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Abstract

The paper draws attention to a type of historic injustices that has been neglected by transitional justice, namely human rights violations and systematic persecution linked to notions of normality, productivity, and fitness. It introduces the concept of injuries of normality to denote systemic human rights violations that result from, operate through, reiterate, and reinforce practices of categorizing people along social norms and standards of health, fitness, productivity, and/or conformity. It studies four paradigmatic cases of injuries of normality under Nazi rule: the persecution of people categorized as mentally ill, hereditarily ill, homosexual, or "asocial". Against this background, it argues that their suffering escapes the transitional justice frame which operates on a specific temporality that tends to preclude the problematization of injuries of normality. The paper concludes that we need a new field of inquiry and intervention that addresses historic justice and the injuries of normality.

Key words: *historic justice, Nazi past, categorization, productivity, normality*

Introduction

The past decades have witnessed an increased preoccupation with the legacies of past atrocities and human rights violations, both in academia and in political life. A fast growing field of scholarly discourse and political activity has emerged, marked by the proliferation of "re-terms" such as restitution, reparations, redress, reconciliation, remembrance, regret, restorative justice, or rectification. Scholars have christened the phenomenon the "politics of regret" (Olick 2013), "the age of apology" (Brooks 1999), or "the politics of blame and atonement" (Barahona De Brito, Aguilar and Gonzalez Enriquez 2001, 2). In political science, law, and international relations, another concept has emerged over the past thirty years: the concept of transitional justice. Unlike memory studies, transitional justice does not just constitute an academic field but also a field of practical intervention (Balint, Evans and McMillan 2014, 198); it engages scholars and researchers, but also legal practitioners, policy-makers, human rights advocates, international organizations, governments, and grass root activists. The scope and meaning of transitional justice is disputed among the community and beyond. It is widely agreed that transitional justice is defined by a particular array of practices, "instruments" or "mechanisms" designed to address past wrongs, such as trials, truth commission, purges, vetting, lustration, and reparations (Elster 2004, 1, Olsen, Payne and Reiter 2010, 11). Occasionally, public apologies and practices of commemoration are included, too. While there is a widespread consensus among members of the transitional justice community that these form the means, the instruments, that constitute the transitional justice "tool box", the meaning and the boundaries of "transition" in "transitional justice" are less clear. Should the concept of transition be restricted to regime change from autocratic rule to democratic rule, and/or include transitions from periods of war or conflict to periods of stability? Or should it refer to any type of changes within the dominant discourse of justifying the exercise of authority, be it in post-conflict societies, situations of regime change, or established democracies (Winter 2013)? Curiously, we seem to have a consensus about the means of transitional justice but none about the political ends these means are supposed to serve.

For all these differences about its scope, meaning, and ends, transitional justice has grown into a well-established field of inquiry and intervention, spurring the formation of journals, research centres, international institutions and policy programs (Leebaw 2008). According to many observers, today it has acquired that status of a veritable "global project" (Nagy 2008), "a dominant international framework" (Balint, Evans and McMillan 2014), or a new global norm (Barkan 2009, Orentlicher 2007, 12). Jelena Subotic and Priscilla Hayner contend that states emerging from authoritarian rule or periods of violence and armed conflict are now expected to deploy transitional justice mechanisms in order to facilitate the transition process (Hayner 2001, 23, Subotic 2005, 4). In other words, transitional justice has become a hegemonic political project.

However, transitional justice has come of age, as some put it. In recent years, a number of scholars have launched out to scrutinize its achievements, point out its blind spots, limitations and boundaries, and to rethink its scope, claims, basic assumptions and political purposes.

These critics fall into roughly one of two categories: those who point out certain shortcomings, biases, limitations or blind spots within conventional transitional justice in order to overcome these, to broaden the concept and to make it more inclusive. In principle, they assume these

shortcomings are amenable to rectification. Consequently, these critics struggle to expand the scope of transitional justice in order to include hitherto neglected issues, such as development, social and economic rights, sexualized violence, or human rights violations against marginalized groups which transitional justice has largely failed to address. Another group of critics challenge the transition paradigm altogether. In their view, it promotes a thin, liberal concept of justice that elides or even precludes questions of power and domination, social inequality, social justice and social change. Hence, it is the meaning of justice that is at stake here. These critics do not necessarily question the point of trials, truth commissions, reparations, or apologies as such but the philosophical-political framework these form part of.

In this paper, I will follow the more fundamental strand of criticism and draw attention to a further type of historic wrongs that transitional justice has grossly neglected so far, namely violations linked to notions of normality, productivity, and fitness. I will term this type of violations injuries of normality. By injuries of normality I mean systematic human rights violations that result from, operate through, reiterate, and reinforce practices of categorizing people along social norms and standards of health, fitness, productivity, or conformity and mark them as being socially inadequate, abnormal, deviant, or deficient. My point is not to demonstrate that these categorizations were based on wrong, "pseudo-scientific" assumptions, nor that they were "misused" by an authoritarian regime, or wrongly applied in individual cases. Instead, I argue that categories of normality, conformity, or fitness are *inherently* degrading in that they ineluctably ascribe differential worth to people. They mark individuals as being deviant, deficient, and a burden or even threat to an imagined community they are excluded from. Thus, already the act of categorizing people according to standards of *normality*, productivity, or fitness constitutes an injustice, not just the harm it may cause for those who are being affected. Yet, these human rights violations are injuries of normality in still another sense insofar as they use to occur in situations of "normality", respectively situations taken for "normality", and not only under exceptional political circumstances. The logic of marking and categorizing people as deviating from certain social norms and standards is not confined to autocratic regimes or situations of strife, war, or civil war, although these may have aggravated the infringements. Injuries of normality, thus, refer to notions of "normality", often occur in situations of "normality", and their occurrence may be taken for "normality" in the eyes of the contemporaries.

Transitional justice has a blind spot regarding injuries of normality; they simply did not come into view. The reason, I think, has to do with the transition paradigm in transitional justice. To explicate this point, I will refer to a cluster of infringements and human rights violations paradigmatic for the type of infringements I have termed injuries of normality. These are the persecution of people categorized as mentally ill, disabled, hereditarily ill, homosexual, or "asocial" under Nazi rule. I will point out that the injustice suffered by these people escapes the transitional justice frame because the latter implies a specific political temporality that blocks injuries of normality from view. This is not to say that criminal trials, truth commissions, reparations, or apologies are useless or inappropriate for addressing the injustices of normality. On the contrary, such practices can act and at times have acted as powerful means to confront, condemn, and even rectify this type of human rights violations. However, to the extent that such efforts have nevertheless taken place, they have taken place independent of and largely

unnoticed by the discourses and institutions of the transitional justice framework. A major reason for this, I argue, is the political temporality underlying the transition paradigm which is largely incompatible with problematizing injuries of normality.

