conduct is such that it greatly endangers the faith of the Polish civilians in Germans. The accused also knew that he had to behave decently and in a civilized manner toward Polish civilians.”²¹⁹ *Gefreite* Adam B. was charged with grabbing a 15 year-old girl by the throat and grabbing her genitals; attempting to penetrate a 17 year-old girl with his finger on the same day; and then, on a different day, throwing a girl to the ground and attempting to touch her genitals. The accused was criticized because he “did not shy away from assaulting the witnesses, who partly were still children.” The women were presented as requiring protection, and thus the assaults committed against them were believed to require punishment. The number of lapses of the accused spoke also to the fact that he exhibits an inclination to the perpetration of such acts.”²²⁰ B. was a poor soldier who could not control his behavior. Those evaluated as poor soldiers were believed to be un-German, un-soldierly, and unmanly, and this was

²¹⁹ BA-MA S84, Gericht der 208. Inf. Division, Strafsache gegen den Obergefreiten Josef Z., 10.28.1944, wegen §177. The belief that the Polish civilians had faith in the Germans can be found, in various forms, in several court cases. The judges believed that the actions of German soldiers could endanger cordial relationships between occupiers and occupied, even if cordiality did not necessarily characterize the relationship in reality. Secondly, judges also mentioned concern that the acts of the German soldiers would cause civilians to join partisan units. In my opinion, this judge’s statement about Polish civilians does reflect a Nazi belief that the Polish would benefit from German occupation, as Germans were the superior race, while at the same time demonstrating that the judge, like other judges, was concerned about the relationship between Germans and those they occupied.

²²⁰ BA-MA S149, Gericht der 251. Division, Strafsache gegen den Gefreiten Adam B., 13.4.1940, wegen §176, 1 (3 cases).

an important issue in determining punishment, receiving more discussion than the crime for which they stood accused.

Officers were expected to act in a way becoming to their rank and the German military. The judge, in the case against Dr. Walther R., accused of beating his Russian servant in sexualized ways²²¹ considered it to the benefit of the accused that he had not previously been punished. Other mitigating circumstances offered included the fact that the accused had participated and earned medals in the First World War, and had “made his strength available in this war.” The judge then argued that “no damage occurred because of the beating.” At first, Walther R.’s actions were excused because he was a good soldier in the current and previous war, and because he volunteered for the Second World War despite his age. The woman he was accused of beating was Russian, and thus, suggested the judge, was not particularly damaged by the violence. Still, Dr. R. was further criticized because the “behavior of the accused is by no means worthy of an officer.” Walther R. was most harshly criticized not for his treatment of the Russian woman, but because he acted in a way that transgressed the expectations of high-ranking soldiers. Furthermore, the judge was quite unhappy because others heard what Dr. R. had done, and the judge thought those rumors damaged the reputation of the *Wehrmacht*. Ultimately, Dr. R. received a sentence of three months in jail, but again, only because he had violated the masculine norms of the German officer, and because others knew he had done so.

²²¹ BA-MA S103, Gericht des Pz.A.O.K.3, Strafsache gegen Oberstabsarzt d.R. Dr. Walther R., 5.12.1944, wegen §223a (gefährlicher Körperverletzung, aggravated battery). Dr. R. was accused of hitting a Russian woman who kept house for him with a riding crop.

Non-commissioned officers were also held to a higher standard than other soldiers.²²² In a 1941 case against a man accused of attempting to rape a woman, the judge considered as a mitigating circumstance that the man was in a “certain amount of sexual distress,” as he seldom had the opportunity to visit his wife. At the same time, however, he was criticized because “as a mature person, and in his capacity as sergeant, he had offended the young woman in almost unbelievable ways.”²²³ In the case of Richard B., also a non-commissioned officer, the accused was castigated because, as an officer, he had failed to be a model for those below him. The court further argued that such a “weak, uncontrolled man, such as the accused, without decent sentiments, must be expelled from the officer corps.”²²⁴ Non-commissioned officers were particularly condemned for failing in this particular aspect of military life—for failing to be models for their subordinates. In 1940, *Unteroffizier* Siegfried F., accused of raping a French woman, was sentenced to a five years in a penitentiary.²²⁵ Part of the reason for the sentence the judge considered severe was that F. told his subordinate to “make it possible for him to have sex” with the woman, and tried to “induce” his subordinate to sexually assault the woman as well. The accused was offered no mitigating circumstances, in

²²² German non-commissioned officers were called *Unteroffizier*.

²²³ BA-MA S52, Feldkriegsgericht des Höheren Fliegerausbildungskommandeurs 17, Wien, Strafsache gegen den Fw.d.R. Franz R., 15.10.1941, wegen §176, 1.

²²⁴ BA-MA S338, Gericht der Oberfeldkommandtur 379, Strafsache gegen Unteroffizier Richard B., 10.6.1942, wegen §177 (versuchter Notzucht).

²²⁵ BA-MA S208, Gericht der 1. Panzer-Division, Strafsache gegen Unteroffizier Siegfried F., 21.6.1940, wegen §177.

large part because F., as an *Unteroffizier*, should have acted as an example for his subordinates, but had obviously failed to do so.

Obviously, the German military would not want to keep in service those soldiers evaluated poorly, or who did not perform adequately before the enemy. However, soldiers were often forgiven for drinking to excess, for example, which would, one assumes, interfere with fighting ability and the execution of one's soldierly duties. Being judged as good soldiers, even though they had obviously broken military law by committing acts of sexual violence indicates that bravery, honor, and duty were more important than sexual transgressions, particularly against women. The cases discussed above demonstrate the lengths to which military judges would go to exonerate men accused of rape. Men accused of sexual contact with other men, however, as will become clear in the following chapter, faced severe criticism, more so than men who had abused women not only because they broke military law, but because they violated norms of heterosexual masculinity.

The Reputation of the Wehrmacht, the Troop, and the Uniform

The reputation of the *Wehrmacht* was mentioned in almost every case. While there is a degree to which the reputation of the *Wehrmacht* was a true military concern, since the military claimed it did not want to cause support for partisan movements by mistreating citizens of occupied territories, there are also references to reputation, to the honor of the military, to moral purity, and to racial purity that are more open to interpretation. Birgit Beck, discusses what she refers to as the "rather vague term

‘reputation of the *Wehrmacht*’” in her work.²²⁶ She, however, lends more credence to the argument that the reputation had to be maintained in the occupied territories, specifically France, so as not to exacerbate an already contentious relationship. However, the reputation of the *Wehrmacht* was also an issue in Eastern territories, where the military made little effort to treat civilians well, and thus it is not clear that the concept of reputation was a pragmatic concern. Rather, it seems to have been an internal conversation about the kinds of behavior German soldiers could engage in before damaging the army’s reputation, I would argue, in the eyes of its soldiers.

Reputation, by nature a rather amorphous concept, constructed by participants and read by observers, was in the case of the German military particularly malleable because of the kinds of behavior exhibited by members of the German military in the occupied territories, particularly in the East. Damage to reputation was not necessarily measured by the kind of crime committed against civilians, or the effect of that crime on the civilian population. Sometimes the concept of the reputation of the *Wehrmacht* had very little to do with how people in occupied territories saw the German army. Damage to reputation was more frequently measured by the degree to which the German soldier deviated from military discipline, did not act like a German soldier, or did not act like a German man. That is, reputation was based more on whether German soldiers acted in accordance with the military masculine ideals of discipline, honor, and morality than whether they had offended citizens of the occupied territories. There are some cases in

²²⁶ Birgit Beck, “Rape: The Military Trials of Sexual Crimes Committed by Soldiers in the *Wehrmacht*, 1939-1944,” in *Home/Front: The Military, War and Gender in Twentieth-Century Germany*, ed. Karen Hagemann and Stefanie Schüler-Springorum (Oxford and New York: Berg, 2002), 260.

which the judges condemned those soldiers who had offended, in some way, the civilians of a particular area. Surprisingly, some of these offenses were that German soldiers mistreated Slavic women and should be punished. Thus, what we may conclude from these documents is that there was no real agreement on how women of occupied territories should be treated—should they be treated well because they were women and there were expectations of German soldiers, or did the way in which these women were treated not matter because they were so “racially inferior” as to render any abuse irrelevant? What we may also conclude, however, is that there were certain expectations of German soldiers that had more to do with adhering to the concept of *Manneszucht* than anything else, regardless of the circumstances of occupation, and thus violations of this concept were considered violations of concepts of masculinity and subject to punishment.

