On the Challenge of Historicizing Violence: Conflicts in State Redress for Historical Abuse of Children in Out-of-home Care

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Abstract

Der frühere Missbrauch von Kindern in der Ersatzfürsorge ist ein wichtiges Thema der Politik geworden, wie die Einrichtung von Untersuchungskommissionen, offizielle Entschuldigungen und staatliche Aufarbeitungsbemühungen zeigen. Menschen, die als Kinder von ihren Geburtsfamilien getrennt und in Pflegefamilien oder in Heimen Gewalt erfuhren, haben in den letzten Jahren ihre Stimme erhoben und ihre Rechte als Überlebende des Missbrauchs eingefordert. Wie können wir aber Missbrauch und Gewalt im Hinblick auf historische Zeiten definieren, in denen Kinder nicht denselben Status wie heute hatten? Dieser Aufsatz zeigt die Herausforderungen, die mit dem Bemühen um eine Historisierung von Gewalt und Missbrauch einhergehen, indem er darauf verweist, welche unterschiedlichen Vorgehensweisen im schwedischen Aufarbeitungsprozess von Kindesmissbrauch gewählt wurden.

I. Introduction

For almost 30 years now, and in several countries, we have seen the phenomenon of investigating, apologising, and seeking redress for the historical abuse of children in out-of-home care and/or institutional settings. These initiatives have been foregrounded by citizen activism and scandals reported by the media in which former foster children, or inmates of residential institutions, have come forward and recounted the violence and abuse they have suffered.[1] State-initiated

1 Cf. Jacqueline Z. Wilson/Frank Golding, The tacit semantics of “loud fences”: Tracing the connections between activism, heritage and new histories. In: International Journal of Heritage Studies, 24 (2018) 8, pp. 861–873; Katie Wright/Alisdair Henry, Historical

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inquiries have been conducted in all the Nordic countries, as well as in Australia, Austria, Belgium, Canada, England, Germany, Ireland, New Zealand, the Netherlands, Northern Ireland, Scotland, Switzerland, and Wales. Huge commissions of inquiry are also currently operating in Germany and in England and Wales. Additional inquiries have been instigated by the Catholic Church and other religious denominations in France, Poland, Portugal, Italy, Spain, and the USA as well as in several countries in Latin America.[2] In a number of these countries, high-profile politicians or church representatives have issued apologies to survivors and victims, and several jurisdictions have set up schemes to offer the victims redress.

The responses are similar to transitional justice frameworks that have been set up to deal with past atrocities in the present. Transitional justice refers to "the attempt to deal with past violence in societies undergoing or attempting some form of political transition".[3] Originally, the transition from authoritarian rule to democratic governance was at the core of transitional justice studies, and attempts to deal with past violence in established democratic societies were omitted.[4] However, the academic field of transitional justice has since broadened, and scholars have argued that historical child abuse inquiries and the redress initiatives that follow can be analysed as transitional justice mechanisms, albeit without a paradigmatic transition of power. Instead, inquiries, apologies, and redress schemes are ways of ensuring the legitimation of political authority in established democracies, when it is evident that the state (or the church) has authorised wrongful acts.[5]

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institutional child abuse: Activist mobilisation and public inquiries. In: Sociology Compass, 13 (2019) 12, pp. 1–13 (https://doi.org/10.1111/soc4.12754).

2 A global mapping of all inquiry reports that have been published is underway in the Age of Inquiry project, led by Associate Professor Katie Wright, of La Trobe University, Australia. The project's website contains information about many inquiries, but is not yet complete: https://www.lib.latrobe.edu.au/research/ageofinquiry/index.html, 12.1.2023. It has been noted that the impetus for setting up inquiries has spread from neighbouring or culturally related countries to one another, resulting in "chains of inquiries". Cf. Johanna Sköld, Apology politics: Transnational features. In: ead./Shurlee Swain (eds.), Apologies and the legacy of abuse of children in care: International perspectives, Basingstoke 2015, pp. 13–26, here 17–20.

3 Christine Bell, Transitional justice, interdisciplinarity and the state of the 'field' or 'non-field'. In: The International Journal of Transitional Justice, 3 (2009) 1, pp. 5–27, here 7.

4 Cf. ibid, pp. 7–9; John Torpey, Making whole what has been smashed, Cambridge, Mass. 2006, p. 53.

5 Cf. Stephen Winter, Transitional justice in established democracies: A political theory, Basingstoke 2014, pp. 5–7; James Gallen, Jesus wept: The Roman Catholic Church, child sexual abuse and transitional justice. In: International Journal of Transitional Justice, 10 (2016) 2, pp. 332–349; Johanna Sköld, Historical abuse – A contemporary issue: Compiling inquiries into abuse and neglect of children in out-of-home care worldwide. In: Journal of Scandinavian Studies in Criminology & Crime Prevention, 14 (2013) sup.1, pp. 5–23.

Monetary redress schemes have been employed before, the reparation schemes for Holocaust victims being a well-known example.[6] What redress schemes actually compensate, and whether they are sensitive to victims' demands for justice or to the state's bureaucratic interests, are topics that have been frequently discussed in previous research.[7] This article adds to these discussions by examining how child abuse and violence that occurred in the past have been conceptualised in one current redress process in an established democracy – the Swedish redress initiatives for historical abuse of children in out-of-home care.