In the following, I will first introduce the concept of transitional justice, its dominant meaning and the major points of criticism levelled against it. Subsequently, I will sketch out four occurrences of human rights violations under Nazi rule that can be considered paradigmatic of injuries of normality: the institutional killings known as "euthanasia", coercive sterilization policy, the persecution of male homosexuals, and the persecution of people categorized as "asocial". Note, however, that these are just four cases and by no means a conclusive list. Particular attention will be given to the pertaining struggles and claims for historic justice in the Federal Republic. Refuting and denying these claims, I argue, has to be understood as prolongation of the original injustice into the post-Nazi era. We can speak of these denials and refutations as second order injustices committed by the successor state, in this case the Federal Republic.

Before doing so, I will first sketch out the particularities of the transitional justice frame.

Narratives of Transitional Justice

The term transitional justice had not yet been invented when the Allied Forces started to deal with the legacies of the Nazi crimes. Later on, in the Federal Republic of Germany, the question of how to deal with the Nazi crimes was framed in terms of *Vergangenheitsbewältigung* or *Aufarbeitung und Wiedergutmachung* (Goschler 1992). The Federal Republic, however reluctantly and incompletely, took a number of measures which nowadays belong to the "tool box" of transitional justice, such as criminal persecutions, lustration, reparation programmes, and, much later, public apologies (Art. Wiedergutmachung 2015, Goschler 2005, Herbst and Goschler 1989, Reichel, Schmid and Steinbach 2009). The contemporaries, however, would not think of these practices as "transitional justice". This still holds true for the West German debate on the Nazi crimes in the 1980s and 90s. In the 1980s, civil society initiatives struggled hard to establish local memorial sites, the government set up new reparation funds, a kind of discourse explosion took place on how different parts of German society had been involved in the Nazi crimes – but "transition" was not the issue. Cath Collins recently suggested the concept of post-transitional justice (Collins 2012) to capture such struggles and efforts which may erupt decades after the actual transition to democracy. Although her observations refer to Latin America in the 1990s, we have seen similar processes in the Federal Republic in the 1980s: a renewed interest in coming to terms with the totalitarian regime, a high tide of testimonial literature, films, and documentaries, renewed demands for accountability, initiatives to launch memorial sites, and commemoration practices by civil society actors, renewed claims for reparation, and apology.

In short, when the concept of transitional justice emerged on the international scene in the 1990s, the practices it denotes where by no means new.[1] What was new was the term transitional justice. Paige Arthur (2009) shows that the term as such emerged in the 1990s and increasingly served to articulate a range of activities throughout different fields such as political advocacy, scholarship, inquiry, policy-making, or prosecution. It allowed actors in these fields to create, denote, delineate, and package a body of knowledge and a set of core devices that could circulate internationally, be handed down from case to case, refined, and systematized. The core devices, usually identified as trials, vetting and lustration, truth commissions, restitution and reparations, constitute the standard "toolbox" of transitional justice. One could say that the emergence of the term facilitated the emergence of a paradigm in a Kuhnian sense (Kuhn 2012): it operated as an accepted model for dealing with atrocities and systematic human rights violations in the past that provided normative direction and orientation as well as model problems and solutions for the various communities of practitioners involved. Before the term came up, there had been no such common paradigm for addressing past wrongs.

By now, transitional justice has become the dominant concept to address matters of coming to terms with the past on a global level. Arthur (2009) makes it very clear that transitional justice does not simply denote a set of substantial issues which had been "out there" already, but that the concept actively shapes and defines a range of activities, delineates the field, assigns meaning and significance to certain issues, and positions them inside or outside the field. In this sense, transitional justice operates as a policy frame that selectively highlights certain aspects of reality at the expense of others and provides a normative lens through which social reality is interpreted, implies certain normative assumptions, points out what is problematic about social reality – and what is not - and suggests what should be done. In short, the concept of transitional justice is not neutral. Nor has it remained uncontested.

[1] For Jon Elster (2004), the phenomenon even goes back as far as Ancient Greece.

We find different narratives concerning the origins of transitional justice in the literature. A common view is that it dates back to the year 1945 and the Nuremberg Trials (Barahona De Brito, Aguilar and Gonzalez Enriquez 2001, Teitel 2003). However, the term as such was adopted, canonized, and diffused since 1995 by a community of scholars preoccupied with issues of human rights in the context of "transition to democracy" (Arthur 2009, 327ff., Barahona De Brito, Gonzalez Enriquez and Aguilar 2001, Kritz 1995, Teitel 2000). Transition, here, denotes regime change from autocratic to democratic form of government. The concept of transitional justice correspondingly addressed the question "how emerging democracies reckon with former regimes" (Kritz 1995), in particular with the crimes and abuses committed by former political leaders. Thus, the term transition serves as a short-cut for "transition from authoritarian rule to Western style representative democracy". "Transitional justice," as Louise Arbour put it,

> "must have the ambition of assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future." (Arbour 2006, 2)

By the late 1990s, the meaning of transition was increasingly broadened to include transition to what was termed post-conflict societies, post-conflict situations, or even more generally, post-violence contexts (Bloomfield, Barnes and Huyse 2003, Olsen, Payne and Reiter 2010).

In this vein, the International Journal of Transitional Justice, founded in 2007, stipulates that

> "[i]n the past two decades, countries emerging from divided histories have increasingly incorporated transitional justice mechanisms in order to uncover and deal with crimes of the past. Transitional justice has fast emerged as a recognised field of policy expertise, research and law, and today, is considered to be an academic discipline in its own right. (…) Citing transitional justice processes as a key vehicle in achieving this objective, Annan announced that the United Nations is working on 'important new tools' to strengthen the transitional justice processes of post-conflict states." (The International Journal of Transitional Justice n.y.)

Concomitantly, the meaning, goals, and the "tool box" of transitional justice expanded, too; restorative justice complemented retributive justice, a new emphasis was put on reconciliation and healing, and practices such as truth commissions, reparations, and apologies were promoted as essentials tools next to trials and tribunals. A series of publications, documents and reports promoted the role of reconciliation in post-conflict societies since the end of the 1990s and argued that reconciliation and social healing were essential for achieving peace, stability, and democratic consolidation (Bloomfield, Barnes and Huyse 2003, Lederach 1997, van der Merwe 1998).