It is also important to remember that, at the same time these soldiers were being criticized for damaging the reputation of the *Wehrmacht*, they were also being exhorted to participate in an institutionalized violence against civilians without fear of disciplinary punishment, at least on the Eastern Front.²²⁷ When reading the courts-martial of soldiers

²²⁷ See Omer Bartov, “The Conduct of War: Soldiers and the Barbarization of Warfare,” *The Journal of Modern History* 64, Supplement: Resistance Against the Third Reich (December 1992): S32-S45 for a discussion of the 1941 Barbarossa decree, which excused soldiers from punishment for various kinds of crimes committed against civilians. Some crimes were considered punishable, as Bartov argues, but it is ultimately unclear whether sexual violence was one of the crimes. See also Birgit Beck, “Rape: The Military Trials of Sexual Crimes Committed by Soldiers in the *Wehrmacht*,” 262 for a discussion of the Barbarossa Decree. For a discussion of the type of war waged on the Eastern Front, see Omer Bartov, *Hitler’s Army: Soldiers, Nazis, and the War in the Third Reich* (New York and Oxford: Oxford University Press, 1992); idem, *The Eastern Front, 1941-45, German Troops and the Barbarisation of Warfare* (2nd ed.) (Oxford: Palgrave, 2001); Jürgen Förster, “Complicity or Entanglement? *Wehrmacht*, War, and Holocaust,” in *The Holocaust and History: The Known, the Unknown, the Disputed, and the Reexamined*, ed. Michael Berenbaum and Abraham J. Peck (Bloomington and Indianapolis: Indiana University Press in association with the United States Holocaust Memorial Museum, 1998), 266-283; Richard C. Lukas, *The Forgotten Holocaust: The Poles under German Occupation, 1939-1944* (Lexington, Kentucky: The

accused of rape, it is not clear why rape would be a greater threat to military discipline than the murder of civilians, and it is further unclear why rape, more so than the numerous other brutalities committed by German soldiers, would push members of occupied territories into the arms of resistance movements.²²⁸

We can see the importance of adherence to military discipline in the 1940 case against *Schützen* Viktor G., accused of the rape of a French woman. G. broke in to a home in France, and raped a sixteen year-old girl. The court argued that he had so damaged the honor and reputation of the *Wehrmacht*, only the most severe punishment, the death sentence, could be considered. The judge explained his reasoning as such: “a worse case of damage to the discipline of the troops can hardly be imagined. The defendant is such a parasite to discipline, he must be eliminated without consideration.”²²⁹ The accused was sentenced to death for violating §5a KSSVO, and the military was just about to undertake a new operation in the West, and the punishment had to act as a deterrent for those with similarly criminal dispositions. In a second trial two days later, the sentence of death was overturned and replaced with a penitentiary sentence of ten years and six months. A third trial, however, reinstated the death sentence.

University Press of Kentucky, 1986); Alexander B. Rossino, *Hitler Strikes Poland: Blitzkrieg, Ideology, and Atrocity* (Lawrence, Kansas: University Press of Kansas, 2003); Theo Schulte, *The German Army and Nazi Policies in Occupied Russia* (Oxford, New York, Munich: St. Martin's Press, 1989).

²²⁸ The punishment of rape, as opposed to other brutalities against civilians, may be the result of the particular gendered nature of rape—if read by men of the occupied territories as a particular assault against them as men (woman as battleground of the war), then perhaps the German military may have had cause to more greatly fear the effects of rape than the effects of other brutalities. This possibility, however, is not mentioned by any German document I have seen.

²²⁹ BA-MA S213, Gericht des XV. Armeekorps, Strafsache gegen Schützen Viktor G., 22.5.1940, wegen Notzucht (the specific law was not mentioned) and §123, 2 (hausfriedensbruchs) in Tateinheit mit §240 (Nötigung).

In the case against *Obergefreite* Paul W., the court criticized the soldier for “severely offended the dignity and reputation of the German soldiers.” The accused, charged with attempted rape, was criticized because “he did not shy away from the attempt to make a girl compliant to his purposes, a girl, who, he says, was completely exhausted and for whom he felt sorry.” Of note, the judge continues by arguing that “had the crime been committed against a German girl, the accused would have had to expect a severe punishment.”²³⁰ In this case, we can clearly see the intersection of gender and race. Although the German soldier was criticized for his assault of a young Russian girl, the judge implies his punishment would have been more severe had he attempted to rape a German girl, presumably because the sexual honor of the German woman, as a “racially superior” individual would have been more severely damaged by such behavior. In this case, it is clear that the German soldier was not necessarily punished for his actions toward the young woman, but rather his offense against the reputation of the *Wehrmacht*, and the German soldiers as a whole.

The two men whose case was presented at the beginning of the chapter, accused of and sentenced to death for the rape of a Polish woman, were also punished because they had damaged the reputation of Germans in the occupied territories.²³¹ The judge criticized the accused because they had “In base ways...offended, in the presence of about 50 Poles, a Polish woman, and neither the plea of her spouse, nor of her mother,

²³⁰ BA-MA S182, Gericht der 129 Division, Strafsache gegen Obergefreiten Paul W., 15.11.1942, wegen §177 (versuchter Notzucht).

²³¹ USHMM RG 15.014M, Sondergericht Hohensalza, Strafsache gegen Hilfszollbetriebsassistent Oskar S. and Karl K., 8.2.1941, wegen §177.

could dissuade them from their shameless behavior.” The judge then argued that the people of the occupied territories required protection because “Even if [they] count as members of a hostile nation defeated in the war...with the incorporation of the Eastern territories into the Reich, they have become the ward of the German *Volk*.” Despite arguing that the Poles required the protection of Germany, the accused were then condemned because they “knew exactly that Poles are a racial enemy of the German *Volk*, and that their attitude is a betrayal of their own *Volk* and furnishes our opponents with moral and political weapons.” That the judge was concerned about the effect of the crime on anti-German sentiment was further demonstrated when the judge quoted the mayor of the village as having said to a police officer: “this is something only the Germans can do.” The reason the accused were punished, though, more than the risk of the crime causing hatred among the Poles, was because “members of the *Volk*, who sin against their own *Volk*, must meet with the maximum punishment provided by law.” The accused, because they had not “admitted their crimes as men,” because they had not stood “to their crimes as men,” and because they sinned against their own *Volk*, were sentenced to death for the rape of a Polish woman.

In 1940, Heinrich R., who had been a soldier until his release from the *Wehrmacht* in 1940, and then worked for the *Landratsamt* in Gnesen, was convicted of violating §174 section 2 in conjunction with §177.²³² The accused, using his position as

²³² §174 section 2 reads as follows: “Anybody who uses for lewd purposes 2) another, by abusing his official status or his position in an institution for diseased or needy persons, shall be punished by confinement in a penitentiary or by imprisonment,” *The German Penal Code of 1871*, 101. USHMM RG 15.014M, Sondergericht Hohensalza, Strafsache gegen den früheren Angestellten Heinrich R., 11.6.1940, wegen §174, 2 in Tateinheit mit §177.

an official, threatened a pregnant 19 year-old Polish girl, who had come under his control during a period in an internment camp, with death unless she had sex with him. The judge first considered as mitigating circumstances that the accused was previously unpunished, and had been twice wounded in the First World War. However, he then called for harsh punishment because “the accused, as a German, sexually assaulted an imprisoned Polish woman, and thereby gravely damaged the German *Volkstum* in the liberated eastern territory.” The judge then attacked the accused as a man: “He did not avoid breaking his wedding vows in disreputable ways (*schimpflicher*), even though he, not long ago, visited his family on the homefront.” Finally, the judge demonstrated the expectations of German soldiers in occupied territories when he wrote: “a severe punishment seemed indicated in order to keep the accused...from, in the future, committing sexual crimes as a German on girls of another nation.” For having violated the expectations of German men, and for having abused his power in forcing a pregnant Polish girl to have sex with him, the accused was sentenced to four years in a penitentiary.

