



Sexual Violence Against Children and Transitional Justice: Bearing Witness and Preserving Testimony About Injustice in Childhood

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Abstract

Efforts to come to terms with sexual violence against children and adolescents are predicated on a desire to achieve justice. Based on the work done by the Independent Inquiry into Child Sexual Abuse in Germany, this article attempts to identify the interfaces between the Inquiry's undertakings and the field of transitional justice. Using an approach informed by the theory of childhood, it examines the issues that arise when survivors bear witness to past childhood events. This must adopt a perspective that is sensitive to childhood and adolescence as unique life phases. That, in turn, requires accounting for concomitant factors, such as the context presented by a child's growth and development, the function of families, the role played by educational institutions, and the legal position accorded children by society. The article thus adopts a framework rooted in childhood theory that considers children both generally as human beings and specifically as children.

Keywords Child sexual abuse · Independent inquiry in Germany · Transitional justice · Survivors testimonies · Childhood theory

Introduction

The point of departure for this article is the work done by the Inquiry, a commission whose motto is “Stories that count.” (Independent Inquiry into Child Sexual Abuse in Germany, 2021).¹ The Inquiry, established in 2016, is committed, ethically and epistemologically, to considering the perspective of those individuals who

¹ Independent Inquiry into Child Sexual Abuse in Germany (hereinafter “IICSAG”), <https://www.aufarbeitungskommission.de> (accessed 16th of March 2021). Translations by the author, unless otherwise noted.

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experienced sexual violence during childhood or adolescence.² A key aspect for the Inquiry is the fact that, in Germany, sexually abused children and their families have filed criminal charges only in a limited number of cases. As long as there are victims of sexual violence who, due to statutes of limitations, are not able to use legal channels to redress the injustice they suffered in younger years, then political or civil society inquires tasked with examining past events represent one possibility for achieving justice.³

In essence, the Inquiry addresses the relationship between justice and truth. Its work is thus predicated on a notion of truth that recognizes the truth of personal testimony (Sköld, 2016).

Children and adolescents are particularly dependent on the rights granted to them and how their legal claims to those rights are implemented. This can be seen in the discussions taking place in many countries about the relationship between the UN Convention on the Rights of the Child and the respective national legal system.⁴ Children and adolescents are assigned a social position in their families, in educational institutions (such as preschools, schools, or children's homes), and in sports associations. Not least, the research on disclosure shows that children, because they are children, are not listened to by adults, and their statements about sexual violence perpetrated by fathers or teachers are often not believed, or these experiences of violence are trivialized or hushed up. Numerous examples of this are provided by the investigations into the sexual violence that has occurred within the Catholic Church in various countries. Working through sexual violence against children and adolescents is thus the responsibility of society at large, as well as all institutions and their sponsors or organizers, such as the Catholic Church and national sports associations.

The Inquiry recently presented recommendations for addressing instances of child sexual abuse in institutional settings, thereby describing its understanding of the task at hand: efforts to work through the past are meant to reveal the institutional culture in which child sexual abuse took place; which structures empowered perpetrators to subject children and adolescents to violence; and who knew about it and did not prevent it, or failed to do so in time. Such efforts are meant to show whether, at the time of the abuse, an attitude existed among individuals in positions of authority at the institution encouraging violence and devaluing children and adolescents; they are also meant to clarify whether child sexual abuse was ignored or concealed and, if so, why. Based on these findings, inquiries into past injustices aim to

² People who have been subjected to violence use various terms to refer to themselves, including "victim" and "survivor," the terms used here.