The Temporality of Transitional Justice

Both narrow and broader concepts of transitional justice, however, refer to "periods of transition", meaning "transition to peace and/or democracy". The UN Economic and Social Council, for instance, in an important report, stipulates a set of new normative principles to combat impunity, most notably the principle that victims of gross human rights violations have a right to the truth, a right to justice, and a right to reparations. The report makes it quite clear to which scope of situations these principles refer, namely to situations of "restoration of or transition to democracy and/or peace" (UN Economic and Social Council 2005, 6).

The concept of transition here, as elsewhere, operates within a particular political temporality. It implies a series of normative and political assumptions, namely:

a) The past has passed; the relationship between past and present is one of discontinuity.

b) The past was a period of systematic wrongdoing committed or condoned by the state. The legacies of the past have to be overcome.

c) The present is a period of change; state and society are moving towards a future which will be characterized by peace and democracy. Once peace and democracy are achieved, transition comes to an end. Peace and democracy mark the end of transition.

d) During periods of transition, this process is still under way; there is still some way to go. Transitional justice is the vehicle to take state and society away from the legacies of the past towards the end of transition marked by democracy and peace.

Transition, therefore, implies the notion of discontinuity. Thus, by definition, transitional justice deals with societies that have left the period of systematic violence and human rights violation behind but have not yet reached their final destination: the state of peace and democracy. Hence, peace and democracy form the end of transition in a double sense: they form the objectives which transitional justice strives to achieve and they also form the endpoint in a temporal sense; the process will come to a close once peace and democracy are being established. Transition, in short, is a teleological concept, it denotes a process directed towards a certain historic end.

To the extent that transitional justice subscribes to this political temporality, it covers a certain range of past injustices but overlooks or even excludes others. For instance, transitional justice, by definition, is not in charge for systematic injustices that are still ongoing On the other hand, it is also not in charge for systematic wrongs that have occurred in the past but not under autocratic rule or in periods of violent conflict but in periods of "normality". In fact, as Jennifer Balint, Julie Evans and Nesam McMillan note,

> "Liberal democratic societies have been positioned as the desired end points of transitional justice, and transitional justice 'has tended to ignore the extent to which liberal democracies themselves might be considered in need of "postconflict" reconciliation and restorative justice." (Balint, Evans and McMillan 2014, 195)

Admittedly, there are views in the literature that deviate from this dominant frame and argue that transition may also occur in consolidated democracies (Winter 2013, Winter 2014). This

conception, however, stretches the concept of transition to an extend that it becomes virtually dispensable. On policy level, in policy reports, papers, and documents issued by international organizations or other policy actors, the periodical-teleological concept of transition is still dominant.

Transitional Justice under Criticism

As mentioned, transitional justice is a contested concept. Critical objections concern a range of different aspects, many of which in some way or other are related to the transition paradigm.

Transitional justice, some have remarked, is biased towards more recent cases of wrongdoing (Balint, Evans and McMillan 2014, Schwelling 2012). Atrocities committed before WW II have been much less in the focus than those related to transition periods after 1945 or in the wake of the so-called third wave of democratisation since the 1970s. Given that transitional justice is both a field of inquiry and a field of political intervention, the focus on the near past may have to do with the fact that it is more difficult to identify perpetrators, victims and witnesses when more than a generation has passed after the event. Yet, the coupling of research and political activity that plays out here has the side effect that atrocities such as slavery and the slave trade as well as genocide committed in the context of colonialism move out of range. In effect, this bias essentially marginalizes the suffering inflicted on indigenous peoples by white conquerors, colonialists, and settlers.

Another major criticism says that transitional justice individualizes systemic violence, focusing on individual acts of violence against individual victims but largely eliding structural violence. This criticism particularly applies to trials with their focus on individual perpetrators. Some scholars have argued that transitional justice's individualist bias results from its history; after all, the field received much of its original inspiration from criminal law and retributive justice (Arbour 2006). More recently, as many commentators emphasize, the field has extended to cover a broader range of approaches, many of which put the emphasis more strongly on restorative than on retributive approaches (Domingo 2012, Hitzel-Cassagnes and Martinsen 2014). Proponents of non-judicial approaches such as truth and reconciliation commissions (Aukerman 2002, Minow 1998) or political reparation programmes (De Greiff 2006b) argue that these provide more adequate instruments to address the structural causes of systemic human rights violations. Unlike trials, truth commissions and reparations programmes, so the argument goes, are potentially powerful means to expose and address systemic violence against oppressed and disadvantaged social, ethnic, racial, or religious groups. Acknowledging the experience of group-related violence and suffering, these instruments are oriented towards recognition and reconciliation rather than retribution. Although this reasoning seems plausible on a normative level, it has been challenged on an empirical level. For one thing, truth commissions as well as reparation programmes may acknowledge the occurrence of systemic ethnic, racial, or religious group discrimination, but mostly provide restitution, reparations, or rehabilitation to individual members of these groups. Collective reparations, granted to a social group as such, are rare. Second, and more fundamentally, analysis has shown that even in the celebrated case of the South African Truth and Reconciliation Commission (TRC), contrary to conventional wisdom, it was *no*t the system of Apartheid that was at stake. As Mahmood Mamdani (2002) shows, the TRC dissociated the phenomenon of Apartheid from the longer history of colonialism and framed the problem of Apartheid as one of individual human rights violations rather than one of systematic social, economic, legal, and political intersections of class and race domination. The TRC explicitly limited their attention to politically motivated gross human rights violations during "conflicts of the past", *not* including the "policies of apartheid". The latter were relegating to mere "context".

Related to this point, but not entirely coextensive with it, is the criticism that certain categories of human rights violations have long remained beyond the purview of transitional justice. Borrowing a term from German discourse on *Aufarbeitung und Wiedergutmachung*, we could speak of the "forgotten victims" of transitional justice: victims of systemic harm that transitional justicehas not adequately accounted for. This criticism mainly refers to historic harms against indigenous people (Balint, Evans and McMillan 2014, Corntassel and Holder 2008) as well as sexualized and gender-related violence (Buckley-Zistel and Stanley 2012, Hitzel-Cassagnes and Martinsen 2014), but also to economic and social injustices such as forced evictions, destruction of homes or long-term social inequity (Arbour 2006, Miller 2008).

A similar point can be made for structural violence. Relations of structural violence often overlap with social and economic relations of power and inequality, but can also take the form of sexualized violence, for instance. When state officials regularly condone or even commit rape or violent attacks against homosexuals, homeless people, people with disabilities, or other marginalized groups, these are incidents of human rights violations emanating from structural violence that may well continue beyond regime change or the end of violent conflict.