In another case, the court argued that: “The troops must know that there will be interventions, in the interest of the purity and honor of the German soldiers, against such incidences of sexual degeneration.”²³³ Soldiers accused of sexual violence were frequently criticized for damaging the reputation of the *Wehrmacht* in occupied areas rife with violence towards civilians, and also for dishonoring the German uniform, as

²³³ BA-MA S254, Gericht der 82. Inf. Div, Strafsache gegen Reiter Walter U., 23.7.1942, wegen §177.

demonstrated in the case against Wilhelm H. and Hans W., accused of rape. The judge considered as “aggravating circumstances” the fact that the crime “was executed in the uniform of a German soldier in enemy territory.”²³⁴ In the sentencing determination in the rape case against Schützen Viktor G., the judge argued that the accused had “in flagrant ways severely damaged the honor and reputation of the German army in enemy territory.” To the further detriment of the accused was that “the severity of the crime and the character and manner of his perpetration,” and that the accused had “besmirched the uniform of the soldier in dishonorable ways.”²³⁵ Another judge criticized a soldier for his “unscrupulous, unrestrained and common” behavior, his “animalistic sexuality,” and further said that he would prevent such a man from ever again wearing German uniform.²³⁶

The uniform, as an ideological construct and tangible item, is of particular importance to the development gender identity; the uniform facilitates the “contemporary constructions of gender in general, and of masculinity in particular.”²³⁷ According to one scholar, Jeffrey Schneider, “[b]y the end of the nineteenth century the military uniform

²³⁴ BA-MA S4, Feldgericht des Höheren Kommandeurs der Post.-Flak-Art. III, Strafsache gegen den Gefreiten Wilhelm H. und den Gefreiten Hans W., 4.11.1940, wegen §177.

²³⁵ BA-MA S213, Gericht des XV. Armeekorps, Strafsache gegen Schützen Viktor G., 22.5.1940, wegen Notzucht (the specific law was not mentioned) and §123, 2, hausfriedensbruchs in Tateinheit mit Nötigung (§240).

²³⁶ BA-MA S248, Stllv. Generalkommando XIII A.K., 21.7.1944, Gnadensache des ehem. Gefreiten S.

²³⁷ Jon Hughes, “‘Zivil ist allemal Schädlich’: Clothing in German-Language Culture of the 1920s,” *Neophilologus* 88 (2004), 430.

had become a dominating symbol of normative masculinity in German society.”²³⁸

Schneider writes that “especially at a time [the 19th century] when fears of decadence, social degeneration, and cultural effemination were widespread, military uniforms provided a valuable, incontrovertible sign of superior and authentic masculinity...”²³⁹

The uniform was of specific importance in Imperial Germany, as well as the Nazi period; it was the tangible manifestation of the importance of military masculinity in Germany, which was, as one scholar writes, particularly strong: “[b]y the early twentieth century, the construction of, on the one hand, German masculinity as a military masculinity, and, on the other, German national identity as a military identity, and implicitly a masculine identity, was complete.”²⁴⁰ Thus, the military uniform was not only important as a marker of membership in a particular national military or a particular contingent of the military, but more specifically as an indicator of masculinity.²⁴¹ Thus, when German soldiers committed crimes in their uniforms, they were not only committing a breach against military discipline, itself a manifestation of masculinity, but were also violating the norms of masculinity represented by the uniform itself. So, when soldiers were criticized for having broken military law while wearing the uniform, thereby transgressing norms of military masculinity on a multitude of levels, the privilege of

²³⁸ Jeffery Schneider, “‘The Pleasure of the Uniform’: Masculinity, Transvestitism, and Militarism in Heinrich Mann’s *Der Untertan* and Magnus Hirschfeld’s *Die Transvestiten*,” *Germanic Review* 72, no. 3 (1997), 183.

²³⁹ *Ibid.*, 183.

²⁴⁰ Hughes, 434.

²⁴¹ *Ibid.*, 188.

wearing that uniform, and the masculine qualities the uniform imbued the soldier with, could be revoked.

There were pragmatic military concerns that the behavior of German soldiers, particularly toward the women in the occupied territories, would cause support for the dangerous partisan movement. For example, Heinz B. was harshly criticized on a variety of levels, most particularly for damaging the *Wehrmacht's* reputation and behaving in such a way as to promote support for the partisan movement.²⁴² At the same time, however, he was most harshly criticized for violating the expectations of German soldiers. The judge called for the severe punishment of the accused, saying that “the protection of the sexual honor of the wounded Russian woman was less a factor than the fact that the accused damaged the interests of the German army.” The judge continued about the danger posed by poor behavior of German soldiers: “poor treatment of civilians by German soldiers will drive civilians into the hands of partisans...” because “Russian propaganda [depicts] the idea that German soldiers will attain their desires with armed force and ruthlessly shoot women who would not give into their desires... This idea was confirmed for the civilians by the conduct of the accused.” The judge feared that these civilians would join the partisans, and the behavior of the accused endangered the “work of pacification” in an area that was particularly important because of its location near the front. Because the accused had been previously punished four times in court, and nine times disciplinarily, he had “demonstrated that he does not understand how to be a part of

²⁴² BA-MA S334, Gericht der 339 Inf. Div., Strafsache gegen den Kanonier Heinz B., 28.4.1942, wegen §177.

the community and to put his interests below the interests of the community.” The accused was lastly criticized because he had “shown an obdurate character and tried to lie his way out of punishment.”

Soldiers accused of rape were also criticized for providing fodder for enemy propaganda, or pushing civilians into the arms of the partisans. However, judges frequently explained their sentencing decisions by invoking the amorphous idea of reputation, again of a military famous in particular areas for its brutality towards civilians, and by claiming that the soldier had dishonored the uniform of the soldier, again, a transgression against the expected behavior of the “racially elite” German soldier, as represented by the uniform of the German military.

Wieder gut zu Machen

Men convicted of sexual violence frequently appealed their sentences, asking for the opportunity to make good their crime (*wieder gut zu machen*). Their letters demonstrate the primacy of gender ideology, but also the pervasiveness of Nazi rhetoric. They also relied on a gendered language of service and courage, a language with a much longer history. John Connelly, in his analysis of letters written to the Eisenach district office, found that Germans invoked the concept of the *Volksgemeinschaft* in whatever ways were most beneficial for them, and this is true of the clemency applications as well. We cannot determine the degree to which German soldiers believed in Nazi ideology, but

we can demonstrate the myriad ways in which they “externalize[d] this ideology,”²⁴³ and mobilized it in their defense.

Johannes L., convicted of participating in the gang-rape of a woman, asked that he be allowed to continue as a soldier in the war. He first wrote that he had been a soldier for six and a half years, and that he possessed a “courageous brave soldier’s spirit.” L. then wrote: “It is my deepest heart’s desire to be permitted to ask the *Generaloberst* of the II *Armee* if I, despite the mercy that has already been shown to me, whether I am still worthy to be allowed to fight on the front for my *Führer* and Fatherland, which is my greatest desire.”²⁴⁴ L. invokes both the language of masculinity, arguing that he was a brave soldier, which, as has been demonstrated, was of the utmost importance in determining the degree to which soldiers adhered to constructs of soldierly masculinity, and the language of the regime, begging to be allowed not just to continue fighting, but fighting on the front, for the *Führer* and the Fatherland. The wife of a soldier convicted of rape also invokes the honor of being a soldier.²⁴⁵ She writes that her husband has an “honest, too open character,” and that “he was for eleven years an entirely superior husband.” Her husband was a soldier with “body and soul,” who “never did anything forbidden in her presence while in uniform, but only wore it with honor.”

²⁴³ John Connelly, “The Uses of *Volksgemeinschaft*: Letters to the NSDAP Kreisleitung Eisenach, 1939-1940,” *The Journal of Modern History* 68 (December 1996), 928.

²⁴⁴ BA-MA S258, clemency letter from Johannes L., June 10, 1944.

²⁴⁵ BA-MA RW 55/558, clemency letter from Frau R., December 21, 1942.