³ In Germany, the periods of limitation for prosecuting the sexual abuse of children range from 5 to 20 years (30 years for abuse resulting in death). Since Germany's Criminal Code was amended in January 2015, the limitation period for prosecution is stayed in the case of aggravated sexual assault until the victim has reached the age of 30 (Sect. 78b para. 1 no. 1 German Criminal Code [StGB]). According to German law, however, the limitation period cannot be stayed in retrospect for an offense for which the limitation period has already expired. Under German civil law, there is a uniform limitation period of 30 years. Prior to 2013, however, the limitation period was only 3 years. For offenses against sexual self-determination, the limitation period for civil claims is stayed until the victim has reached the age of 21. If the victim is living in the same household with the perpetrator when the limitation period commences, the limitation period does not begin until the victim and perpetrator are no longer living together.

⁴ In Germany, for example, there has long been a discussion of whether the country's constitution should be amended to include children's rights.

recognize the suffering of adult victims of abuse, and to acknowledge victims' rights and provide them with support. The ultimate aim is to better protect children and adolescents and ensure their rights are firmly established, while raising awareness in society at large of the various dimensions of child sexual abuse. Inquiries into past injustices thus provide a public accounting, on the one hand, and formulate recommendations, on the other—results that can then be used in the fields of prevention and intervention, and during other efforts to come to terms with the past (IICSAG, 2019a). The media became an important partner to spread the information of cases, studies and public hearings. Recognition from the government depends on the single topic, important is the support of two Federal Ministries: The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*—BMFSFJ) provides the Inquiry with around EUR 1.2 million annually from its budget. For 2018, the Inquiry's budget was increased to EUR 2.6 million. In addition, during the Inquiry's first term the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*—BMJV) funded the positions of two legal advisors at the Inquiry Office. The Federal President Frank-Walter Steinmeier published a foreword in the 2019 report of the Inquiry (IICSAG, 2019a).

The social-scientific, normative, and ethical questions arising from source criticism and the testimony of survivors must be carefully weighed by commissions or inquiries and must be clarified in cooperation with a range of experts.

The following begins with a description of the Inquiry's background and approach. It then discusses convergences with childhood theory. Finally, it embeds efforts to work through child sexual abuse within the concept of transitional justice.

Origins and Design of the Independent Inquiry into Child Sexual Abuse in Germany

The year 2010 marked a shift in attitudes towards child sexual abuse in the German-speaking world (Andresen & Demant, 2017). In January of that year, Father Klaus Mertes, the headmaster of Canisius-Kolleg, a Jesuit-run secondary school in Berlin, publicly said that he believed statements by former students who had described being sexually violated by clergy at the school (Mertes, 2013). Moreover, he stressed the responsibility the Church bore for the acts, as well as the lack of assistance provided to the victims and the cover-up which took place within the Church. In a book based on his experiences, Matthias Katsch, a former student at the school and founder of Square Table (Eckiger Tisch), an initiative representing the victims, writes of the events of 2010, describing how difficult it was to get survivors to speak up and participate in the discussion of causes, responses, and strategies (Katsch, 2020).

In 2010, a discussion finally took place in Germany of society's responsibility for past child sexual abuse and for protecting children and adolescents in the present. This quickly revealed the considerable shortcomings in the available research, for example on the prevalence of abuse and past occurrences. Germany's policy makers responded by implementing the following measures: establishing a temporary

Roundtable on Child Sexual Abuse (Runder Tisch sexueller Kindesmissbrauch), appointing an Independent Commissioner for Child Sexual Abuse Issues (Unabhängiger Beauftragter für Fragen des sexuellen Kindesmissbrauchs),⁵ initiating research programs on the subject,⁶ and launching a complementary support system⁷ and national telephone helpline.⁸ In 2016, a Council of Victims and Survivors (Betroffenenrat) began collaborating with the Independent Commissioner,⁹ as did the Inquiry.

Victims of child sexual abuse had described their experiences long before 2010, and clarifying how it was possible for this knowledge and the resulting discourse to be marginalized, as has happened on an international scale, remains a worthwhile topic of investigation (Lewis Herman, 1981; Rush, 1980).

