CHAPTER 3

Literary Restitution

W. G. Sebald, Alexander Kluge, Heimrad Bäcker and the Responsibilities of Writing

The concept of restitution is not restricted to law – it travels. In this chapter, I pay attention to how it emerges in a literary frame and as a writing practice. I describe various literary texts as offering their own ethos of restitution. Similar to Chapter 2, these accounts of restitution are showing us how it may be attempted: they are a practice of how to write and how to read in the aftermath. As such, the literary texts under consideration in this chapter do not thematise the legislative restitution regime as a matter of explicit content.[1] Rather, I contend their work demonstrates different forms of making-good-again – of taking responsibility through the practice of writing itself.

Parallel to this, I investigate how these texts offer insights into the telling and making of jurisprudence. The question of prudence shifts away from being anchored in law (through Schwarz the glossator and his critique of the legal restitution regime) to being held in other personae – authors and readers – and I examine how the texts themselves shape the responsibilities attached to these personae in the aftermath. As part of this, I orient attention towards the forms and the techniques in these works. I contend these texts have an implicit relationship with the juridical, using mediums and sources which move between both legal and literary realms and therefore offer a different practice of thinking with law.

This chapter has four parts. In part one, I contextualise my approach to literary jurisprudence, describing how I focus on the hybrid forms of

[1] For a literary rendering of the process of legislative restitution, see Ursula Krechel, *Landgericht* (Btb, 2014).

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the 'case' and the 'transcript'. I contextualise the work of these authors in the setting of the 'aftermath'. Next, I pay particular attention to a public statement made by one of the three authors I discuss in this chapter, W. G. Sebald, who called upon German authors to take up the responsibility for writing literature as a form of restitution after the Holocaust. The main body of this chapter discusses the way each author could be seen to take up this challenge, describing how they offer an account of restitution through their writing practice. Part two analyses selected short stories by Alexander Kluge about the NS regime from 1962 to 2013. Presented as snippets of voices, Kluge reconstructs obscure details, with the focus on atmosphere. Kluge's method of writing draws attention to legal language: his fragments are striking in their use of rhythm and tone. However, his writing produces a gesture of restitution which is always 'cut-short'. Moving across to Austria, in part three I examine the work *transcript* (1986) by Heimrad Bäcker. Part of the avant-garde poetry scene in Vienna, Bäcker's concrete poetry relies on the power of visual formations. Bäcker makes a reader look again, forcing them to 'see' the images which are held within legal texts. He enacts a process of 'making again' through citation. Finally, part four discusses selected passages from W. G. Sebald's works *The Emigrants* (1992) and *Austerlitz* (2001). My reading looks back to certain pre-texts in an attempt to enact the way Sebald's texts thematise the craft of writing and their own assemblage in light of the restitutive responsibilities articulated by their author.

3.1 METHODOLOGY

3.1.1 LITERARY JURISPRUDENCE. This chapter does not offer an argument in the tradition of law and literature criticism in a redemptive mode; it does not offer literary texts or literary forms as a panacea to the deficiencies of law in matters of restitution.[2] Rather, my claim regarding the juridical in this chapter is different. I keep returning to the practices

[2] For one example of literature working as a 'supplement' to legal narratives, see Audrey J. Golden, 'Remaking the Record: Emigrant Fiction and Restorative Justice in the Former Yugoslavia' (2017) 13(1) *Law, Culture and the Humanities* 145. For a general critique of scholarship in this vein, see Julie Stone Peters, 'Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion' (2005) 120(2) *PMLA* 442.

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of writing demonstrated in these texts to notice how, in the aftermath, there are parallels with genre and form, and a responsibility towards conduct, that mean these texts may help us see the relationship between literary works and the concerns of jurisprudence in more depth.[3] In this way, there are two jurisprudential questions running through this chapter: the parallel concerns of conduct and responsibility emerging from the persona of being an author and a reader; and the way these authors take up and write with legal forms and techniques which reflect back on ways of writing, law and restitution.