The mother of another soldier, Siegfried F., convicted of rape, also used the language of military masculinity and personal suffering as well. She referred to her son as a soldier with “body and soul” who so much wanted to be a soldier, joined of his “own free will.”²⁴⁶ The family had previously been expelled from Poland because they were German, and the mother describes losing their home, and participating in the struggle for the existence of the “*Volk* and Fatherland.” She begged Hitler to free her son, writing “we Germans must be led with strength to perform our duties, so that the welfare of our *Volk* is secured.” She wanted her son to be free to participate in the “creation of our Greater German Empire (*Gross-Deutschen Reiches*).” The fiancée of Siegfried also wrote a letter to Hitler, again citing the fact that her fiancé had joined the military of his own free will, and had participated in the invasions of the Sudetenland, Bohemia and Moravia, and in the campaigns in Poland and France.²⁴⁷ She continued: “I know that he was always a good soldier, his enthusiasm for you, my *Führer*, allowed him to fight strongly.” She too cites the expulsion of the family from Poland, and explains that Siegfried’s father died shortly afterward, from wounds sustained in the First World War. The fiancée is mobilizing service to the nation during the First World War, personal suffering, and soldierly ability as reasons for clemency. She also then invokes the important role played by mothers in Nazi Germany, again calling on Hitler to recognize the suffering of this woman: “A mother knows a life full of worry and struggle, and nevertheless happily gave her sons to the Fatherland.” She continues: “My *Führer*, help

²⁴⁶ BA-MA S208, clemency letter from Frau F., October 8, 1940.

²⁴⁷ BA-MA S208, clemency letter from Frau R., March 29, 1941.

a mother who stands on the verge of despair...don't let a woman, who is the archetype of our German *Volk*, suffer any longer." She not only calls on the gender ideology of the Nazi regime on behalf of the longsuffering mother, but also excuses the crime her fiancé committed as the "result of a weak-willed moment." She writes "If anyone has the right to judge him, I should be the first, but I know what our soldiers have to do...I have forgiven him. My *Führer*, for a year I have fought along with his mother...I cannot believe that a person who fought for his home as a true soldier must today sit behind the barbed wire of his own *Volkes*. This punishment is too high for a soldier who so often was ready to give his life for us." Just as the judges in the sentencing proceedings did, the fiancée also explained Siegfried's behavior as the result of the conditions of war: "Do not abandon those soldiers who have, with pride and joy, gone to the fight for you and are judged because they could one time not master themselves, and therefore committed a crime that, in normal times, they never would have."

Arnulf W. asked to be transferred to the front. W. first attacked the woman he was accused of assaulting by saying "I did, to be sure, have sex with the married woman, which she strangely denies today, in order to put herself in a good light."²⁴⁸ He then criticizes the court: "It is curious that the under-oath explanations of three soldiers, as well as my own statement are not believed, and the testimony of three frivolous French whores is not even questioned." W. understands the importance of the military uniform, and asks that he be allowed to demonstrate that he is "still worthy to wear a German

²⁴⁸ BA-MA S300, clemency letter from Arnulf W., May 9, 1941.

uniform.” He not only asks to go to the front, but mobilizing the gender ideology of the regime, asks to be sent “wherever Germany has the hardest fight. Whether it be in Africa, Iraq or on the sea or in the sky, anywhere I will strive through the complete deployment of my person and my entire ability, to regain my lost *Volk* and employment honor, in order that I may display that I am a brave soldier.” In another letter, W. again asks to be sent to the front to demonstrate that he was “still worthy of being a ‘German soldier,” and in order to regain my soldierly honor, which I lost because of these tragic circumstances.”²⁴⁹ Of note, W. is again demonstrating his willingness to act in accordance with the military masculine ideals of battle in order to regain his honor; he is also not taking responsibility for his actions, calling his situation the result of “tragic circumstances.” W. is willing to make the ultimate sacrifice to regain his honor: “Perhaps it can be allowed to me that I regain my soldierly honor through performing particularly heroic deeds for the Fatherland in this great battle, or through suffering a heroic death.”

Conclusion

Scholarly works on rape and masculinity and rape during war suggest that there are particular factors that facilitate rape during war, including, in the words of one scholar, “dominance, assertiveness, aggressiveness...[and the rejection of] characteristics

²⁴⁹ BA-MA S300, clemency letter from Arnulf W., May 20, 1941.

such as compassion, understanding, and sensitivity.”²⁵⁰ According to another scholar, war creates an environment which “does not simply *allow* men to be violent, but *compels* them so to be.”²⁵¹ Men are expected, or even forced to be violent during war, a situation only exacerbated by the uniquely barbaric type of warfare waged by the German military, particularly on the Eastern Front. German soldiers were not only encouraged to mistreat civilians in the East, but the Barbarossa Decree of 1941 preemptively forgave crimes against Russian civilians. According to Christopher Browning, the 1941 Barbarossa Decree “removed the actions of German soldiers toward Russian civilians from the jurisdiction of military courts and explicitly approved collective reprisal against entire villages. It was, in fact, a ‘shooting licence’ against Russian civilians.”²⁵² Soldiers could only be punished for mistreating civilians if such behavior threatened the discipline of the unit.”²⁵³ It is, however, rather unclear how the Decree affected the punishment of rape—was rape considered a violation of military discipline, particularly in the context of the Barbarossa Decree, which allowed mistreatment of civilians? Birgit Beck concludes that the Decree was rather unclear on the issue of sexual assault. According to the Decree, “‘serious actions that are caused by a lack of sexual restraint’ [were] punishable

²⁵⁰ Madeline Morris, “By Force of Arms: Rape, War, and Military Culture,” *Duke Law Journal* 45, no. 4 (February 1996), 701. Morris further suggests that there exists a “configuration of norms regarding masculinity, sexuality, and women that have been found to be conducive to rape” (653).

²⁵¹ Price, 80, emphasis in original.

²⁵² Browning, 11.

²⁵³ Bartov, *Hitler’s Army*, 70.

offenses.”²⁵⁴ However, what “lack of sexual restraint” meant, and how it was to be used to punish or not punish soldiers is unclear. Bartov suggests that “charges of rape almost totally vanished—not so much because such acts were not committed but because it was impossible to accuse a German soldier of a ‘moral offense’ against ‘*Untermenschen*.”²⁵⁵ We know from the above discussion of rape in occupied territories, however, that this is untrue, and that soldiers were not only charged with rape but also severely chastised and punished for committing these offenses, even against those considered “*Untermenschen*.” The fact that soldiers were punished for these actions, despite the fact that the Barbarossa Decree and racial ideology could have been used as an excuse not to punish rape, requires that scholars re-examine the court-martial documents in an attempt to determine what other factors might have caused soldiers to be tried for rape. My research suggests that gender ideology, particularly the transgressions against the expected behavior of the “racially superior” German men, was a primary reason that soldiers were charged with and punished for rape.

Thus, despite orders largely prohibiting sexual contact with and the rape of women of occupied territories, and despite the fact that violations of these orders did result in punishment, given the nature of war in general and the nature of the war waged by Germany in particular, it is not surprising that German soldiers committed rape. Rape communicates a variety of messages on the individual, national, and ideological level;

²⁵⁴ Beck, “Sexual Violence,” 326.

²⁵⁵ Bartov, “Soldiers, Nazis, and War in the Third Reich,” *The Journal of Modern History*, 63, no. 1 (March 1991), 53.

rape committed by German soldiers communicated the individual victory of man over woman, and the overall power of the German nation over its enemies, as there was no way for defeated countries to prevent rape. Rape also demonstrated the strength of Nazi ideology because it was the “racially superior” German man whose behavior could not be controlled or prevented by the “inferior” nations, which only reinforced the idea that German men, as “racially superior,” were entitled to sexual contact.