In 2010, the efforts to work through child sexual abuse in Germany did not start “from scratch.” In addition to reports by commissions investigating past abuse in other countries, the Inquiry could draw on earlier works such as *Väter als Täter* (Fathers as Perpetrators),¹⁰ an expose by Barbara Kavemann, who is member of the Inquiry, and Ingrid Lohstöter from 1984, and experiences gained by specialized counseling centers and self-help groups (Kavemann & Lohstöter 1984).

Availing itself of past social-scientific approaches to investigating child sexual abuse, the Inquiry was able to begin its work, predicated on the following hypothesis: when children and adolescents are subjected to sexual violence, revelation and secrecy collude—to the victims’ detriment. In light of the testimony given by survivors of such violence, this hypothesis has become a well-documented truth. The public often glosses over the silence maintained by others, speaking instead of the victims’ reluctance to come forward and thus ignoring the manifold types of dependence young people experience within society’s generational power structures. The Inquiry is focusing on this aspect, since, in addition to enduring an act or acts of violence, children and adolescents frequently received no assistance or support even after confiding in another person.

Initially established in 2016 and given a 3-year mandate which was extended for an additional five in 2019, the Inquiry is tasked with investigating the extent, nature, causes, and consequences of sexual abuse in institutions and family contexts in the Federal Republic of Germany and the German Democratic Republic from 1949 to the present. Its main methods for achieving this are conducting closed hearings of survivors and other witnesses; creating a database and clarifying how archiving will take place; organizing public hearings and conferences which are streamed live and which can be

⁵ See <https://beauftragter-missbrauch.de> (accessed 16th of March 2021).

⁶ See <https://www.bmbf.de/de/schutz-von-kindern-und-jugendlichen-vor-sexueller-gewalt-1241.html> (accessed 16th of March 2021).

⁷ See <https://www.fonds-missbrauch.de/fonds-sexueller-missbrauch/der-fonds-im-ueberblick/> (accessed 16th of March 2021).

⁸ See <https://beauftragter-missbrauch.de/hilfe/hilfetelefon> (accessed 16th of March 2021).

⁹ See <https://beauftragter-missbrauch.de/betroffenenrat/der-betroffenenrat> (accessed 16th of March 2021).

¹⁰ Titles of German publications that have not appeared in English are given a courtesy translation in parentheses.

viewed online afterwards; holding “workshop discussions” and documenting them; and releasing case studies, statements, and recommendations (IICSAG, 2018, 2019a).

Serving in a voluntary capacity, the Inquiry’s seven members come from a range of disciplines and professions—education, sexology and psychotherapy, sociology, social psychology. A former Federal Minister of Family Affairs, a former President of a Higher Regional Court, and a survivor are members. They are supported by a team of professional assistants and receive critical input from survivors of child sexual abuse, especially from members of the council representing survivors and from Germany’s Independent Commissioner for Child Sexual Abuse Issues. The fulcrum of the Inquiry’s work is inviting people to speak who were subjected to sexual violence during their childhood and/or adolescence, and encouraging them and other witnesses to share their experiences (Andresen, 2015, 2019). Since May 2016, more than 2200 people have registered to speak, close to 1200 hearings have been held, and more than 400 submissions of written testimony have been received (IICSAG, 2019b).

Inquiries in other countries have primarily examined child sexual abuse in institutional settings (Wright, 2017). Many victims, however, experienced sexual abuse in their family environment, which is why the German Inquiry is investigating this context as well. An ongoing focal point is child sexual abuse in the family and the role of child welfare authorities and family courts. Other topics addressed during the Inquiry’s first term were child sexual abuse in the German Democratic Republic (IICSAG, 2020; Sachse et al., 2018) in the Catholic and Protestant Churches in Germany (IICSAG, 2019b) and organized sexual violence (Nick et al., 2018, 2019). Other key topics in the Inquiry’s second term have been abuse in sports, sexual violence against people with disabilities, and pedo-sexual networks from the 1970s to the 1990s.