II. Witness Accounts of Historical Child Abuse and Violence

Altogether, hundreds of thousands of witness accounts of historical child abuse have been collected through commissions of inquiry and redress scheme applications globally. If we look solely at the Nordic countries, 2,400 survivors have testified before a Nordic inquiry.[8] In addition, approximately 9,000 applications for financial redress have been filed in Sweden and Norway alone.[9] Inquiries, official apologies, and redress schemes have collected massive amounts of information about child abuse in historical settings. This work has been conducted through victim-centred approaches. Almost all the inquiries have focused on interviews with victims or survivors, and the redress schemes also stress individual accounts of what happened in the past.[10] The inquiry reports contain rich, and in many ways disturbing, testimonies about various forms of child abuse. For example, Gun-Britt, a woman born in the 1950s who was placed in foster care, had her testimony presented in the following way in the report from the Swedish

6 Cf. Regula Ludi, The Vectors of Postwar Victim Reparations: Relief, Redress and Memory Politics. In: Journal of Contemporary History, 41 (2006) 3, pp. 421–450.

7 Cf. Kathleen Daly/Juliet Davis, Civil justice and redress scheme outcomes for child sexual abuse by the Catholic Church. In: Current Issues in Criminal Justice, 33 (2021) 4, pp. 438–465; Kathleen Daly, Redressing institutional abuse of children, Basingstoke 2014; Brandon Hamber/Patricia Lundy, Lessons from transitional justice? Toward a new framing of a victim-centered approach in the case of historical institutional abuse. In: Victims & Offenders, 15 (2020) 6, pp. 744–770.

8 Cf. Johanna Sköld/Pirjo Markkola, History of Child Welfare: A Present Political Concern. In: Scandinavian Journal of History, 45 (2020) 2, pp. 143–158, here 143.

9 According to a compilation of applications by Studsrød and Enkosen, 3,638 applicants have entered the regional schemes in Norway; Ingunn Studsrød/Elisabeth Enoksen, Money as compensation for historical abuse: Redress programs and social exchange theory. In: The Journal of the History of Childhood and Youth, 13 (2020) 2, pp. 288–306, here 295. According to Sköld et al. 5,285 applications were filed with the Swedish scheme; Johanna Sköld/Bengt Sandin/Johanna Schiratzki, Historical justice through redress schemes? The practice of interpreting the law and physical child abuse in Sweden. In: Scandinavian Journal of History, 45 (2020) 2, pp. 178–201, here 180.

10 Cf. Shurlee Swain/Katie Wright/Johanna Sköld, Conceptualising and categorising child abuse inquiries: From damage control to foregrounding survivor testimony. In: Journal of Historical Sociology, 31 (2018) 3, pp. 282–296, here 291.

Commission to Inquire into Child Abuse and Neglect in Institutions and Foster Homes: "Gun-Britt reports that her foster mother used to beat her up and throw things at her. When she didn't finish her meal, the foster mother would throw plates in her face. If they broke, the foster mother told the foster father that Gun-Britt had broken them, and she was beaten up once again. The foster father used a belt. Gun-Britt had to take her clothes off before he hit her. She sometimes fainted from the pain."[11]

In the Australian Commission of Inquiry into Abuse of Children in Queensland Institutions, the following submission from a former inmate of an orphanage states:

"I am a 42-year-old Aboriginal man. I was made a Ward of the State in 1964 and sent to an orphanage in central Queensland. My earliest memories of being there are clouded and full of sadness because I could not understand or speak English very well. I remember suffering constant racial ridicule and floggings. The physical abuse I endured while there was executed with bull whips and various other instruments, administered by orphanage staff. Until I could comprehend what was required of me, I endured daily humiliation in front of all the children. This humiliation was also meted out to other children who were considered backward or different."[12]

These quotes demonstrate the ways in which adult witnesses describe how powerless and vulnerable they were as children when exposed to violent and humiliating situations in out-of-home care settings where no one stood up for them. The accounts are quite similar in this regard, even though they refer to different geographical contexts (Sweden and Australia), different genders and ethnic backgrounds, and different types of out-of-home care (foster care versus residential care). Even if the phenomenon of historical child abuse has many traits in common in the different inquiry reports, there are various aspects that distinguish some inquiries and schemes from others. The first distinction is between inquiries and schemes that focus solely on abuse in out-of-home care – whether in foster homes or institutional settings – and those that focus on abuse in any institutional setting – in schools, sports clubs, residential care, etc. Ireland, Switzerland and the Nordic countries, for example, have focused their efforts on out-of-home care. The huge commissions of inquiry in Germany, England and Wales, and Australia, on the other hand, have addressed abuse in various

11 SOU 2009:99 [Government Official Reports 2009:99], Vanvård i social barnavård under 1900-talet. Delbetänkande av Utredningen om vanvård i den sociala barnavården [Abuse and neglect in social child care in the 1900s. Interim report of the Inquiry into child abuse and neglect in institutions and foster homes], Stockholm 2009, p. 190 (author's translation from Swedish).