This chapter argues that the court documents demonstrate the attempt to define a new identity of German man—a “racially superior,” unquestionably heterosexual, and strongly militaristic masculinity. This new masculinity combined the Nazi ideological belief in the racial superiority of German men, a construct much more coherent than the “inferiority” of non-Germans, with the long history of German militarism and martial masculinity, as signified by the military uniform and the adherence to traditional military ideals of honor, duty, and discipline. Of particular importance in this new German masculinity was heterosexuality, as defined not only against German homosexuals, or German men engaging in homosexual behavior, as will be discussed in the following chapter, but also against the subordinate masculinities of “racial inferiors,” as is examined in the sixth chapter. It is not the case that heterosexuality was unimportant in previous constructs of German masculinity, but it was under Nazism that identification and persecution of homosexuals, or those committing homosexual behavior, was escalated to a theretofore unmatched level. During the Weimar period, there were attempts to assuage the legal and societal persecution of homosexuality, and the Nazi treatment of homosexuality was simultaneously a direct backlash against that period of

perceived moral and sexual degeneracy, and a result of the biologization and publicization of sexuality. All sexual endeavors were to be harnessed for the benefit of the “racially superior” German nation. The control of sexuality was a specific part of the organization of the Nazi regime; it was a public undertaking, with policies on and bureaucracies devoted to ensuring the propagation of the “superior” German race.

The examination of the court-martial documents in this chapter demonstrates the creation and negotiation of this new hegemonic, “racially superior,” and heterosexual masculinity. Concepts of heterosexual masculinity could be invoked to either mitigate or require severe punishment for rape. Soldiers, as “racially superior” Germans and as men could be excused for assaulting a woman, even though such behavior broke military law, itself a transgression against military masculine norms, because their heterosexual sexual desire entitled them, in fact required them, to have access to women, even if it took the form of rape. At the same time, as members of a “superior” race and as the “superior” sex, as compared to “racially inferior” men and all women, German soldiers could be punished for not controlling themselves, for not exhibiting the kind of self-control expected of German men. This tension in the concept of German masculinity, manifested in the writings of the military judges in the court-martial documents, demonstrates the constant negotiation of this new hegemonic German masculinity. Ultimately, even though forced sexual contact with women was considered a punishable offense, it was less a transgression of masculine norms because it was heterosexual; not only was it expected that men had sexual needs that had to be met, but the Nazi regime and German military believed that heterosexual sex, in addition to reaffirming masculinity in general,

was specifically necessary to the successful functioning of the “racially superior” German military.

The concept of the “racial inferiority” of non-German women frankly lacked consensus among military judges, as well as high-ranking Nazi officials, and was inconsistently discussed during the punishment proceedings. However, the quality of women overall, the “gender quality” as opposed to “racial quality,” and the question of whether the woman had incited sexual abuse or was even traumatized by sexual violence was a much more frequent and important point of discussion in the court-martial documents. Whereas the severity of punishment for rape could not be predicted based on the “racial quality” of the woman assaulted by the German soldier, what the military courts always discussed was whether the accused man, as a “racially superior” German soldier, had transgressed the boundaries of acceptable behavior, as measured by whether the soldier had controlled his sexual desire, as was expected of “racially superior” men; whether the crime had been committed in uniform, with its long and important status as a signifier of martial masculinity; and whether the crime damaged the rather amorphous idea of reputation, itself measured by adherence to discipline and the carrying out of military duty. These transgressions can, and should be read as violations of concepts of German masculinity, and it was the fact that the soldier had violated norms of masculinity that was considered worthy of punishment. At the same time, competing concepts of masculinity—the heterosexuality of the sexual encounter, or the evaluation of the soldier as courageous in the face of the enemy, could be invoked to assuage the severity of punishment for rape. There were fewer mitigating circumstances for the

punishment of homosexuality. The argument that abstinence had caused same-sex sexual contact rarely obtained, and the belief that homosexuality was an epidemic, that it was contagious, that any same-sex encounter was enough to cause future homosexual behavior, thus threatening the heterosexuality of the military and the nation, often prompted much more severe criticism of the soldier than heterosexual contact, even forced heterosexual contact. Punishment for homosexual behavior, like that for heterosexual rape, remained variable, however, again because competing concepts of masculinity could be invoked to mitigate a severe punishment.

This chapter has demonstrated not only the overall importance of the concept of heterosexual masculinity in the determination of punishment for German men accused of rape, but has also argued that through the examination of these court documents, the creation, negotiation and maintenance of a specifically Nazi concept of heterosexual masculinity can be observed. Concepts of masculinity and femininity develop as a result of differences in power, and the structure of power relationships is simultaneously influenced by concepts of gender identities. Rape is a concrete manifestation of differences in power, and rape during war is even more complexly related to power structure as the war adds yet another level of power struggles. Thus, these court cases provide an excellent lens through which to examine the negotiation of gender identities. This chapter demonstrates that rape was an expression of both heterosexual masculinity

and racial superiority,²⁵⁶ and was understood to be such by the military judges and the German military. It was easier for the judges to know what it meant to be German than what it meant to be “racially inferior” because the latter developed in conjunction with military movement. The judges could not divorce gendered expectations of individuals from their race, so that “even” Slavic women had to be protected because they were women, but they could combine gender and race in their dealings with German men, because they already had a precedent, and had only to expand the identity of “superior” to include Nazi expectations of German soldiers. These two concepts of heterosexual masculinity and “racial superiority” were inextricably related, as evidenced by the legal discourse of the court-martial documents, and the determination of punishment for sexual violence and homosexuality based on these two concepts demonstrates that the Nazi regime and German military were not operating only along an axis of race, but also an equally important axis of gender as well.

²⁵⁶ This concept, that rape is a reflection of heterosexual masculinity and racial superiority, comes from the idea of rape as an expression of “hetero-nationality,” discussed in Euan Hague, “Rape, Power and Masculinity: The Construction of Gender and National Identities in the War in Bosnia-Herzegovina,” in *Gender and Catastrophe*, ed. Ronit Lentin (London: Zed Books, 1997), 50-63.

CHAPTER IV

“[T]HE GREATEST DANGER TO THE MILITARY”: HOMOSEXUALITY AND THE THREAT TO THE HETEROSEXUALITY OF THE MILITARY, THE NATION, AND THE RACE

The tensions inherent in the construction of a German masculine identity during the Second World War become even more apparent when cases of homosexuality are examined. Instances of homosexuality, the violation of §175, were considered dangerous to the strength, function, morality, cleanliness, purity, and overall masculinity of the German *Wehrmacht*. Much more so than rape, homosexuality was believed to be a danger to the troop and an offense against duty, and thus a violation of constructs of masculinity. Here the import of heterosexual gender norms is clear—it was acceptable to seek out sex with women, even if it took the form of rape and thus violated military law, because this sexual contact was heterosexual, and thus accorded with concepts of heterosexual masculinity. In the majority of cases, however, homosexual sexual contact was unacceptable, because it threatened concepts of masculinity, and as will become clear, endangered the heterosexuality of the entire German nation.

This chapter will examine the ways in which the judges criticized those men accused of violating §175 and its sub-clauses. Violations of §175 were considered by the Nazi regime and the German military to be sex crimes, and were categorized as such

during the archival process; for this reason, they are included in this analysis of sexual violence in occupied territories. Moreover, the examination of these cases, the majority of which were trials of men involved in non-violent encounters, demonstrate the importance of concepts of heterosexual masculinity to Nazism and the military. It is through the comparison of the language used in the cases of heterosexual rape and homosexual contact that the significance of heterosexual masculinity becomes clearest.