Certain formats are especially important for working through past injustices, namely those that allow survivors and other experts to speak of their childhood experiences; to recount how the abuse has continued to affect them throughout their lives; to explain why they pressed criminal charges or did not do so; to describe what it was like to confide in someone else; to state which changes they would like society to introduce in order to deal with child sexual abuse; and to express concrete demands for policy makers. Through hearings and the careful reading and documentation of written testimony, the Inquiry is creating a proto-archive in which individual stories are gathered, thereby producing a “collective memory.” This makes it possible to ascertain how often children and adolescents, and the signals they sent, were simply discounted and ignored at different times in East and West Germany, in different social contexts, and in educational institutions. The hearings and written testimony document sexual violence and the many instances in which silence was maintained in the victims’ social environments. Both illustrate the powerlessness of children and adolescents as particularly vulnerable individuals at the intersection of generational and gender hierarchies. It therefore seems fitting to include here an extended passage from the Inquiry’s summary report, since it will allow a number of survivors to have their say:

In retrospect a majority of the survivors recount that they sent signals which others within their social environment should have recognized.

I ‘broadcast’ clear signals in my childhood – by suddenly acting out, for example – which teachers and doctors should have responded to. Survivor

Others withdrew and attempted not to be conspicuous.

Well, I always felt like I was in the way, you know? Which meant being invisible was the best thing. Survivor

For various reasons, others developed the need to excel in school or at sports. Some made an extra effort, trying to maintain a semblance of normality and boost their ego by doing well in school. Others used athletic achievements to compensate for their social isolation, or deployed the iron discipline they learned in sports to suppress their emotions and pain.

Another group reports that they developed aggressive, rebellious, or confrontational attitudes. These changes were sometimes seen as deviant behavior—especially in East Germany—which needed to be punished, for example by having the individual in question institutionalized (IICSAG, 2019b, p.179).

Another collective experience documented by the hearings and written testimony is the lack of help given to victims of sexual violence.

I’ve now come to believe that my uncle was aware of it, and my aunt. My step-mother naturally, she once burst into the room. My grandfather, too, but because of the war, of course – he had his own problems. Yet no one bothered to speak up and say: Hey, are you crazy? You can’t do that to a child. Survivor (IICSAG, 2019b, p.184).

These extended excerpts from the 2019 summary report illustrate how the Inquiry’s publications, research projects, and commissioned case studies focus on the hearings and written testimony, and how they cite the survivors at length (after the latter have given their consent). By drawing on the hearings and reports and by developing a new website called My Story (Meine Geschichte) (IICSAG, 2019b),¹¹ the Inquiry wants to highlight the importance that bearing witness has for coming to terms with childhood injustices, while preserving testimony for the future. In view of their work in Sweden, childhood researcher Johanna Sköld and archival scholar Åsa Jensen attest to the necessity of this approach, including for international inquiries into past injustices and for the concept of Transitional Justice. Moreover, they show that hearings—of former residents of institutions, for example—do not obviate the need for viewing and analyzing the material on file—on the contrary (Sköld & Jensen, 2015). They argue for recognizing the extraordinary significance of archives and call for resources to be allocated so that the files held by social, pedagogical, psychiatric, and other medical institutions can be preserved, processed, and

¹¹ It is planned to launch an online portal in 2021, making it possible for the public to access survivors’ life stories.

accessed. One example of how this can be done is Switzerland's Federal Law for Coming to Terms with Compulsory Care Measures before 1981 (Bundesgesetz über die Aufarbeitung der fürsorgerischen Zwangsmassnahmen und Fremdplatzierungen vor 1981).¹² At the same time, Sköld and Jensen describe the challenges inherent to such an undertaking:

Victims' testimonies have been accepted as sufficient for inquiries into the past, making previously unheard stories known to a broader audience, but when these narratives risk challenging the national identity or identifying and convicting perpetrators, or when financial compensation to the victim is involved, critics have insisted on stories being tested against the official perspectives reflected in archival records and other forms of written evidence (IICSAG, 2019b, p.159).