12 Commission of Inquiry into Abuse of Children in Queensland Institutions, Report of Commission of Inquiry into Abuse of Children in Queensland Institutions, Queensland Government, 31 May 1999, p. 251 (https://www.qld.gov.au/__data/assets/pdf_file/0023/54509/forde-comminquiry.pdf; 30.3.2023).

institutional settings[13] and – in the case of the current Independent Inquiry into Child Sexual Abuse in Germany – in families as well, which means that not only care leavers are included.[14]

A second distinction concerns the type of violence and abuse investigated. Some inquiries focus solely on sexual violence (Independent Inquiry into Child Sexual Abuse in Germany; Independent Inquiry into Child Sexual Abuse in England and Wales; Australian Royal Commission into Institutional Responses to Child Sexual Abuse; the Dutch Deetman and Samson commissions), while others focus on a wider range of abuse, including labour exploitation, physical and psychological violence and neglect and, of course, sexual violence. This wider scope of abuse has been a theme for the Nordic countries, as well as in Ireland, Switzerland, Canada, etc.[15] The choice of focus is not without dispute. In Australia, where the Royal Commission focused on sexual violence, care-leaver associations have expressed their regret that the vulnerable situation of children in out-of-home care has been ignored. Frank Golding, academic historian and former ward of the state, argued in his role as a representative of a care-leaver organisation when giving evidence to the Royal Commission that "sexual abuse was never an isolated event: there were always 'related matters' such as physical brutality, fear, humiliation, and emotional abuse."[16]

This is also why commissions and research in this field have so far conceptualised historical child abuse as an umbrella concept rather than labelling everything as violence. In the following, I use the concept of "abuse" in order to include as many types of harm historically perpetrated upon children as possible.

III. The Challenge of Historicizing Abuse

While the phenomenon of investigating and redressing historical child abuse has different characteristics, it is important to underline that the phenomenon everywhere originated with people, who as children were separated from their birth families and placed in foster or residential care where they suffered abuse. They have raised their voices and claimed their rights as survivors of violence and abuse. But how do we retrospectively conceptualise violence and abuse that took

13 Cf. Katie Wright/Johanna Sköld/Shurlee Swain, Examining abusive pasts: Reassessing institutional violence and care through commissions of inquiry. In: Traverse: Zeitschrift für Geschichte/Revue d'histoire, 25 (2018) 3, pp. 162–178, here 170–172.

14 Cf. Sabine Andresen, Sexual violence against children and transitional justice: Bearing witness and preserving testimony about injustice in childhood. In: International Journal on Child Maltreatment: Research, Policy and Practice, 4 (2021) 2, pp. 193–207, here 197.

15 Cf. Wright/Sköld/Swain, Examining abusive pasts.

16 Frank Golding, Sexual abuse as the core transgression of childhood innocence: Unintended consequences for care leavers. In: Journal of Australian Studies, 42 (2018) 2, pp. 191–203, here 201.

place at a time when the concept of children's rights was not as self-evident as it is today? In this article, I illustrate the challenges of historicizing violence and abuse that I have encountered throughout the Swedish redress process aimed at survivors/victims of historical child abuse. Firstly, I present the Swedish process in which I myself have participated, first as a committee secretary for the Commission to Inquire into Child Abuse and Neglect in Swedish Foster Homes and Institutions, and later as an independent scholar investigating the financial redress scheme. I begin by addressing how we in the abuse inquiry handled the fact that we were documenting a range of abusive practices that occurred over a long period of time, from the 1920s to the early 2000s. Then I turn to how abuse was defined in the later financial redress scheme. The questions under investigation are: are all practices that we condemn today as child abuse valid as child abuse in a historical context? Should present or past norms guide the definition of abuse?

IV. The Swedish Redress Process

In the 1990s, academic and public discussions on the "dark sides of the welfare state" emerged in several Nordic countries as responses to a history of interventionist social policies.[17] In Sweden, "this change in attitudes towards the Swedish welfare state created space for the reconsideration of different aspects of the country's social policy".[18] In this historical context, child abuse in out-of-home care became speakable as an unfounded injustice. As in many other countries, in Sweden it started with media documentaries and survivor/victim activism. A 2003 radio documentary led to the establishment of the first care-leaver association in Sweden in 2004: Stepchildren of Society. This association pressed for legislation and mechanisms to minimise the risk of children in care being abused or neglected. Economic compensation was also addressed as a means for achieving the goal of safer care. This is how Kent Sänd, the first chair of Stepchildren of Society, outlined the association's strategy: "We know that society is highly insensitive to pleas for humanity, but very sensitive to financial issues. If abuse and neglect cost money, the authorities will be responsive. This is why we need to pursue claims for damages, as has been done in Norway, the UK, Australia, and many other countries."[19]

A television documentary, "Stulen barndom" ("Stolen Childhood"), was subsequently broadcast on national television on 27 November 2005. It featured Kent Sänd and five other men speaking about the sexual and physical violence

17 Cf. Sköld/Markkola, History of child welfare, p. 147.
18 Malin Arvidsson, Contextualizing reparations politics. In: Johanna Sköld/Shurlee Swain (eds.), Apologies and the legacy of abuse of children in care: International perspectives, Basingstoke 2015, pp. 70–82, here 74.
19 Kent Sänd, talk given at Stepchildren of Society's conference in Gothenburg on 18 September 2004 (https://docplayer.se/107013140-Samhallets-styvbarns-kunskapsbank.html; 16.12.2022, author's translation from Swedish).

and hard labour they had experienced at one boys' home during the 1950s and 1960s.