More generally, transitional justice has been critiqued for its implicit tendency of depoliticizing the notion of justice. Since the 1990s, various goals of transitional justice, such as democratization, peace, stability, conflict resolution, rule of law, public trust, revealing the truth about crimes committed, criminal justice and retribution, reconciliation, social healing, and more were increasingly presented as complementary and mutually reinforcing (Leebaw 2008). Within this framework, there was no need to discuss political goals and purposes of transitional justice. The framework was built upon the premise that a) any of the postulated goals were equally valuable, b) all these goals were somehow intertwined and mutually reinforcing, so that c) any transitional justice mechanism would, in one way or other, help to bring about any of these goals. Hence, there was effectively no room for analyzing conflicting interests, diverging strategies, or the distribution of power nor for debating political priorities within the respective social and political context (Bell 2009). This universalized, decontextualized approach, argues Hannah Franzki (2012), effectively depoliticizes the notion of justice. Accordingly, transitional justice is usually framed in technical terms such as tools, instruments, and mechanisms. The recurring metaphor is that of a tool box; transitional justiceis a set of instruments, politically neutral and uncontested, that may function in a variety of different contexts.

Transitional Justice and the Injuries of Normality

In the remainder of the paper, I will draw attention to still another category of forgotten victims of transitional justice: those who suffered from injuries of normality and argue that the reason why they have been "forgotten" is strongly intertwined with transitional justice'sspecific political temporality. Injuries of normality denote acts of harm and abuse inflicted upon individuals on the grounds that their behaviour, body, or way of life is deemed to deviate from certain norms and standards of conformity, health, fitness, or productivity. The logic of normality and deviance may overlap or intersect with notions of race, ethnicity, gender, religion, or other but is also distinct from these. Most notably, the targets are not necessarily targeted as members of a certain group that as such existed prior to persecution or abuse. Conversely, members of a dominant racial, ethnic, national, or religious group or gender are not necessarily safe from injuries of normality. The logic of normality singles out an individual among a larger social group and categorizes her or him as being abnormal, deficient, or deviant. One of the consequences is that victims rarely enjoy the solidarity that group membership may provide. At the same time, the logic of normality is usually anchored in social, political, cultural or legal institutions and backed up by structural violence. Often, it is so deeply entrenched in legal, cultural and social structures that it is taken for "normality" itself. Injuries of normality rarely ever count as exceptional crimes or "extraordinary evil" of the type that gives rise to transitional justice mechanisms.

What kind of abuse do I refer to? To illustrate, let me take the historic experience of the Nazi crimes.

Model Case Germany?

The Federal Republic of Germany is often referred to as the model case for "coming to terms with the past". Post-war (West-)Germany, it is said, has confronted its Nazi past through education policies, apologies, and payments of compensation in ways that could serve as a model for other countries that also have systematically committed human rights violations in the past (Buruma 1994, Cunningham 2004, Wolfrum 2009). German Holocaust Reparations have been called "the prototype of all reparations politics" (Torpey 2006, 4) or the "historical referent for most reparation programs" (De Greiff 2006a, 5).

Indeed, the Luxemburg Agreement of 1952 between the Federal Republic and the state of Israel and the Jewish Claims Conference can be considered a "milestone in the history of reparation politics" (Ludi 2005, 3). What was historically new about this agreement was not least that it was the first reparation scheme to grant reparation not to states but to individuals. "These were no ordinary post-war reparations", Ruti Teitel (2000, 123) states. Until 2009, the Federal Republic paid some 60 billion Euros of reparations to victims of Nazi crimes, which was not only six times as much as had been initially anticipated by the German government but also the biggest reparatory endeavor in human history (Brunner, Frei and Goschler 2009). Thus, in many respects, German efforts of *Aufarbeitung und Wiedergutmachung* can be considered a model project for coming to terms with the past.

At the same time, the history of German *Aufarbeitung und Wiedergutmachung* is also a history of denial and disregard, most notably with respect to the so-called forgotten victims. The term

"forgotten victims" is a misnomer, since some groups of Nazi victims were not forgotten at all, but deliberately excluded from reparations, such as communists or those who had been forcibly sterilized under the Law for the Prevention of Hereditary Diseases. The 1953 Federal Compensation Law (*Bundesentschädigungsgesetz*, BEG) clearly and conclusively defined who was to be considered a victim of Nazi persecution, namely someone who had been persecuted for "racial, religious, and political reasons or because of the victim's world view"[2] (BEG, Art. 1(1)). Thereby, the Federal Compensation Law sharply delineated those injuries that would count as Nazi injustice and qualify for reparations from those that would not. The wording goes back to the so-called Bermuda Conference formula of "racial, religious, and political refugees" framed by the US and British Allies in 1943. Regula Ludi argues that the Bermuda formula was originally derived from the interwar minority regime designed to protect national, ethnic and religious minorities (Ludi 2012, 12). The West German post-war reparation scheme adopted the Bermuda formula but included persecution for political reasons. In other words, West German post-war reparations were crucially informed by the ethnic minority protection frame and I would argue that it has remained the dominant frame in West German post-war reparations until now. This, I would argue, holds true for much of the field of transitional justice in the past some 20 years; much of transitional justice literature and activity is strongly focused on violence against ethnic, cultural, national, or racial minorities. John Torpey has a point when he states that the larger part of contemporary campaigns for historic justice refer to violations that "took place across and to a large extent on the basis of an ethnoracial distinction" (Torpey 2006, 47). Other lines of power and domination such as gender, sexual orientation, class, or notions of normality and fitness rarely formed the focus of transitional justice.[3]

The predominance of the ethnic minority frame in a sense matches the shift from a criminal justice paradigm to a restorative justice or conflict resolution paradigm (Aukerman 2002, 77). It is not by coincidence that this shift occurred at the same time as the transitional justice paradigm emerged, namely in the mid-1990s. One of the most formative events in this context was the celebrated, paradigm-defining South African TRC 1996-1998 that, according to Mark Freeman (2006), divided the history of truth commissions into 'before' and 'after'. The TRC captured global attention and imagination precisely because it placed the emphasis more strongly on reconciliation, healing, and conflict resolution than on punishment and accountability. For the following decades, reconciliation and conflict resolution were promoted to core objectives of transitional justice. The notion of reconciliation and conflict resolution, I would argue, presupposes at least two distinct social, racial, or ethnic groups that existed prior to, during, and after the conflicts at stake. Without going into the extended criticism that has been raised against the reconciliation paradigm in the context of the TRC, we can certainly say that it constructed the problem as a conflict between distinct groups that as such preceded the phase when the main acts of violence occurred; these groups, so the underlying narrative, were not constructed *through* these acts. Another assumption is that these groups will continue to live together in one society for the foreseeable future. This constellation, however, does not apply, for instance, to the situation in post-war Germany. Here, barely any Jews survived or returned from exile. The reconciliation narrative does not make sense in relation to gender-based violence either, nor does it apply to the forms of abuse I have termed injuries of normality as in these cases, victims were not constructed as members of pre-existing groups. Further, in cases

[2] All translations from German into English by the author.
[3] But see for example (Min 2003).

where the relationship is extremely asymmetric, it is euphemistic to speak of a “conflict” - as if there had been two groups mutually threatening the existence of each other. If, however, there had never been anything halfway close to symmetric relationship, the notion of re-conciliation or re-storing becomes misleading, if not euphemistic.