The tensions present in this nexus of survivors' narratives, archived files, and sociopolitical interests show how initiatives addressing childhood abuses are embedded in the concept of transitional justice. When efforts are made to address past wrongs and exercise "transitional justice" in the truest sense, new historical and cultural narratives can arise that are of general societal interest—and that often result in conflict. Moreover, as Sköld and Jensen note, such efforts frequently lead to the question of granting compensation for the injustices suffered.

Bearing Witness and the Theory of Childhood

A victim of childhood sexual violence recounts to the Inquiry how she was abused by one of her schoolteachers, noting that others at school were aware of the abuse: "All of that was known." (IICSAG, 2019c, p.16). Many victims describe a "knowing silence" about sexualized violence in their social environment, one maintained by family members, other relatives, friends of parents, and neighbors, as well as at school and in community groups. The family is a setting that can remain relatively obscure to the outside world; that also makes it a difficult place for transitional justice to illuminate. Nevertheless, survivors often report that other family members witnessed the sexual abuse, that youth welfare authorities had regular contact with their family, or that they themselves confided in someone else, for example at school, without it bringing about an end to the sexual abuse. This silence about sexual violence pervaded other, similar contexts, such as schools, children's homes, preschools, choirs, and children and youth groups overseen by the Catholic Church. Here, too, there were many who knew of the abuse taking place.

¹² In the Swiss law of 2016, the country recognizes that victims have suffered an injustice that has impacted their entire lives. Among other aspects, the law stipulates that files documenting compulsory care and placements in foster homes may no longer be destroyed, a provision that applies to files in both public and private archives. In addition, archives must provide access free of charge. Private archives include those kept by families, churches, private schools, private children's homes, etc. If these archives guarantee that they will provide access, the files may remain housed there. It is also possible to arrange for the federal archives to acquire the files. Moreover, the law lays out the rights victims have for viewing files and regulates the assistance and support provided by victim advisory centers, <https://www.admin.ch/opc/de/classified-compilation/20162609/index.html>.

The public is often unaware of the silence maintained by others who were present in the abused children's environment. What is usually discussed instead is the silence maintained by the victims. This glosses over the considerable extent to which young people are impacted by socio-cultural generational power structures, in which children and adolescents have little influence. A framework informed by childhood theory is therefore helpful here. This includes clarifying which impacts the normative ideas of childrearing have on reactions in the social environment when it comes to dealing with the disregard for and violence against children. A multidimensional perspective is required, above all when sexual violence in childhood is being examined.

Three dimensions will be outlined briefly here: the temporality of violence, the relationship between speaking out and remaining silent, and trust (Andresen, 2020).

Temporality of Violence

Sutterlüty, Jung, and Reymann emphasize that violence, like any social phenomenon, has a complex temporal structure (Sutterlüty et al., 2019). The complexity of this temporality is especially evident from the survivor's perspective. During confidential hearings with the Inquiry, survivors typically speak of their lost childhood and the life-long consequences of child sexual abuse. They describe the burdens they bear in the present and their fears of the future. This testimony thus raises awareness of the ways childhood and old age intersect in that, during the hearings, survivors discuss a range of topics, including their anxiety of needing care and therefore being placed in a home. The present is also salient, since coming to terms with structures that enabled sexual violence against children always acknowledges ongoing instances of child sexual abuse (Jud, 2014). Survivors work through past events while simultaneously knowing that child sexual abuse continues to take place.