The documentary awakened political interest, leading to the establishment in 2006 of the Commission to Inquire into Abuse and Neglect in Institutions and Foster Homes – in short, the Abuse Inquiry. The Abuse Inquiry was soon contacted by many people who wanted to come forward and tell their stories. The commission's secretariat was in contact with 2,000 people who had experience of abuse. But some learned about the inquiry too late, after admission to the interview process had already closed, and others lost interest when they were told about the long waiting list to be interviewed. In the end, the inquiry interviewed 866 care leavers who described experiences of abuse and neglect.[20] In conjunction with this inquiry, the Swedish Government set up a parallel inquiry addressing how the state could organise redress for victims. The Redress Inquiry reported in early 2011, recommending that an official apology should be issued and a financial redress scheme established.[21] On 21 November 2011, the official apology ceremony was held at Stockholm City Hall. This is the location where the Nobel Prize Banquet is held and thus it has a strong symbolic status. Some 1,300 people attended, most of them care leavers. The Chair of Parliament delivered a sincere apology on behalf of Swedish society to the victims and acknowledged society's failures to protect them.[22]

Both commissions received feedback from appointed expert groups and from victim advocacy groups. In the case of the Abuse Inquiry, a reference group with representatives from two care-leaver associations and two organisations for Romani people met the commission three times a year while the inquiry was operating between 2006 and 2011. The Redress Inquiry discussed the proposals for a redress process with these care-leaver associations and with individual care leavers who approached the inquiry.[23] This meant that victims were at least formally represented in the work of the two inquiries. They had a forum in which to express their opinions about how the work of the inquiries was proceeding, even though not all victims were represented in organised groups. This formal representation of victims later became lost in the process.

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20 Cf. SOU 2011:61 [Government Official Reports 2011:61], Vanvård i social barnavård. Slutrapport. Slutbetänkande av Utredningen om vanvård i den sociala barnavården [Abuse and neglect in social child care. Final report of the Inquiry into child abuse and neglect in institutions and foster homes], Stockholm 2011, pp. 68 f.

21 Cf. SOU 2011:9 [Government Official Report 2011:9], Upprättelseutredningen. Barnen som samhället svek – åtgärder med anledning av övergrepp och allvarliga försummelser i samhällsvården: betänkande [The redress inquiry. The children abandoned by society – responses to abuse and serious neglect in the out-of-home care system: report], Stockholm 2011.

22 Cf. Malin Arvidsson, Att ersätta det oersättliga: Statlig gottgörelse för ofrivillig sterilisering och vanvård av omhändertagna barn [Compensation of irretrievable matters: State redress for involuntary sterilization and abuse in out-of-home care for children], Örebro 2016, p. 13.

23 Cf. SOU 2011:9, Upprättelseutredningen, p. 52.

In its proposal for a financial redress scheme, the Redress Inquiry acknowledged that victims of historical child abuse would face serious difficulties in achieving justice through civil litigation due to the statute of limitations period. The inquiry therefore proposed an ex gratia compensation payment, which should be considered as "recognition by society that the person eligible for compensation had been exposed to unjustifiable suffering, and not as compensation for concrete damages".[24] This proposal was supported by several victim advocacy groups.[25] However, the government disputed whether a legally fair process of ex gratia compensation would be feasible. This spurred a political debate in the autumn of 2011, which eventually resulted in a joint agreement between eight of the nine parliamentary parties that a financial redress scheme should be pursued.[26]

The Financial Redress Act was passed by the Swedish Parliament in 2012, entitling each successful claimant to 250,000 SEK (approximately 27,000 EUR) for serious abuse that had occurred in out-of-home municipal care between 1920 and 1980. Once the Act had been passed by Parliament, victim advocacy groups had no further impact on the design or operation of the redress scheme.

Financial redress schemes are often favoured as a political response to historical child abuse by victims and survivors because money puts the power into their hands and "respects the survivor's agency by providing the means to pursue and obtain a wide range of goods and services".[27] However, the idea of money as a symbol of justice to victims is different from the legal practice and outcome of financial redress schemes. This article argues that we need to be highly vigilant about how recommendations for financial redress are politically negotiated, and that we need to think carefully about the design of redress schemes and learn about the outcomes for victims within existing schemes. In this case, the Swedish redress scheme offers important insights.

An extraordinary feature of the Swedish financial compensation scheme is that it was limited to only two possible outcomes: either the claimants received the flat payment, or they received no money at all. Many other financial redress schemes operate a graded system, whereby the amount the claimant receives depends upon the individual experience of injury.[28] Applications were decided upon by the Financial Redress Board, which operated between January 2013 and June 2016. By that time, 5,285 applications had been filed of which 58 percent were ultimately rejected. This is the highest rejection rate of any similar redress

24 SOU 2011:9, Upprättelseutredningen, p. 138.
25 Cf. Arvidsson, Att ersätta det oersättliga, pp. 140 f.
26 Cf. ibid., pp. 148–151.
27 Stephen Winter, State redress as public policy: A two-sided coin. In: Journal of Law and Social Policy, 31 (2019), pp. 34–47, here 39.
28 Cf. id., Two models of monetary redress: A structural analysis'. In: Victims & Offenders, 13 (2018) 3, pp. 293–311, here 297f; Sköld/Sandin/Schiratzki, Historical Justice, p. 182.
29 Cf. Sköld/Sandin/Schiratzki, Historical Justice, p. 181.