In the following, I will inspect some of those types of persecution that escape both the reconciliation and the transition paradigm with its constitutive periodical-teleological temporality.

Institutional killings or "euthanasia"

Between 1939 and 1945, at least 125,000 people were killed within the Nazi programme of destroying "life not worth of living", among them at least 5,000 children, 100,000 people who lived in psychiatric institutions and 20,000 who lived in institutions in the occupied territories in Poland and the Soviet Union (Art. Euthanasie-Prozesse und -Debatten 2007). The so-called "children euthanasia" programme was directed against "malformed" newborns and children under the age of three, the killing of adults targeted mainly mentally ill or mentally handicapped people living in institutions. As regards the latter, the questionnaires on the basis of which life-and-death decision were made included the question whether the person was capable of working. These people were killed for not conforming to Nazi standards of health, fitness, and productivity. The programmes were encouraged by Nazi leaders but implemented by professionals: psychiatrists, physicians, nurses.

After the war, twenty physicians and three public servants involved in the institutional killings were tried at the Nuremberg Doctors' Trial held by a US Military Court in 1946/47, seven were sentenced to death, nine to prison.

Between 1945 and 1949, some perpetrators were tried and sentenced by German courts. There was, however, no consensus among the judiciary that killing people with disabilities was actually a crime: In 1949, the Hamburg district court refused to open a trial against individuals involved in so-called children's "euthanasia", declaring that the "shortening of life not worth to live was not a measure which contradicts the general moral laws" (quoted in gedenkort-T4.eu, n.y.).

After 1949, German courts increasingly tended to issue shorter term prison sentences or acquittals, even if, as in the case of the Frankfurt "Euthanasia Trial" in 1966/67, there was proof that the accused had murdered several hundreds or thousands of persons. Acquittals were based on constructions such as "Verbotsirrtum" – perpetrators were mistaken as to the wrongful nature of the act - or "Pflichtenkollision" – a collusion between conflicting duties -, implying that killing people on the grounds that they were deemed disabled, mentally ill and/or unfit for work was part of "normal" medical practice.

Most physicians who had been involved in medical killings continued to practice in the Federal Republic. During the 1950s, 60s and 70s, practically no effort was made of coming to terms with the Nazi medical crimes whatsoever. It was only in the 1980s that medical associations and civil society actors started to confront these crimes.

As regards reparations, victims of the Nazi "euthanasia" programme were not entitled to reparations under the Federal Compensation Law; killing people for reasons of disability, mental illness, or incapacity of working did not count as persecution for "racial, religious, and political reasons or because of the victim's world view". Since 1988, a hardship compensation funds was established under a different law, the General Law on Consequences of the War (*Allgemeines Kriegsfolgengesetz*) and descendants of "euthanasia" victims could apply for a one off compensation payment of 5,000 Deutschmark, if, and only if, the parent would have been liable to provide sustenance to the child at the time. Since September 1, 2004, when hardship com-

pensation was amended, survivors of "euthanasia" killing institutions[4] , and in some exceptional cases their descendants or spouse, could claim a one-off payment of 2,556.46 Euro (Bundesministerium der Finanzen 2006, 27). On March 28, 2011, hardship compensation was again amended by the German government so that survivors of "euthanasia" institutions could also claim monthly benefits of 291.00 Euro (BT DR 17/8729 2012). On December 31, 2011 altogether three individuals received these monthly payments (BT DR 17/8729 2012).

In January 2007, a new memorial for the victims of the institutional killings was handed over to the public: the memorial of the Grey Busses. Similar grey busses had been used to transfer individuals to the killing facilities between January 1940 and August 1941. On May 24, 2007 the German Parliament at last adopted a declaration that condemned the institutional killings as "a manifestation of the inhuman Nazi notion of 'life not worth living'" and expressed respect and sympathy to victims and their families (BT Dr 16/5450 2007, BT PLP 16/100 2007). On September 2, 2014, a memorial and information centre in Berlin opened to the public, located at Tiergarten Straße No.4, where the headquarter of the Nazi "euthanasia" programme – thereafter termed Action T4 - had been located.

[4] These were the institutions at Grafeneck in Württemberg, Hartheim near Linz, Sonnenschein near Pirna, Bernburg upon Saale, Hadamar near Limburg and Brandenburg upon Havel.

Coercive sterilization

The Nazi sterilization programme was linked to the institutional killings in many respects, and like the victims of Nazi "euthanasia", the victims of coercive sterilization were not acknowledged as proper "victims of Nazi persecution" in the Federal Republic. Yet, the case of coercive sterilization was also distinct from "euthanasia" in that the former was based on a formal law, the "Law for the prevention of hereditarily diseased offspring" (GzVeN)[5] that came into effect on January 1, 1934 and allowed the sterilization of persons with a number of illnesses, but also persons deemed "feeble minded" and alcoholics.

Between 1934 and 1945, around 360,000 people were sterilized under the law (Bock 1986, Friedlander 1995); almost 6,000 women and 1,000 men died from the surgery. Additionally, several thousand persons were sterilized illegally in concentration camps (Friedlander 1995) and at least several hundreds of children of German women and French or American soldiers of African origin stationed in the Rhineland after World War I (Lauré al-Samarai and Lennox 2004, Pommerin 1979). Sinti and Roma were disproportionally affected since they were disproportionally categorized as being "feeble-minded" (Riechert 1995), but the law did not explicitly target ethno-racial groups.