Speaking Out and Remaining Silent

When child sexual abuse is considered from a personal, academic, or societal viewpoint, the relationship between speaking out and remaining silent is paramount. This seems to be of particular momentousness in the context of the Church. An objective and empathetic discussion of child sexual abuse quickly advances to the realm of the inconceivable and unspeakable (Emcke, 2013). The difficult relationship between speaking out and remaining silent, which seems to have a particularly negative effect on children, invokes a normative dimension. This ensues from the question of whether research must especially account for children's experiencing sexual violence during a phase of life in which they are very dependent on others. This is the case since children experience a number of reglementary constrictions within generational structures: As infants and toddlers, they cannot communicate or can only do so rudimentarily and are therefore dependent on others to recognize the relevant signals. It is difficult for children, who are usually physically weaker, to overcome the command to remain silent issued by those who are more powerful. Since young people have had fewer opportunities to gain experience, they have less knowledge at

their disposal and, due to their stage of development, cannot take a broader view or take control; to that extent, there is little they themselves can do to change the basic conditions governing their everyday lives.

Trust and Violence

That child sexual abuse often occurs in a familiar environment underscores the relationship between trust and violence (Reemtsma, 2012). Here, Reemtsma's analysis of trust and violence shows that extreme violence can persist in the modern era without people completely losing their trust in modernity. Trust is a key aspect for clarifying how violence is understood in the context of child sexual abuse. The testimony provided by survivors is, in turn, instructive, as it describes that upon which children are existentially dependent: being able to trust others. When considered from this perspective, what becomes apparent, on the one hand, is the magnitude of the loss of trust that ensues when a child is sexually abused, and the resulting feelings of shame. It becomes clear, on the other, that children who have suffered abuse must necessarily continue to trust others. Since trust also requires knowledge and a wider understanding of the world, children in particular must be able to trust in adults. The relationship between trust and violence thus allows for the systematic integration of the phenomena of looking away and failure to provide help into the description and analysis of violence in childhood.

Embedding Inquiries into Child Sexual Abuse in the Concept of Transitional Justice

Transitional justice is closely linked to international criminal law and other fields of jurisprudence (Conze, 2014). In some countries, inquiries into violence at social welfare institutions have a statutory base and follow common legal procedures (Wright, 2017). Based on an international comparison, Katie Wright distinguishes between two types: those that are granted judicial modes of access, for example the power to subpoena witnesses, and those that do not have wide-ranging powers and are primarily research-oriented. Even though the German Inquiry does not have a statutory base, the question nevertheless arises of where it intersects with the concept of transitional justice.

Sexual violence against children is often relegated to the realm of the unspeakable. Even if their testimony might remain incomplete, victims and survivors take it upon themselves to put into words what was unspeakable during childhood and adolescence. In her recounting to the Inquiry, one survivor refers to her siblings, recalling shared experiences: "*Our childhood was loveless, cruel, sadistic and full of the repeated abuse of us children.*" (IICSAG, 2019b, p. 43).

Testifying, bearing witness, and the role of the witness can all have a different meaning in the context of society's efforts to work through the past than they do in the field of law. An inquiry into past events must therefore clarify and clearly

communicate the authority given to the testimony of witnesses. In his book *Remnants of Auschwitz: The Witness and the Archive*, Giorgio Agamben criticizes the mixing of ethical and legal precepts and formulates his own notion of ethics across the terms “testimony” and “witness” (Agamben, 2002). He is concerned with the witness who has experienced something and who recounts it, even though survivors provide incomplete testimony, since they have survived. In *The Truce*, Primo Levi writes of Hurbinek, the 3-year-old child interned at Auschwitz who died in March 1945: “Nothing remains of him: he bears witness through these words of mine.” (Levi, 2015, p. 226).

People who experienced sexual abuse as children take different approaches to speaking for the dead and bearing witness. The opportunity offered by the Inquiry is presumably peripheral in this regard. In his in part autobiographical book *Das Fenster zur Einsamkeit – Verborgenes Leben (The Window to Solitude – Hidden Life)*, Max Mehrick draws attention to the fragility of bearing witness and to the importance of deciding for oneself. Through his text, a friend, whom he calls Majana, bears witness to her suffering and her life. She experienced sexual violence as a child and committed suicide as a young adult. The book accords her story a place of remembrance (Mehrick, 2018, 2019). Mehrick attests, moreover, to the inner process of the person who listens and begins thinking the unthinkable. In view of such writings, it becomes evident why inquiries into past injustices do not end in the legal sphere, but can also intersect with transitional justice and its concerns.