scheme that we know. This meant that the Redress Board actually spent less than half the amount the Swedish Government had budgeted for compensation.[29]

From the state's point of view, the redress process is now closed – inquiries have been conducted, an official apology has been offered, and a temporary financial redress scheme has been carried out. However, many victims probably disagree that either redress or historical justice has been achieved because many have had their claims rejected. Eivor, a woman who was raped between the ages of four and 14 by an adult male in the foster home where she resided as a child, was rejected on the grounds that the care order providing evidence that she was taken into custody was missing from the municipal archive. When she received the decision to reject her application, she spoke on a national television broadcast about her disappointment: "I wanted this apology – that [they would acknowledge] we have done this to you. A recognition that they have done wrong."[30]

In a research project, my colleagues Bengt Sandin and Johanna Schiratzki and I explore why so many claimants were excluded from the financial redress scheme and how processes of exclusion and inclusion have been constructed, discussed and redefined in the politics of the Swedish redress process. Our main conclusion is that the outcomes of a redress scheme with a very intricate design, like the Swedish one, are not easily foreseen.[31]

V. Defining Abuse and Neglect in the Abuse Inquiry

The Abuse Inquiry covered the period from the 1920s to the early 2000s. This long timeframe forced the commission to consider the definition of abuse and neglect. The notions of childhood and what is in the best interests of children

30 Thomas Lundström, Staten lovade 250.000 kronor till vanvårdade – mer än hälften fick ingenting [The state promised 250,000 SEK to neglected people - more than half of them got nothing]. In: SVT [Swedish Television Homepage], 17 May 2016 (https://www.svt.se/nyheter/inrikes/staten-lovade-250-000-kronor-till-vanvardade-mer-an-half-ten-fick-ingenting; 16.12.2022; author's translation from Swedish).

31 This paper summarises four published articles from the Limits of state responsibility project funded by the Swedish Research Council for Health, Working Life and Welfare. Cf. Johanna Schiratzki/Johanna Sköld/Bengt Sandin, Redress in context: The Swedish redress scheme for historical abuse of children in care – Re-introducing inquisitorial procedure? In: Nordisk socialrättslig tidskrift [Nordic Journal of Social Law], (2019) 21–22, pp. 97–118; Sköld/Sandin/Schiratzki, Historical Justice; eid., När välfärdssamhället gör fel: De vanvårdade och upprättelsens gränser [When the welfare society goes wrong: The abused and the limits of redress]. In: Arbetarhistoria [Labour history], (2021) 2–4, pp. 92–103; Bengt Sandin/Johanna Sköld/Johanna Schiratzki, Var går gränsen för statens ansvar? Upprättelseprocessen för dem som vanvårdats i samhällsvård ur ett historiskt perspektiv på normalitet, aga och barns rättigheter [Where are the limits of state responsibility? The redress process for those abused in social out-of-home care from a historical perspective on normality, corporal punishment and children's rights]. In: Statsvetenskaplig Tidskrift [Journal of Political Science], 124 (2022) 2, pp. 349–377.

changed dramatically during the twentieth century. In 1979, Sweden became the first state in the world to prohibit parents from administering corporal punishment to their children. But what about the time before this? We made several attempts to adjust our contemporaneous definition of abuse and neglect to past norms and values.

Firstly, we tried to formulate a definition on the basis of past legal frameworks. We consulted national legislation as well as regulations and instruction manuals for child welfare. The ban on corporal punishment in 1979 was not really the first prohibition on such punishment of children. The right of a master to physically punish younger servants was withdrawn in 1920. Corporal punishment was also prohibited in higher elementary schools in 1918 and by 1958 this had been extended to elementary schools. In 1948, the main authority for child welfare, the National Board of Health and Welfare, prohibited corporal punishment as well as psychological abuse in children's homes. By 1960, this was legally enforced in a ban on corporal punishment at children's institutions in the new Child Welfare Act. An important insight is that, long before bans were enforced legally, physical punishment as a pedagogical method was being criticised and questioned.[32]

However, abuse and neglect do not only refer to physical punishment. The exploitation of children's manual labour could also be considered abuse. Children's labour in factories had been legally restricted since the nineteenth century, with age limits and restrictions on working hours, which were different for boys and girls. Children's labour in agriculture and within households was legally restricted much later as a result of mandatory schooling. Restrictions on working hours were set to ensure that children could attend school – not primarily to safeguard them from physical harm. In 1950, schoolchildren were prohibited from engaging in work before school, but were allowed to work for two hours after school, except on Sundays. Before 1950, no such regulations existed, even though children aged 7–14 had a duty to attend school.[33]

A problem with using legal frameworks as a basis for the definition of historical abuse is that many practices that were not acceptable at the time have not been explicitly addressed in legal documents. Hence, legal frameworks do not cover all contemporary norms and values. One example is the production and distribution of child pornography, which did not become a crime under Swedish law until 1980. But that does not mean that it was generally acceptable to distrib-

32 This historical development was outlined in SOU 2009:99, Vanvård i social barnavård under 1900-talet, pp. 97–114. In our research project we have detailed the emergence of bans on corporal punishment by contextualising them in relation to other societal spheres such as school, work and the child welfare. Cf. Sandin/Sköld/Schiratzki, Var går gränsen för statens ansvar?