Up to the 1980s, victims of coercive sterilization could only claim reparations if they were able to document that they had been sterilized for political, racial, religious or ideological reasons. This, however, was a minority among sterilization victims. Throughout the 1950s, 60s and 70s, the dominant view on the Nazi sterilization programme among West German experts and policy makers was that in principle it had been an instrument of rational public health and population management, if, maybe, somewhat exaggerated (Herrmann and Braun 2010, Tümmers 2009). The relation between Nazi sterilization policy and post-war reparation policy is characterized by considerable discursive, personal, and legal continuities: only in the Soviet occupation zone was the Nazi sterilization law formally abolished after the war. In the other zones, only the Hereditary Courts were closed. Victims' claims to reparation were regularly refused on the grounds that sterilizing the "unfit" was not considered "typical Nazi injustice". On the contrary, the Parliamentary reparations committee that discussed reparations for victims of sterilization in 1965 explicitly rejected such claims, following the recommendations of professors Ehrhardt, Nachtsheim, and Villinger on the occasion of an expert hearing in 1961. All three had been personally involved in Nazi medical crimes (Klee 2005, 127; 427; 641). At the 1961 hearing, professor Nachtsheim explained that the Nazi sterilization law had been "an unpolitical law that had served to protect the hereditary health of the German people" (BT B 34 1961, 25).

The situation changed in the 1980s, when new historical research on Nazi sterilization was published (Bock 1983) and civil society initiatives addressed the so-called forgotten Nazi victims (Deutscher Bundestag 1987, Die Grünen im Bundestag & Fraktion der Alternativen Liste Berlin 1986, Evangelische Akademie Bad Boll 1987). In December1980, the German government established a hardship fund for victims of coercive sterilization. They could now claim a one-off compensation of 5,000 Deutschmark and since 1988, they could also receive monthly

[5] "Gesetz zur Verhütung erbkranken Nachwuchses" of July 14, 1933, http://www.documentarchiv.de/ns/erbk-nws.html (last access Dec. 29, 2015).

payments (of 100 Deutschmark at the time). It took the German Bundestag up to May 2007 to issue a formal declaration that condemned the Nazi sterilization law for being a severe historic injustice (BT Dr 16/5450 2007, BT PLP 16/100 2007). The victims of coercive sterilization were never formally acknowledged as "victims of Nazi persecution".

The persecution of homosexuals[6]

"For the Homosexuals the Third Reich has not yet ended," said historian Hans-Joachim Schoeps in 1962 (quoted in Wahl 2012, 191). The Nazis categorized homosexuality as 'socially aberrant', but they were not the first to do so. Anti-homosexual legislation had been co-established with the German Penal Code in 1871. The infamous paragraph 175 prohibited homosexual activity and "sodomy" (anal intercourse).

In 1935, the Nazis amended paragraph 175, very broadly criminalizing 'lewd and lascivious' behaviour. In addition, in 1935 an amendment of the Law for the Prevention of Hereditary Diseases postulated that men could be legally castrated, albeit *de jure* with their consent, if medical experts ruled this measure was required to free them from their "perverse sexual drive" (*entarteten Geschlechtstrieb*) and/or to prevent crimes against paragraph 175. In July 1940, Himmler ordered via decree that all male homosexuals who had seduced more than one partner be incarcerated in a concentration camp after having served a prison sentence.

Between 1933 and 1945, an estimated 100,000 men were arrested as homosexuals, some 37,490 were officially sentenced, between 5,000 and 15,000 of them were incarcerated in concentration camps. About 60 percent of those incarcerated in concentration camp died, although the exact numbers are unknown.

For homosexuals, 1945 did not mark a break. Paragraph 175 remained in force without amendment up to 1969. "Some homosexuals", Angelika von Wahl points out, "were even forced to serve out their terms of imprisonment set under the Nazi regime" (von Wahl 2009, 205). For them, 1945 marked the end of the camp system but not of criminalization and stigmatization. Between 1950 and 1969, over 100,000 legal investigations opened against gay men 59,316 of whom were actually sentenced. In addition, being convicted under Paragraph 175 had a host of implications such as loss of passport, restriction to a specific locality, exclusion from professional organizations, and loss of employment, in addition to trauma and health problems. Many of these effects endured long after 1945.

Neither did 1945 mark the beginning of *Aufarbeitung und Wiedergutmachung* in this case. The Nuremberg Trials did not address persecution of homosexuals, homosexuals were not entitled to reparations, not even as former camp inmates, and it was not until the 1980s that German civil society started some attempts of coming to terms with Nazi crimes against homosexuals. For them, the phrase by William Faulkner truly applied that the past is "not even past". It was not until December 2000 that the German Parliament issued an apology to the homosexual victims of Nazi persecution and annulled their former sentences. In May 2008, a memorial for the homosexual victims of the Nazi regime opened in Berlin.

[6] For the following, I mainly refer to the work by Angelika von Wahl (2009; 2012).

More recently, however, something happened that did not happen in the other cases discussed above: Referring to a legal opinion a member of the government, Minister of Justice Heiko Maas, launched a legislative initiative to provide reparations and legal rehabilitation to those homosexual men who had been sentenced on the basis of paragraph 175 of the Penal Code after 1945 (ZeitOnline 2016). This would be the first time that a German government makes amends for historical injustices committed in and by the Federal Republic. It would mean that the government acknowledges that injuries of normality have been committed "in a situation of normality", not during, but after Nazi rule. The German state, thus, would self-critically confront the injustices of its own past reparation policy - which is certainly something, the victims of other forms of injuries of normality, such as coercive sterilization, institutional killings, or the persecution of the "asocial" wish for themselves, too.[7]

[7] Upon the time of writing, the law had not yet been passed.

The persecution of the "asocials"

Victims of "euthanasia", coercive sterilization, and homosexual Nazi victims have received an official apology from the German government by now. The violence and abuse they suffered has been acknowledged as a grave historic injustice – albeit not as "typical Nazi persecution". Other Nazi victims are still waiting for that to happen, such as those who have been persecuted as so-called "asocials".

As had been the case with male homosexuals or those categorized as "unfit", "imbecile" or "hereditarily diseased", discourses and practices of marginalization, discrimination and stigmatization did not start in 1933 and did not come to a close in 1945. Begging and vagrancy already constituted a criminal offense under the 1871 Imperial Criminal Code (Reichsstrafgesetzbuch, RStGB) and could be punished with imprisonment of up to six weeks or detention in a work-house of up to two years (§§ 361 and 362 RStGB) (Ayaß 1995, 44). However, the use of work-houses had nearly come to a close at the end of the Weimar Republic.