Theodor W. Adorno used the German term *Aufarbeitung* (working through the past) as early as 1959. In his essay “The Meaning of Working through the Past,” he critically examined post-war Germany’s efforts to come to terms with historical events (Adorno, 1998). If one looks at these efforts, one sees that they are closely allied with initiatives to recall the injustices perpetrated during the Nazi era and to determine who knew about the Holocaust and was responsible for it. Additional momentum came from the examination of infractions committed by the East German state, an undertaking that was meaningfully institutionalized in two ways in particular: by the law governing the files kept by the Stasi, the East German secret police, and by the federal body tasked with overseeing those files (Romeike, 2016). Yet working through past injustices is not a German, but a global phenomenon—the point at which it converges with the concept of transitional justice (Mihir et al., 2018). The latter is especially concerned with peace processes, with respect for human rights and international criminal law, for which the trials of former Nazi officials in Nuremberg did much to lay the groundwork (Conze, 2014).

Transitional justice comprises four interrelated objectives and the practices used to achieve them: delivering justice and, above all, punishing perpetrators; ascertaining the truth about injustices and their causes; compensating those who have been wronged and their families; and developing strategies to prevent a recurrence of collective violence and thus help establish democracy and the rule of law (Mihir et al., 2018).

Recognizing and championing instances of past injustice—and mobilizing the resources needed to address them—require a political mindset, as has been noted by cultural anthropologist Aleida Assmann (2014). Assmann has diagnosed an ethical

and political shift in national policies to re-examine the past, one whose hallmark is a focus on the narratives and truths advanced by victims and survivors. According to Assmann, a shift towards the perspectives of the previously unheard and oppressed could deprive perpetrators of their authority to interpret history, denying them and their discourse recognition. This requires, in particular, a clarification of the views generally held of victims and perpetrators, and an understanding of when society chooses to speak out and when it remains silent (Goltermann, 2017).

On the international level, the history of institutional care in social welfare states is currently being rewritten by initiatives taking place within the framework of transitional justice (Sköld & Swain, 2015). This is impacting efforts to revisit injustices perpetrated on children and adolescents in Germany and is making the differences visible that exist between the country's eastern and western states. Violence against children and adolescents, including sexual violence, only came to an end in East Germany in 1989, especially in the country's "special homes" for the young such as its *Jugendwerkhöfe*, while the situation gradually changed in West German institutions as a result of reforms introduced in the 1970s.¹³ This does not mean, however, that the willingness to come to terms with the past manifested earlier in the West.

How do societal efforts to address sexual violence in childhood and adolescence and in varying contexts relate to the concept of transitional justice, even when legal precepts are not given precedence? How can the issues inherent to such efforts be positioned here? The following outlines answers to these questions based on selected aspects, as seen from the perspective of inquiries into the past.

- The reasons for addressing injustices experienced in childhood and adolescence stem from specific historical and national contexts. They are embedded in distinct events such as racial segregation and influenced by various ideologies. Countries such as Canada and Australia, for example, have examined racially motivated colonial practices involving violence against children and adolescents. Canada, for instance, focused on the forced adoption of indigenous children, who were not only forcibly separated from their biological parents and other relatives, but who lost access to their original language, writing, stories, history, and rituals (Cradoc, 2015).
- Sexual violence was often ignored when initial critical and public discussions took place of the injustices suffered by children in institutional settings. This demonstrates how resolute the imperatives to remain silent and the opportunities for denial can be, even when the task at hand is working through past events. What also becomes clear is the momentousness of shame. The experiences of those exposed to violence in East Germany's "special homes" for the young are a profound example, since their stories only found an attentive audience long after the fact.¹⁴

¹³ Concluding report by the roundtable on 'Heimerziehung in den 50er und 60er Jahren' (Institutional Care in the 1950s and 1960s), https://www.fonds-heimerziehung.de/fileadmin/de.fonds-heimerziehung/content/de/dokumente/RTH_Abschlussbericht.pdf (accessed 21 December 2020).