This dissertation argues that the court-martial documents provide a lens through which to examine the attempt to create and maintain a new identity of German man, one which simultaneously hearkened back to previous concepts of German masculinity, while at the same time including Nazi beliefs in the racial superiority of Germans. That is not to say, however, that the definition of German man was clear and concrete under Nazism. What the documents demonstrate is that participants in the trials were attempting to determine what it meant to be a man, a soldier, a German, and a German in this specific period of time by punishing those who transgressed the boundaries of those identities, or exonerating those because their behavior could be included in the definition. It is necessary to examine trials for those men accused of homosexual contact because it is in these cases that the expectations of German men were made clear; the soldiers were often acting in contradiction to the behaviors expected of a German man, and in doing so, provide evidence of what it actually meant to be a German man. Homosexuality was a masculinity subordinate to the hegemonic heterosexual masculinity, and in order to determine the characteristics associated with that hegemonic masculinity, it is necessary to examine how men accused of same-sex contact were evaluated by the military

Nazi regime; there were particular expectations of German men as “racially superior” men, as members of the *Volk*, and those expectations and the negotiations thereof are evident in the trials of those men accused of violating §175. The military courts-martial demonstrate the discursive creation of the “racially superior” German man, invoking tropes available to and understood by the majority of civilians, soldiers and military jurists: discipline, honor, obedience, strength, heterosexuality, and the particular Nazi twist of associating those pre-established concepts with the notion of race. William J. Spurlin points out that:

...gender is a crucial lens of inquiry and analysis to...understand heteronormativity as a regime that imposes a stringent policing of gender norms and maintains them as fixed as part of the overall project of protecting Aryan racial purity.²⁶⁵

The court-martial documents illustrate the negotiation of the landscape of heteronormativity, and the importance of heterosexual masculinity to the German military and ultimately to the Nazi regime. The court documents are an excellent way to examine the creation and negotiation of gender identities, particularly as Spurlin suggests that “...lesbian and gay subjectivities need to be interpreted and understood in relation to juridical practices under National Socialism and their precedents in German cultural history.”²⁶⁶ That is, in fact, what this chapter attempts to do, but with a more specific lens of German military court documents. This chapter argues that the judicial documents illustrate the attempts to define homosexuality and determine who should be

²⁶⁵ William J. Spurlin, *Lost Intimacies: Rethinking Homosexuality under National Socialism* (New York: Peter Lang, 2009), 17.

²⁶⁶ *Ibid.*, 30.

included in that definition, in large part relying on the established language of homophobia used in periods prior to the rise of the Nazi regime. Nazi masculinity, and therefore German masculinity, in particular military masculinity, relied on established norms, indicating the importance of gender ideology to the regime, but added a rhetoric of race to the scaffolding upon which Nazi ideology was built.

Geoffrey Giles has already demonstrated the importance of masculinity to Nazism, writing “Manliness was a vital part of the National Socialist identity...The need for manliness derived from the militaristic character of the Nazi movement and the state.”²⁶⁷ What was unique about Nazi masculinity then, was the association of that masculinity with a particular concept of racial superiority.²⁶⁸ What the court documents reveal, however, is the fragility of both identities of heterosexual man and “racial superior.” The chapter analyzing the “gender quality” of the women raped by German soldiers, showed that the “racial inferiority” of Eastern Europeans was incoherent and inconsistently applied. Women were judged according to whether they adhered to

²⁶⁷ Giles, “Institutionalization of Homosexual Panic,” 238. Spurlin also refers to the Nazi regime as “hypermasculine,” 42.

²⁶⁸ Spurlin also writes: “What ultimately threatens to tear the fantasized shorn-up fabrics of imperialism, nationalism, or totalitarianism is not lesbians or gay men per se, but the specter of gender deviance, male passivity, and ultimately the fear of the weakening of the nation-state and its imperial desires through the ideological penetration of homosexuality as the signifier which cannot be contained. It is the circulation of homosexuality under regimes of power (such as European imperialism, nazi [sic] fascism, postcolonial nationalism) and its challenges to gender, racial, class, sexual and other social normativities that point to and extend the ambivalence of those sites of power. The ultimate threat of homosexuality is not particular identities or sexual practices alone, but the threat of the feminization of the nation-state, always imaged as masculine...” (27). The court-martial documents demonstrate the fear of gender deviance and the fact that same-sex contact was not, in and of itself a cause for concern, but that chronic contact, combined with evidence of deviance, be it linguistic or physical, was perceived as a threat by the Nazi regime. Examination of the language used not only by the military judges, but by high-ranking members of the Nazi regime in their discussions of who should be included in the definition of “racial inferior,” also demonstrates the intersection of race and gender as a site of what Spurlin calls an ambivalent site of power.

national identity, those men who crossed the boundary from homosociability to homosexuality were subject to particular criticism because they endangered that identity. The German military, and the individual soldiers, placed tremendous importance on the emotional bonds between soldiers, but this relationship was to remain suitably masculine, and not evolve into a homosexual relationship, which would threaten the masculinity of the troops.

The judge, in a case against six soldiers accused of various acts of homosexuality, called sexual contact between men the “greatest danger to the military,”²⁸² and several judges issued calls to “exterminate” same-sex contact.²⁸³ The language of extermination is of particular importance here, in that it mirrors the language used to describe the removal of the Jews from the German, and eventually European, population. The invocation of the words “exterminate,” “vice,” and “parasite” are a product of Nazi ideology, and the use of this rhetoric is an example of the particular racialized twist the Nazis applied to the persecution and prosecution of homosexuals. In the case against

²⁸² BA-MA S342, Gericht der 6. In. Reg. 13, Strafsache gegen Gefreiten Mortiz M., Gefreiten Josef D., Gefreiten Otto Huber, Unteroffizier Kurt W., Gefreiten Rudi H., und Georg B., 30.6.1941, wegen widernatürlicher Unzucht.

²⁸³ The calls to exterminate homosexuality, and homosexuals, was again a reflection of Nazi rhetoric: “In 1935 the lawyer Rudolf Klare took the opportunity presented by his dissertation to present a justification for the ‘eradication’ of homosexuals. In what became a standard work of National Socialist jurisprudence, Klare advocated a reversion to ancient Germanic legal customs, involving the killing of homosexuals as an expression of ‘racial instinct’. He described homosexuality as ‘a racially exterminatory manifestation of degeneracy’, and called for the ceaseless ‘cleansing’ of homosexuals from the Reich, recommending that ‘the courts make increased use of expert witnesses in order to achieve an increase in the number of cases resulting in custodial sentences’,” Hans-Georg Stümke, 158. Stefan Micheler, “Homophobic Propaganda and the Denunciation of Same-Sex Desiring Men under National Socialism,” in *Sexuality and Fascism*, ed. Dagmar Herzog (New York and Oxford: Berghahn Books, 2005), discusses instances in which the Nazi regime called for the extermination of homosexual behavior, although not those identified as homosexuals (96).

Flieger Walter D. for violations against §175, the judge called for a severe punishment because the accused “as an older man attempted to sexually seduce and misuse a considerably younger man.”²⁸⁴ The judge continued in his explanation of the necessity of severe punishment: “ the accused...is guilty of a severe offense against discipline, which must be most severely punished, in order to deter the accused and similar criminal elements. The devastating vice of sexual contact between men must be exterminated by all means.”

The same call for extermination of homosexuality was issued in the case against *Obergefreite* Walter B. and *Gefreite* Hermann H.:

Discipline (*Disziplin und Manneszucht*) demands a strong cleanliness and purity of the soldiers particularly here in Russia, where the circumstances require that the soldiers more or less lie together in their accommodations. Same-sex lapses in the troop must therefore be severely punished and exterminated.²⁸⁵

Not only did same-sex contact have to be exterminated, but “innocent” soldiers had to be protected from corruption as well. *Schütze* Walter B. was convicted of three instances of same-sex contact with men, one in conjunction with a charge of insult. The judge said the following about the accused:

He has, through his behavior, utterly damaged the sexual honor of this man who was a stranger to him, who did not have the same sexual disposition as he himself. The sexually normal member of the *Volk* has a right to be protected with all possible means from the possibility, that he, when he visits public accommodations looking for protection and then being tired falls asleep there, will be considered and used as a welcome object for such frivolous and dirty

²⁸⁴ BA-MA S14, Feldgericht des Kommandeurs des Luftverteidigungsgebietes Hannover, Strafsache gegen Flieger Walter D., 7.27.1940, wegen §175.

²⁸⁵ BA-MA S165, Gericht der Feldkommandantur (V) 239, Strafsache gegen den Obergefreiten Walter B. und Gefreiten Hermann H., 25.3.1943, wegen §175, 1.

honor of the *Unteroffizierkorps* in severe ways,” and because the crime was “damnable.” The judge ultimately concluded, however, that the punishment should be mitigated because of the soldier’s “previously faultless comportment, his participation in various campaigns, and his proven value in battle.” Despite the damage the accused inflicted on the honor of the *Wehrmacht* and his fellow *Unteroffiziers*, his soldierly conduct, as was the case in charges of rape, functioned to mitigate the punishment.