After 1933, the police made excessive use of paragraphs 361 and 362. Already in the fall of 1933, big raids against beggars and vagrants took place. According to Wolfgang Ayaß, at least 10,000 people were sent to work-houses or concentration camps, most of whom, however, were set free again after six weeks (Ayaß, 1995, 23f.; 41ff.). The situation worsened with the 1934 "Law against Dangerous Habitual Criminals" that allowed for indefinite detention in work-houses. In addition, since 1934 many municipalities also established coercive work-camps ("Lager der geschlossenen Fürsorge" or "Arbeitszwanglager"). These camps formed a historical novelty compared to the German Empire and the Weimar Republic (Ayaß 1995, 101). Inmates of work-houses or work-camps were systematically targeted for sterilization under the 1933 Law for the Prevention of Hereditarily Diseases Offspring (Ayaß 1995, 47). While the sterilization law did not mention "asocial lifestyle" as an indication for sterilization, the Heredity Courts used to issue verdicts of "moral imbecility" if they sought to sterilize someone without evidence of a hereditary disease.

In 1937, the "Decree on Crime Prevention" of 14 December 1937 („Grundlegender Erlaß über die vorbeugende Verbrechensbekämpfung durch die Polizei") authorized the police to circumvent the courts and imprison so-called "asocials", defined as persons who "without being a professional or habitual criminal endanger the public through their asocial behaviour", directly and "preventively" in a concentration camp (*Vorbeugehaft*) (Ayaß 1995, 139, Ayaß 1998, No.50). The decree provided the pretext for major police roundups of so-called "asocials". In April 1938, executive guidelines to the decree declared:

> "Asocial is he who demonstrates through his anti-social, however not criminal behavior that he is not willing to adapt to the community." (Ayaß 1998, 142ff.)

The guidelines explicitly mentioned beggars, vagrants, prostitutes, alcoholics, homeless, work-shy, persons with a venereal disease, or persons who did not pay alimonies, although this was not meant as an exhaustive list. Based on the decree on "crime prevention", Gestapo and Criminal Policy arrested more than 10,000 persons in April and June 1938 and sent them to concentration camps in an operation nowadays known as "Aktion Arbeitsscheu Reich". It was

mainly geared at adult males whose ability to work was exploited in the camps, among them many Sinti, Roma, and Jews.

Women were targeted as "asocials", too. According to Christa Schikorra (2005), one out of four women who were deported to the women's concentration camp Ravensbrück between early 1939 and early 1940 were categorized as "asocial". Many had been imprisoned for reasons of prostitution, some for adultery in war time (*Kriegsehebruch*), some for petty crime, some after having served a prison sentence for abortion, and some of the younger women had been detained in residential care institutions for youths before. Younger girls were imprisoned in a special concentration camp for girls, the Uckermark Concentration Camp. Between 1942 and 1945, some 1,200 girls and young women between 14 and 21 and some boys were incarcerated here, among them many girls classified as "hopeless cases" by Nazi welfare institutions, many of them for reasons of so-called sexual depravation, a term uniquely used to categorize women (Initiative Uckermark 2009, 5).

Boys and young men, who had been detained in parallel institutions for male youth before, were sent to the youth concentration camp Moringen. A decree issued by Himmler in April 1944 declared that the purpose of the youth concentration camps was

> „…die noch Gemeinschaftsfähigen so zu fördern, daß sie ihren Platz in der Volksgemeinschaft ausfüllen können und die Unerziehbaren bis zu ihrer endgültigen anderweitigen Unterbringung (in Heil- und Pflegeanstalten, Bewahrungsanstalten, Konzentrationslagern usw.) unter Ausnutzung ihrer Arbeitskraft zu verwahren." (printed in Ayaß 1995, 183, Ayaß 1998, 374f.)

"Healing and care institutions" (*Heil- und Pflegeanstalten*) was of course the term for the institutions that systematically killed the mentally ill or disabled. According to Martin Guse (2005), we have to assume that one out of ten inmates of the Moringen youth concentration camp did not survive.

There can be no dispute that the Nazi persecution of "asocials" amounted to massive, systematic and severe human rights violations. Yet, it did not fit the notion of Nazi persecution laid down in the Federal Compensation Law. For one thing, those marked as "asocial" did not belong to any given racial, political, religious, ideological, or social group. People were marked as "asocial" for being a burden or a threat to the *Volksgemeinschaft*, not for belonging to a certain group. The *Volksgemeinschaft*, however, was no preexisting entity either; both "the asocials" and "the Volksgemeinschaft" were actively constructed through acts of marking, exclusion and persecution. In this case, as in the case of coercive sterilization, "euthanasia", and the persecution of male homosexuals, practices of marking and persecution reinforced, radicalized, and executed norms and standards of conformity, usefulness, and productivity and ascribed differential worth to people along these norms and standards. Yet, these norms and standards had not been created by the Nazis. They formed part of overarching social and political rationalities that both predated and outlasted the Nazi regime. For the same reason, the persecution suffered by those categorized as "asocial" did not constitute a right to reparations in the Federal Republic since the reparation scheme, as outlined above, was restricted to persecution defined as "typical Nazi injustice".

In the Federal Republic, begging, vagrancy, and prostitution continued to form a criminal offense until the 1970s and even the work-houses were not abolished until the late 1960s (Ayaß 1995, 210). Often, even associations of Nazi victims would distance themselves from "criminals" and "asocials", complaining the latter had been sent to the concentration camps in order to denounce the other prisoners (for many examples see Ayaß 1995). The mindset that had made this type of injuries of normality possible persisted. For instance, in 1951, the Zentrum faction in the German Bundestag launched an effort to introduce a new Custody Law (*Bewahrungsgesetz*) that would have allowed for the detention of "the mentally and morally weak" in closed institutions. The proposal did not succeed, but the incident shows that the idea of marking and detaining people for not complying with social standards of conformity, usefulness and productivity still enjoyed some credit. Claims to reparations were constantly rejected, even if someone had been detained in a work-house for many years or imprisoned in a concentration camp as, for the authorities and the courts, such acts did not constitute a "typical Nazi injustice".

When the new discourse on the "forgotten victims" of the Nazi crimes emerged in the 1980s, it did not really include those persecuted as "asocials" either. When President Richard von Weizsäcker (1985), for instance, made his famous speech on May 8, 1985, he mentioned many hitherto "forgotten victims" such as homosexual men and the victims of "euthanasia" and coercive sterilization, but not the so-called "asocials".