¹⁴ See the Bent Souls (Verbogene Seelen) self-help group for victims of abuse in East German institutions <http://www.betroffeneninitiative-torgau.de/selbsthilfegruppe.php> (accessed 21 December 2020).

- Initiatives investigating childhood injustices are mostly guided by the UN Convention on the Rights of the Child and the right children have to an upbringing free of violence (Andresen, 2019). In her analysis of Norwegian reports on violence in institutional care, criminologist Kjersti Ericsson discusses a fundamental problem: guidelines for professional conduct have only recently begun considering children's rights. This inevitably leads to the question of which standards should be applied when violence in childrearing and educational settings is being examined (Ericsson, 2015).
- Raising awareness of the lack of initiatives to address past wrongs, or of efforts to prevent such initiatives, is one of transitional justice's key aspects. Matthias Katsch refers to the failure to intervene, active obfuscation, and cover-ups as the "second crime" (Katsch, 2020). One of the aims of inquiries into child sexual abuse is to shed light on society's past failures. For example, a critical discussion is still needed of why no reaction was forthcoming after instances of child sexual abuse at the Odenwald School were made public in 1999, something that is also true of the attempts to deny, trivialize, and hush-up child sexual abuse in both Christian churches.
- In the context of transitional justice and the normative orientation towards democratization processes, insights are gained into the child's position in society and into imbalances in achieving intergenerational justice. Until now, findings from international initiatives investigating past injustices suggest that wrongdoings perpetrated against minors can be traced back to the latter's structural powerlessness, which, in turn, has made it comparatively easy to prevent young victims from receiving information and support.

Conclusion: Transitional Justice and Childhood Theory

This outline of efforts to critically examine violence and injustice experienced by children in social welfare states illustrates that working through past wrongs, raising awareness of them, and recognizing what victims endured are all part of taking responsibility today. Johanna Sköld and Shurlee Swain therefore speak of an "apology movement"; they also make multiple connections to transitional justice (Sköld & Swain, 2015). In addition to discussing the development of mechanisms for providing restitution, they examine the question of political responsibility and the gestures that result, such as public apologies issued by national parliaments.

The analyses of the concept and experiences of the Independent Inquiry into Child Sexual Abuse in Germany focus on childhood, generational power structures and relational aspects of childrearing, and violence. The paper argues that a framework informed by childhood theory is helpful for transitional justice and the legacy of welfare.

One clear shortcoming in efforts to redress past injustices, one that actors in the area of transitional justice have also largely overlooked, is the lack of a systematic examination of violent relationships in families and the home

environment. In contrast to commissions in other countries, the German Inquiry is looking into child sexual abuse in families (Andresen, 2018). It is conceivable that transitional justice initiatives could benefit from this approach, since it critically considers the division traditionally maintained in many societies between private and public spaces and private and public responsibility for how children grow up. Social attitudes towards the private family sphere often prove a pitfall for individuals who have experienced sexual violence in familial settings. From the start, the aim of the Independent Inquiry's public outreach and communications work was to ensure its work was widely known. The Inquiry sought, in particular, to be seen as a point of contact for victims and survivors and to be perceived as an expert body by professionals in the field and policy-makers. The Inquiry wanted to raise public awareness for the situation of survivors and the lifelong consequences of sexual abuse. Everyone who is involved has learned that "working through the past" takes time and sustained public pressure to achieve responsibility in the society.

More societies around the world are now choosing to examine the injustices that have been perpetrated against their own children and adolescents. Efforts to come to terms with sexual violence against children and adolescents in particular, and how those efforts have been realized, serve in this regard as a sort of magnifying glass. One effect of coming to terms with the past can be seen in attempts to achieve inter-generational justice.

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Declarations

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Consent for Publication Yes.

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