Gefreite Bernhard V. was charged with touching a twelve-year old girl on the breast, and then touching her genitals.³⁵³ When she attempted to scream, he covered her mouth with his hand. The judge acknowledged that the advanced pregnancy of the wife of the accused meant that he had no opportunity for sexual release (*geschlechtliche Befriedigung*), but that this state of affairs was not a mitigating circumstance because the accused had committed his crime in uniform. The judge further argued: “With his crime, the accused has most severely shamed the reputation of the *Wehrmacht*, and he no longer deserves the right to wear the uniform of a German soldier.”

In this case, we can see two conflicting ideas of masculinity—it was assumed that men needed sexual contact, even if that contact was with a child, and had the soldier not committed his crime in uniform, it is likely that his punishment would have been less severe. However, because he was wearing his uniform while committing a crime, he broke military law, something a good German soldier did not do. Thus, despite the fact that the soldier had abused a female child, ostensibly a heterosexual interaction, he

³⁵³ BA-MA RW 55/1694. Gericht der Wehrmachtcommandantur Berlin, Strafsache gegen den Gefreiten Bernhard V., 24.6.1942, wegen §176, 3.

to explain and justify the sexual abuse of female children—there was no understanding of young girls as a separate category from adult women. All females were equal, and equally doubted by the judges; women and female children started in a detrimental position and had to prove their worth, whereas men started from a position of worth, and were then judged.

woman. He has through his common crime damaged the *Volkstumskampf* in the East, and has demonstrated his unworthiness to belong to the German race.

The judge also wrote: “[T]he reason for a strong punishment appears because he sinned against the German blood and his own family.”⁴⁰⁷ The accused was given a five-year penitentiary sentence for his conduct. The fact that an individual could be considered as unworthy to belong to a race demonstrates the mutability of the concept—it was supposed to be an inherent status, but at the same time could be revoked on the basis of behavior. This fluidity illustrates that the court proceedings were one way in which the concept of *Deutschtum* was created and maintained. It is also of note that even when *Reichdeutsche* violated the laws and norms of the *Volk*, they were not usually considered unworthy of membership, they were not expelled, but were simply punished for their behavior. This is not the case for *Volksdeutsche*, who as not-quite German, could and were excluded from the *Volk* if their behavior was found to contravene expectations.

In 1940, Adolf W. was accused of rape.⁴⁰⁸ The defendant was referred to both as a *Volksdeutscher* and a *Reichsdeutscher*; his father was born in Hagenau, in Posen, and he attended a German school. After the death of his father in the First World War, and Posen came under the control of Poland, the accused opted to go to Germany; he returned after the *Wartheland Gau* was established. Adolf W. was charged with raping a Polish woman, and was sentenced to eight years in a penitentiary. The judge explained his sentencing as follows:

⁴⁰⁷ USHMM RG 15.014M, Sondergericht Hohensalza, Strafsache gegen Volksdeutscher Julius D. May 23, 1940, wegen specifically §176, Ziff 1.

⁴⁰⁸ USHMM RG 15.014M, Sondergericht Hohensalza, Strafsache gegen den volksdeutschen Adolf W., 31.8.1940, wegen §177.

This punishment was not, however, decided upon in order to give Polish women special protection regarding their sexual honor and integrity. Rather, the accused caused this relatively severe punishment because, through his actions, he has damaged the reputation of Germandom in the local area. Sexual contact between a German man and Polish woman is already condemnable. To bring about this sexual contact by threat and force, and to commit this deed in the honorable uniform of the SA, is so abhorrent, that an especially harsh punishment is indicated.

The judge continued, acknowledging that the accused participated in the fight for Germany, but he then specifically notes that the accused opted to go to Germany after the war, thus “abandon[ing] his homeland.” The service of the defendant in the SA and the DAF was acknowledged, but the judge then stated:

The accused has, however, forfeited the right to receive a mitigation of punishment. Because he had enjoyed a political education in the Old Reich (*Altreich*), it was a particular matter of duty to refrain from lapses such as those he perpetrated. One could have offered leniency had the accused confessed to his misconduct, but his behavior demonstrated that he did not act with a German attitude (*deutschen Gesinnung*) on that day.

It appears as if Adolf W., who left his homeland for Germany, was punished as a soldier who was not born in Germany proper; eight years in a penitentiary was a severe sentence, as the judge stated. The judge obviously believed that the sexual honor and integrity of Polish women did not deserve protection, but the accused was sentenced so severely for having been in uniform during the commission of his crime.

Friedrich H., a *Volksdeutscher*, charged with the rape of a Polish woman, was released because of the judge’s opinion of the woman who brought the charges.⁴⁰⁹ The Polish woman, a single mother of three illegitimate children, had previously had sex with

⁴⁰⁹ USHMM RG 15.014M, Sondergericht Hohensalza, Strafsache gegen volksdeutschen Friedrich H., 17.8.1940, wegen §177.

the accused, and had accepted payment for that sexual intercourse. Thus, the judge decided to release the accused with the following explanation:

Even if the accused should have forced the sexual contact, it has not been sufficiently demonstrated that the accused perceived the resistance [the witness] lodged against him as serious. Here it is to be considered that the accused previously paid for sex with [the witness]. Thus, the accused knew that [the witness] consented to sexual contact for payment. Therefore, it is possible that [the witness] only pretended to have certain inhibitions in order to attain a higher fee. Therefore, the criteria of §177 has not been sufficiently met, and his acquittal for lack of proof had to follow.

It should be noted that the judge offered other possible reasons to doubt the testimony of the witness, but the choice to dismiss the charges for the reasons stated above demonstrates a particular opinion of women and their sexual histories. Previous court cases discussed thus far have established that the judges, and soldiers as well, did not believe prostitutes could be raped, an opinion further bolstered in this case. The judge acknowledges that a rape could have occurred, but ultimately decided to dismiss the charges because the witness had accepted money for sex on a previous occasion; the judge dismissed her resistance to sexual intercourse as a ploy for more money, and once her resistance was cast in doubt, the judge concluded that no rape had occurred.

Conclusion

The breadth of Nazi occupation in Europe during the Second World War resulted in the inclusion of ethnic Germans in the German military, as well as the establishment of courts in several non-German territories. The trials of ethnic Germans and the courts in occupied territories provide an opportunity to examine more closely the relationship between gender and racial ideologies. “Racial inferiors” and ethnic Germans were

race to be a fluid, malleable construct—one cannot be expelled from an inherent, biological category on the basis of behavior. “Racial superiority” seems to have been a result of place rather than race; Germans born in Germany were superior simply by dint of having been born on German soil, whereas ethnic Germans, despite the fact that the Nazi party claimed them as belonging to “superior” German race, had, through their actions, demonstrated that were “inferior.” Additionally, ethnic German men who violated the norms of “racially superior” masculinity were simultaneously considered less German and less manly—they were not afforded the same evaluation of masculinity and attendant mitigating circumstances as German-born men were—thus demonstrating the inextricable relationship between gender and race. This relationship is further illustrated in the analysis of “racially inferior” men accused of committing sexual violence. Those “racially inferior” men who committed sex crimes were believed to be less masculine as a direct result of their “racial inferiority,” which further served to reaffirm the belief that Germans, as “racially superior” were also therefore more masculine.

CHAPTER VII

CONCLUSION

There is no way to determine how many women, Jewish and gentile, German soldiers raped. My suspicion is that the number is much greater than scholars think, or are willing to acknowledge. Given that two-thirds of European Jews were murdered by the Nazi regime, over a million of them by the *Einsatzgruppen* and not in the camps, I suspect that hundreds if not thousands of women were raped and murdered as the frontline and killing squads moved eastward. There is no documentation of these assaults, however, because of the nature of the war fought in the East; because of the Barbarossa Decree, which *a priori* excused soldiers for attacks on civilians; and because there was no occupation, as there was in France, and thus no opportunity for women to seek redress for crimes committed against them. Guards and soldiers raped women in the concentration camps as well, but as in the aforementioned case, there are no *official* records of this, although there are hundreds of oral testimonies in which women and men recount the sexual violence they experienced in the ghettos and in the camps. There was no government-sponsored plan to commit rape, as has occurred in other genocides and ethnic cleansings, but rape did occur. Given the millions of soldiers involved in the war, the vast territory the Nazis controlled at the height of their power, and the number of

civilians with which the military came into contact, it seems likely that German soldiers, functionaries, and civilians involved in the war effort in the occupied territories committed rape on a scale that scholars have thus far not acknowledged and will never be able to prove.