When in 1988, due to initiatives by the Social Democrats and Bündnis 90/the Greens in the Parliament, a hardship fund was established for the "forgotten victims" of the Nazi crimes, people who had been persecuted as "asocials" could, theoretically, apply for a one-off payment of then 5,000 Deutschmark. Few, however, tried and even fewer succeeded: As of 31 December 2011, altogether 354 persons formerly categorized as "asocial", "vagrants", "unwilling to work", or "work shy" under the Nazi regime had applied for the one off payment, and 222 applications were approved (Bundesministerium der Finanzen 2012, 33). In recent years, however, a number of civil society initiatives have addressed the persecution of the so-called "asocials", as for instance the "Arbeitskreis Marginalisierte – gestern und heute"[8]. Translated into English, the name of the group would be both "working group of marginalized people – then and now" and "working group on marginalized people – then and now". The name makes it clear that this is not a state-led or institutionalized initiative but an oppositional civil society-led group that gives voice to people who have been marginalized by German capitalist society and who seek to expose and denounce the continuation of such marginalization processes before, during, and after the Nazi era – until now. For them, at least in this respect, "the past" is not over.

Many sites of this persecution, such as the site of the former youth concentration camps Uckermark[9] or Moringen, as well as the site of a former work-house called Rummelsburg in Berlin-Lichtenberg have been turned into memorials by local civil society groups who also organize an impressive range of exhibitions, talks, discussions, and further events. One can find information and articles on the internet, for instance, about the "Aktion Arbeitsscheu Reich" (Meyer 2001), the concentration camp in Moringen , or the former work-house Rummelsburg (Irmer

[8] http://www.marginalisierte.de/ (last access December 22, 2015).
[9] http://www.gedenkort-kz-uckermark.de/ (last access December 22, 2015)

2013, Irmer, Reischl and Nürnberg n.y.). These initiatives received some support from the opposition in the Bundestag when the faction of the Left submitted a list of questions to the government on how they intended to come to terms with the Nazi persecution of the "asocials" (BT Dr 16/9405 2008). This initiative notwithstanding, it is safe to say that the persecution of the "asocials" under Nazi rule is still a very much neglected topic in German politics of the past.

Conclusion

It should have become clear by now that whether or not someone was recognized as a Nazi victim in the Federal Republic did not depend on what they had suffered. It was not decisive whether someone was injured, abused, mistreated, incarcerated in a concentration camp, starved, or killed. What was decisive then? In the cases sketched out above – the institutional killings known as "euthanasia", coercive sterilization, the persecution of male homosexuals, and the persecution of people categorized as "asocial" – we can discern some key features that critically co-determined whether a certain Nazi practice was problematized as an historic injustice or not:

Norm-related targeting: The victims did not form an ethnic, racial, or religious minority or a political group. They were not targeted as members of such a group. They were targeted as individuals deemed to deviate from certain norms and standards of health, fitness, productivity, and/or accepted behaviour. To be sure, ethnic or racial persecution would overlap with this form of targeting very often, as in the case of the Gypsies. These overlaps notwithstanding, we should not overlook the distinct logic of persecution referring to notions of conformity or normality. One of the key features of this logic is that the targets had very little in common except for the fact of being persecuted. It might be different in the case of homosexuals, since there had already been a gay community and a gay subculture in the interwar period, but it had been very much confined to urban contexts and far from being officially acknowledged. In the cases of "euthanasia", coercive sterilization, and the persecution of people deemed as "asocial", there was no such thing as a shared collective identity among the victims, at least not one that predated the persecution.

The main paradigm underlying the West German reparation system, however, was the minority rights protection paradigm, assimilating victims of Nazi persecution to population groups that had been protected by the interwar minority regime (Ludi 2012, 18ff.). Persecution for political reasons was added to the list, but incoherently: according to the Federal Compensation Act (§6 1(2)), victims of Nazi persecution could be excluded from reparations if after 1949 they had fought against the German Basic Law (BEG §6 1(2)), read: if they were communists.

Stigmatization: Being classified as hereditarily ill, biologically inferior, not worth of living, sexually depraved, and/or asocial meant to be marked with a life endangering stigma. To come forward and make a claim is extremely difficult for people who bear such a stigma. In addition, in some cases, such as the case of male homosexuals, the stigma was additionally reinforced by the law: Until 1969, male homosexuals could not come forward as a victim of Nazi persecution without exposing themselves to criminal prosecution. In any case, it is extremely difficult to step forward, get organized and mobilize support when the stigma endures in the present.

Continuity: For survivors of Nazi "euthanasia", coercive sterilization, persecution of homosexuals or so-called "asocials", stigmatization did not end with the end of the Nazi state. For many, even the threat of being institutionalized or imprisoned endured. For them, May 1945 marked a caesura in some respect but not in others. That is, for them, the transition to democracy did not coincide with the end of stigmatization, exclusion and the experience of violence. In many cases, personal, institutional, or legal continuities stretched into the new republic. The norms and standards on the basis of which they had been categorized as inferior or worthless did not

dissolve. Experts called for a new sterilization law in order to protect public health. Male homosexuals had to hide in the closet in order to avoid criminal charges. Girls from poor segments of the population were still confined to institutional 'care' for reasons of being 'sexually depraved'. People would hide it from their fiancé that a family member had been killed in a psychiatric institution for fear that the fiancé would not marry them. In addition, those who had suffered systematic injuries of normality from the Nazi state were systematically excluded from post-war reparations and other transitional justice measures. Insofar as these exclusions were based on the same rationality that had allowed for the persecution to happen, they amount to what we term second order injustices (Braun and Herrmann 2015). Hence, in many respects and for many people, 1945 did not mark a clear-cut break that introduced a fundamental transition. For them, the past was not over after the regime changed. Yet, how can a society come to terms with the "past" when the past is not the past?

Considering the injuries of normality, it is not easy to identify the beginning or end of "transition" in the German case; in many respects, a meaningful transition occurred in the 1970s and 1980s, when eugenic rationalities were questioned more thoroughly, work-houses were closed, closed institutions for youth abolished, and male homosexuality decriminalized. In other respects, we could as well say that transition is still going on – or has never really happened. After all, a person's worth is still being judged along lines of health, fitness, productivity, and economic usefulness and people still suffer stigmatization, discrimination, and marginalization when deemed deficient in relation to these norms.

The transition paradigm, therefore, is ill-suited, if we want to understand when and how societies come to terms with systematic injuries of normality – or not. Its underlying temporality postulates a distinction of before and after, past and present that is inapplicable at best and harmful at worst for coming to terms with the injuries of normality in that it diverts attention away from continuities on the one hand and more meaningful changes that may occur many decades after "transition" on the other. What we need, I suggest, are more systematic comparative studies on when and how societies have been coming to terms with systematic injuries of normality in the past and in the present and what the conditions are that enable or constrain the efforts of doing so.

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