33 Cf. Mats Sjöberg, Skydd, hinder eller möjlighet? Lagstiftning kring minderårigas arbete i Sverige ca 1975–2000 [Protection, obstacle or opportunity? Legislation on underage labour in Sweden from 1975 to 2000]. In: Barn, (2009) 3–4, pp. 123–138.

ute pornographic pictures of children before this date.[34] The commission's conclusion was that while legal frameworks can say something about when certain practices appeared to become unacceptable, they do not cover all practices that were unacceptable at the time. Hence, legal frameworks cannot constitute the sole basis for a historicized definition of abuse.[35]

In a second attempt to find a definition, we turned to research in order to map what kind of practices had been the basis for societal interventions in families. The rationale was that practices that provoked an intervention into the family at a certain time in history could be considered an abusive practice at the time. However, research on this topic was quite sparse in Sweden at the time, and still is.

As a third attempt, we turned to opinion surveys on child-rearing practices. However, the first survey mentioned in the literature was from 1965.[36] This survey indicated that 53 percent of the Swedish adult population held a positive attitude to corporal punishment. By 1971, this positive response had shrunk to 35 percent. Still, exploring the public's opinions on parenting and child-rearing practices across a period of 100 years is a massive research project in itself. Opinion surveys on child-rearing practices from the 1960s and 1970s could not constitute the basis for a historicized definition of abuse that needs to cover a century. Moreover, these opinion surveys are not suitable sources from which to retrieve a historicized definition of child abuse because they reflect opinions mainly on corporal punishment, not the actual treatment of children.

All these considerations finally led us to use the UN Convention on the Rights of the Child (UNCRC) from 1989 as the basis for our definition of abuse and neglect in the past. This means that the inquiry deliberately chose an anachronistic definition of child abuse. Aside from the problems in finding any historicized and time-sensitive definition at all, several arguments underpinned this decision. The commission concluded that society's current condemnation of abusive practices in the past cannot rely on various time-sensitive definitions of what has been considered abuse at different times. Past norms and knowledge can explain why child abuse occurred, but they cannot be taken as the basis for the definition of what abuse is or has been. Secondly, our task was to document witness accounts, write a report, and, on the basis of the experiences reported, draw conclusions that could help to prevent the future abuse of children in out-of-home care. Historicized definitions of abuse were not helpful in this regard.[37] Surviving victims are living amongst us today, but many of them suffer from how they were treated

34 Cf. Government Bill 2011/12:160. Prop. 2011/12:160, Ersättning av staten till personer som utsatts för övergrepp eller försummelser i samhällsvården [State compensation to individuals who have suffered abuse or neglect in the care of society], p. 22.

35 Cf. SOU 2011:61, Vanvård i social barnavård, pp. 85 f.

36 More recently, I have identified media reports about surveys from the 1940s, but it is not evident how they were conducted, and the original data has not been found.

37 Cf. SOU 2009:99, Vanvård i social barnavård under 1900-talet, p. 124.

in the past. If the state wanted to encourage them to come forward and disclose their experiences, these experiences cannot be relativised according to the time and context in which their childhood took place. Moreover, the commission argued against a definition of abuse that was adjusted towards what is likely to be harmful to children in the long run: "Such causalities are often difficult to prove and must in this context be left aside. We therefore refrain from evaluating whether, for example, locking up a child is more harmful than corporal punishment."[38]

The decision to use the UNCRC as a basis for defining abuse was also motivated by an ethical positioning. The ethical standards for civil servants require us to treat all humans equally. However, in the past, children of different genders or of different custodial status could be treated differently according to contemporary norms and standards. For example, until 1965, in Swedish law the penalty for the sexual abuse of girls was harsher than for the sexual abuse of boys.[39] In our discussions, we concluded that we could not ethically justify a definition of abuse that was gender sensitive in line with past society's norms.

Finally, the scale of the abuse and neglect with which we were confronted was of a magnitude that would have been considered unacceptable at any time. A majority of the 866 interviewed care leavers had been sexually abused, and 51 percent disclosed hands-on sexual violence. In addition, 44 percent reported physical violence inflicted with weapons or tools such as whips, and many more reported physical violence such as slapping, hitting, hair-pulling, and kicking. Many of the interviewees stated they had suffered in this way on a daily or weekly basis. Only 12 percent of the interviewees did not report any physical or sexual violence, instead reporting other forms of abuse. 52 percent of the interviewed care leavers reported that they had been exploited as unpaid labourers whilst in care, and 90 percent reported various forms of neglect.[40] A historically contextualised definition of abuse would not make much difference in that regard.

VI. Defining Abuse and Neglect in the Subsequent Redress Process

Later in the redress process, the commission's way of defining abuse and neglect in the past was completely abandoned. In the preparatory works for the establishment of the redress scheme, it was suggested that only severe abuse would entitle victims to compensation. The government stated that the definition of severe abuse had to be sensitive to contemporary norms and values. Consequently, there was need for a historicized definition of severe abuse that could be used as a yardstick when assessing whether claimants' accounts of abuse would entitle them to compensation.