A more important question than how many women were raped is, I believe, how many women must be raped in order to make the study of sexual violence committed by German soldiers a valid historical inquiry. A related question is why most scholars have thus far been unwilling to acknowledge that German soldiers committed rape. There are a number of possible explanations for the neglect of this particular topic, including the lack of archival documentation; it could also be because scholars have only recently focused on sex and sexuality under Nazism, and so sexual violence was previously not considered as a viable research topic. The absence of the analysis of sexual violence may also be a product of the fact that a scholarly focus on the experience of women during the Holocaust, and during the war, is only a relatively recent undertaking, and that there were initially concerns that such a specific focus on women's experience was too minute, that the horror of the Holocaust as a whole would be lost in the examination of issues that pertained only to a select few, rather than to all the victims of the war and the Holocaust.

In this context it is also worth noting that scholars have, to a greater degree than we might expect, accepted and internalized Nazi racial ideology. There was a *de jure* prohibition on sex between Germans and Jews (although it is ultimately unclear whether rape fell under the purview of the Nuremberg Laws), and a *de facto*, but strongly debated, prohibition on intercourse between Germans and those believed to be racially inferior,

including Slavs. Historians seem to accept that German soldiers did not, *would not*, rape women they believed to be racially inferior, although why scholars believe German soldiers would participate in mass murder, would commit various kinds of torture, and were capable of all manner of cruelties *except* rape, ultimately remains inexplicable. Analyses of race and rape in other historical contexts prove that a belief in the racial inferiority of a specific group of women did not prevent rape, but may in fact have facilitated it—it can either be an *expression* of the “racial superiority” of the man and the “inferiority” of the woman, or the *result* of the belief in differing racial quality.⁴¹¹ Why then, should the case of German soldiers be any different?

It is my contention that, given the number of indignities inflicted primarily upon the Jews, but also on other individuals and groups the Nazis maintained were “racially inferior,” this is just *one more* humiliation, one that members of the victim groups are unwilling to acknowledge. At the same time, however, there is something particular about rape, something about the meaning of rape to society that ultimately makes it different from the other cruelties, from the torture that became the norm during a persecution that was fundamentally different from that which came before, although not after—it was *not* just one more kind of humiliation, but one that the survivor group was unwilling to acknowledge. The reluctance to admit that rape occurred, particularly in the case of Jewish women, is, I believe, a result of what such an admission means for men. If, at this historical period of time, the bodies of women and their sexuality belonged to

⁴¹¹ Other instances when beliefs about racial superiority and inferiority facilitated rape, or proved to the participants their status as either “superior” or “inferior” include rape committed in the Old South, in the former Yugoslavia, in Rwanda, the Congo, and in Darfur.

men, if the attacks on the bodies of women were read as an attack on the men to whom they “belonged,” and more broadly to the national or ethnic group to which they belonged, then the men, and the nation as a masculine entity, had failed—men had failed to protect their women, and thus they had failed *as* men. This is not to say that I believe women, their sexuality and their sexual honor do or should belong to anyone or anything but themselves. Nor do I believe rape causes an irretrievable loss, of sexual honor or what it means to be a woman. Nonetheless, analyses of relationships between men and women, and of gender and nationalism have demonstrated that women’s bodies and sexuality belong not to themselves, but are rather representative of something greater—their position in the discourse of nationalism and ethnicity. It is also not the case that I believe men are to blame for the absence of any discussion of rape; some women were, and are, agents of the unwillingness to discuss their experiences of rape. Women are, just as are men, subject to and purveyors of a gendered nationalist/ethnic discourse that does not want to acknowledge that rape occurred, for fear of the doubts such an admission might cast on the strength, as represented by the masculinity, of that nation/ethnicity and its members.

Despite women’s participation in this discourse, the unwillingness to concede that rape occurred is not necessarily the point of view of all, or even many, of the individuals who were raped, men or women. Rather, it is the group as a whole, the descendants of that group, and a scholarly community that does not want to force yet another kind of victimization on those who have already suffered so much, who have been rather unwilling to engage with the historical inquiry into this topic. Oral testimonies of

Holocaust survivors demonstrate that there are some who wanted this particular experience to be recognized, acknowledging that it was difficult to discuss not just because of their own trauma, but because of the expectations and opinions of others as well. This is, I would argue, particularly the case for men who were sexually abused. Interviewers more frequently and more easily asked women about sexual violence, and women were more likely to answer and recount their experiences in detail. Because rape is supposed to happen only to women, and in fact was legally defined as the sexual assault of (unmarried) women, it was particularly difficult for men to admit that they had been raped; it is also difficult for others to recognize that men can be and were raped. At the same time however, because rape is supposed to happen only to women, men who were raped were often considered to be more victimized than women—this was so beyond the norm, it must have been more traumatic.

I am concerned about the need of some scholars to have Nazi or German documentation of sexual violence in order to prove that sexual violence occurred. A need to have such documentation as proof of “what really happened,” thereby reifying the validity of an event or experience, inadvertently results in a Nazi history of rape. That is not to say that we cannot use German documents, but that we must be careful not to over-privilege these sources—they do not provide *the* account of sexual violence, only *an* account. I chose to examine how the court documents reflect concepts of masculinity because scholars have had a tendency to focus on the victims rather than the perpetrators of rape, of locating the explanation of rape and how it should be punished with the women rather than in those who actually committed the crime. The determination of

punishment had more to do with the behavior of the men, as representatives of the German *Reich*, than with anything specific about the race of the women raped by German soldiers. When I do focus on women, it is to point out that the court proceedings deal more with women *qua* women than as members of a particular racial group. All women were subject to gendered evaluations, even German women, and almost all women, and female children as well, were found lacking in some way. The discussions about men and the extent to which they violated or adhered to the gendered expectations of the courts, and the environment in which those courts operated, were ultimately of the most importance in the determination of punishment. It is our job as scholars of rape, attempting to determine why rape occurred and why it was punished, to acknowledge that the most important figure in trials of rape is, and should be, the rapist, and to read the documents with that knowledge. It is not only a responsibility to recognize that rape is a result of the behavior of the rapist, but it is also necessary because it was the masculinity of the man in question that most frequently affected sentencing decisions.

Using the courts-martial of men accused of sex crimes, including violations of §175, as a lens through which to examine Nazi ideology, my dissertation demonstrates that Nazi racial ideology was not internally coherent, contrary to the mainstream of Nazi historiography. Nazi ideology did not make sense, even to its most ardent supporters, and the upper echelon of the Nazi regime knew that it did not make sense. There was no consensus among high-ranking Nazi officials and military officials, or among the soldiers and their family members, about how the category of “racial inferior” was to be defined, and how that definition was to affect the determination of punishment for men accused of

sex crimes. The only individuals who were clearly “racially inferior,” according to the court documents, were the Polish men who had proven their “inferiority” by raping German women and abusing female children. Sex between Polish men and German women alone did not qualify one as “inferior,” as the practice of Germanization demonstrates; rather it was the act, or even the potential act of violence directed toward German women and children that proved “inferiority.” The fluidity of Nazi racial ideology is evident in the negotiations of German masculinity undertaken by the participants in the courts-martial; further proof that racial identity was malleable can be found in the trials of *Volksdeutscher* accused of rape—these men had proven that they did not belong to “racially superior” Germandom, and that they were, as a result, not as masculine as “real” German men.

By examining the court-martial documents of German soldiers accused of sex crimes, as well as trial records from the occupied territories and military orders regarding sex and sexual violence, not only does my dissertation provide a corrective to those scholars who place too much trust in Nazi racial ideology as an explanation for the crimes committed by the regime and the military, but it also illustrates the importance of gender ideology—not just in the court proceedings of men accused of sex crimes, but the German military and the Nazi regime as a whole. The determination of punishment for men accused of sex crimes depended more on whether the men and women, and female children as well, adhered to gender expectations—whether they had acted as proper men and women. Lastly, my dissertation reveals that the courts-martial, both a product of and influence on the environment in which they functioned, provided a means by which to