38 Ibid.
39 Cf. ibid., pp. 111 f.
40 Cf. SOU 2011:61, Vanvård i social barnavård, pp. 136–138.

In the government bill, foregrounding the Financial Redress Act, it became evident that this historicized definition was based neither on legal frameworks nor on contemporary expert knowledge. This is illustrated by the following two quotes. The first quote is from the regulations of the National Board of Health and Welfare, which in 1948, prohibited corporal punishment at children's homes: "Forced showering – a method only applied by very incompetent, well, sadistic people – can create a long-lasting aversion or fear of bathing and showering."[41]

In 1948, the prohibition of forced showering was introduced on the grounds that it could harm the child's psychological development. Compare this to what the government stated in the bill in 2012: "For example, going to bed without supper or showering in cold water because you were too naughty have not been uncommon punishments and must in many cases be deemed as conforming to contemporary values of society."[42]

The government's interpretation of the past clearly did not consider the recommendations made by the authorities during the 1940s. The Redress Board was instructed to identify "physical abuse that exceeded what was considered normal corporal punishment" at the time, but this was obviously not done by consulting historical legal frameworks or regulations. Consequently, it was not clear what the Redress Board should use as a basis for defining "normal" discipline at different times in history. As the Abuse Inquiry had already shown, it is very tricky to historicize past child-rearing practices in this context.

VII. Defining Severe Abuse in the Practical Work of the Redress Board

With the aim of exploring how the Redress Board decided on these matters when dealing with the applications from claimants, my colleagues and I collected every fourth decision made by the board about applications, a total of 1,225 decisions. In our sample, 704 decisions rejected the application and 521 awarded compensation.[43] To be awarded compensation, applicants had to meet four specific criteria outlined in the Redress Act and specified in the government bill, proving that they had been "taken into custody between 1920 and 1980" under specified Child Welfare Acts and giving "credible evidence of exposure to severe abuse that occurred in conjunction with municipal out-of-home care".[44]

In rejected cases, the Redress Board justified its decision with reference to one or more of these four criteria. The rejection criteria for our sample of 704 rejected applications can be seen in the table.

41 National Board of Health and Welfare, Råd och anvisningar i socialvårdsfrågor [Advice and guidance on social care issues], nr. 49 (1948), p. 11. Author's translation from Swedish.
42 Government Bill 2011/12:160, p. 23.
43 For more information on method for data collection and analysis, cf. Sköld/Sandin/Schiratzki, Historical Justice, p. 182.
44 Ibid., pp. 183 f.

Table: Criteria for rejecting applications to the Redress Board[45]

Criterion	Number of rejected applications (n=704)	Percentage
Custody	187	26.6
Credibility	73	10
Conjunction with care	161	23
Severe abuse	464	66

In a significant number of decisions, the board maintained that the applications failed to meet multiple criteria. However, the most notable result is that the severe abuse criterion is cited for 66 percent of the rejections. Consequently, the most common reason for a claimant's application for redress being rejected was that the board did not consider the reported abuse to be severe enough.

To understand how the board dealt with the historicizing aspect of severe abuse, we searched for reject decisions that took this aspect into consideration. Only 15 decisions in our sample explicitly historicized the events and dismissed the application on such grounds. Eleven of these rejections were related to testimonies about child labour. This reflects a notion held by the board that past childhoods entailed work, sometimes heavy labour, but that this was just "normal".[46]

Testimonies about physical violence, however, were also occasionally rejected with reference to the historical context. In a previous article we accounted for a case in which the applicant reported that she had been beaten with whips so regularly that she had constant scars on her back. In her application, she reported that she had been "force-fed (sometimes with her own vomit), locked up, punished by being denied food, denied having friends outside the institution, had a cherished gift stolen, and was never informed that her siblings resided in the same institution".[47] Her application was dismissed by the Redress Board based on the claim that the board took "into account the conditions prevailing at that time".[48] What conditions these were is not specified in the decision and, in fact, the reported abuse matches many of the actions that were prohibited by the National Board of Health and Welfare in 1948. We cannot know whether this reflects notions about the conditions prevailing before or after 1948 because information about the years of placement is redacted in the decisions in order to safeguard the applicants' anonymity. But we do know that the Redress Board only occasionally rejected applica-

45 One application was rejected with reference to the applicant being deceased. The table is quoted from Sköld/Sandin/Schiratzki, Historical Justice, p. 184.
46 Ibid., p. 188.
47 Ibid., p. 189.
48 Cited in ibid.

tions with explicit reference to their historical context.[49] This is probably because the standards of what counted as severe abuse were specified in other ways.

VIII. Defining Severe Abuse in the Redress Act and in the Government bill

The most common ground for rejecting applications was that the claimant's submission of abuse did not meet the severe abuse criterion, even where other criteria also played a role.[50] The distinction between abuse and severe abuse was proposed by the Redress Inquiry as a prerequisite for safeguarding the symbolic significance of a redress compensation represented by a flat payment.[51] The inquiry argued that the definition of severe abuse should take into account "whether, due to the circumstances in the individual case, there was a significant risk that the young person's health or development could be seriously damaged".[52] This definition was excluded from the government bill, in which severe abuse was defined as serious sexual abuse, occasional "very serious physical abuse", occasional "sadistic or torture-like conditions" or "serious violations and repeated abuse or neglect meant to seriously harm the child's self-esteem".[53] Moreover, the government bill's definition rested on several specific notions about what was not considered severe abuse: abuse that, with "reference to the conditions at the time", was not perceived as severe. "Normal" child-rearing in the past was not regarded as severe abuse. Furthermore, occasional or infrequent abuse was not considered severe, nor was abuse during a placement that lasted for a short period of time. Abuse that was not directly aimed at the children themselves, for example witnessing domestic violence or violence against relatives, was also not regarded as severe abuse according to the government bill.

IX. Sexual Violence not Defined as Severe Abuse

When we analysed rejected decisions containing reports on sexual violence, it became clear that touching children's private parts, forcing the child to masturbate the perpetrator or forcing the child to watch someone masturbate did not count

49 Cf. ibid.
50 To learn more about the other criteria, see Schiratzki/Sköld/Sandin, Redress in context; Sköld/Sandin/Schiratzki, Historical Justice; Sköld/Sandin/Schiratzki, När välfärdssamhället gör fel; eid., Redressing or excusing the past? The evaluation of child sexual abuse in the Swedish redress scheme for historical abuse in out-of-home care. In: Johanna Annola/Hanna Lindberg/Pirjo Markkola (eds.), Lived Institutions as History of Experience, Basingstoke 2023 (forthcoming).
51 Cf. SOU 2011:9, Upprättelseutredningen, pp. 142 f.
52 Ibid., p. 143.
53 Government Bill 2011/12:160, p. 23.

as severe abuse according to the board. In effect, these abusive actions have not been conceptualised as gross sexual abuse, which would count as severe abuse according to the bill. Our analysis demonstrates that even narratives about rape were not considered severe abuse in a few cases. An applicant recounted that, when he was 11 years old, he was forced to have intercourse with a female adult carer. This was not considered severe abuse by the board.[54]

How is it possible that these abusive actions were not conceptualised as severe abuse entitling compensation? It turned out that, rather than historicizing the reported abuse, the Redress Board was guided by another principle which is situated in the present day; namely, current tort case legislation. In a discreet passage, the government bill suggested that the definition of severe abuse "could not ignore circumstances that today might lead to equally high damages as the proposed compensation".[55] This passage contradicted the message put forward by the Redress Inquiry, in which "the compensation was considered to be an ex gratia symbol of the state's acknowledgement, outside the general tort system, and not compensation for harm or loss".[56] When the government bill was circulated to various authorities and stakeholders, as part of the Swedish so-called "remiss system", the Göta Court of Appeal (Göta hovrätt) and the Chancellor of Justice remarked that the amount of 250,000 SEK was high in relation to Swedish tort case compensation.[57] Tort case compensation in Sweden is rather low compared to other national standards. Child rape victims may receive compensation that is less than 250,000 SEK in contemporary tort case damages.[58] In effect, the compensation amount came to set the standard of what counted as severe abuse. As the redress scheme only had two possible outcomes – either the claimants got the 250,000 SEK compensation, or they got nothing at all – all abuse that would not have generated 250,000 SEK in a present-day tort case compensation was rejected for compensation from the redress scheme.

X. Past or Present Norms?

The extent to which contemporary tort law came to influence the assessment of the historical redress claims was probably not foreseen by the politicians in parliament who passed the Financial Redress Act. This is an important reminder for designers of forthcoming schemes internationally to be observant about how contemporary legislation is related to the redress scheme.

54 Cf. Sköld/Sandin/Schiratzki, Redressing or excusing the past?
55 Government Bill 2011/12:160, p. 25.
56 SOU 2011:9, Upprättelseutredningen, p. 134. Cf. also Schiratzki/Sköld/Sandin, Redress in context, p. 107.
57 Cf. Arvidsson, Att ersätta det oersättliga, p. 176.
58 Cf. Schiratzki/Sköld/Sandin, Redress in context.

In the end, present, not past, norms came to guide the redress process in Sweden, both in the abuse inquiry and at the subsequent Redress Board. But which present norms proved to be critical varied across the process. While the Abuse Inquiry Commission anachronistically related our definition of abuse to the UNCRC, the Redress Board came to relate its definition to present tort case law. Both challenged the demand of historicizing abuse and violence against children, but with completely different outcomes.

The massive plethora of witness accounts of historic abuse from people who grew up in out-of-home care has much to contribute to our understanding of the potential risks that are associated with current foster care and residential care. But if we do not treat the victims' and survivors' willingness to share with respect and proper responses, we are likely to exploit them once more, as society's failure to protect them is not merely a thing of the past, it is a current issue as well. Historicizing abuse and violence could be seen as "politics of time", creating a distance between the past and the present, in accordance with the argument of historian Berber Bevernage.[59] Struggling against such regulation of distance could be seen as an anachronistic stance, but possibly also as another way of understanding both time and the victims of historical abuse.

59 Cf. Berber Bevernage, Writing the Past Out of the Present: History and the Politics of Time in Transitional Justice. In: History Workshop Journal, 69 (2010) 1, pp. 111–131, here 121 f.