Literature and law share formal modes of expression, with scholars often focusing on the way 'narrative' is a part of legal storytelling and can also provide an important counter-strategy to the exclusionary tendencies of legal discourse.[4] In addition, law and humanities scholarship has drawn attention to how 'testimony', 'witnessing', 'trauma' and 'memory' can take place in and be evidenced through cultural texts.[5] However, even though all of these concepts are deeply infused into the subject

[3] I am not, however, 'reading jurisprudentially' in the style of William MacNeil, see William P. MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Stanford University Press, 2007) 2. As Cornelia Vismann reminds us: 'There were times, after all, when the term "law and literature" would not have made sense, times when literary production was commissioned by a sovereign. A poet was an office which coincided with that of a secretary, who cared for the written output of a certain political body, in reference to which one could not have distinguished a literary from a legal textual production.' Cornelia Vismann, 'Files, Not Literature' in Gert Hofmann (ed), *Figures of Law: Studies in the Interference of Law and Literature* (A. Francke, 2007) 163, 163.

[4] For a brief overview and critique of important work in the 'legal storytelling' or 'narrative jurisprudence' mode, see Peters, 'Law, Literature, and the Vanishing Real', 446–448. For an overview of how narrative functions as part of legal discourse, see Greta Olson, 'Narration and Narrative in Legal Discourse | The Living Handbook of Narratology' <www.lhn.uni-hamburg.de/node/113.html>.

[5] On testimony and witnessing see the canonical text: Shoshana Felman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (Routledge, 1992). One recent book from German scholars in this field also crosses disciplines; see Sybille Krämer and Sigrid Weigel (eds), *Testimony / Bearing Witness* (Rowman & Littlefield International, 2017). On the representations of Holocaust testimony and trauma, see the influential: Geoffrey H. Hartman, *The Longest Shadow: In the Aftermath of the Holocaust* (Palgrave Macmillan, 2002); Dominick LaCapra, *Writing History, Writing Trauma* (Johns Hopkins University Press, 2001). For an example of how to read testimony and memory in films made in the aftermath of atrocity, see Peter D. Rush and Maria Elander, 'Working through the Cinematography of International Criminal Justice: Procedures of Law and Images of Atrocity' (2018) 6(1) *London Review of International Law* 17, 35–43.

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matter of my chosen texts in this chapter, I am not offering a direct argument regarding any of these forms.[6] I have chosen a less well-trodden path and pay attention to two other hybrid forms which, like the gloss, rest on the threshold between legal and literary practices: the 'case' and the 'transcript'.

3.1.1.1 CASE. The form of a 'case', as a legal ordering of experience and an invitation to judgment, links intrinsically to the institutional discourses of law and its bureaucracy. Alan Durant, in a meticulous taxonomy of 'case' in law and in literature, highlights the vagueness of the definition of 'case' between these two disciplines, emphasising the differences in and effects of their modes of representation.[7] Nevertheless, scholars in cultural and literary studies have emphasised that the 'case' is a key form of knowledge production and dissemination.[8] Lauren Berlant, in her introduction to two special issues 'On the Case', notes that '[a]s a genre, the case hovers above the singular, the general, and the normative'.[9] Berlant emphasises that the case is not so much 'a form but an event that takes shape'[10] – something in motion – which is useful for this chapter as it parallels the way I am conceptualising the practices of making-good-again.[11]

[6] For instance, on the relationship between 'literary memory' and witnessing/testimony, see chapter five of Lynn L. Wolff's Sebald study: *W. G. Sebald's Hybrid Poetics: Literature as Historiography* (De Gruyter, 2014). See also the edited compendium: Scott Denham and Mark McCulloh (eds), *W.G. Sebald: History, Memory, Trauma* (De Gruyter, 2006).

[7] Alan Durant, 'Reading Cases in Interdisciplinary Studies of Law and Literature' in Marco Wan (ed), *Reading the Legal Case: Cross Currents between Law and the Humanities* (Routledge, 2012) 11.

[8] Joy Damousi, Birgit Lang and Katie Sutton, 'Introduction: Case Studies and the Dissemination of Knowledge' in Joy Damousi, Birgit Lang and Katie Sutton (eds), *Case Studies and the Dissemination of Knowledge* (Routledge, 2015) 1, 10.

[9] Lauren Berlant, 'On the Case' (2007) 33(4) *Critical Inquiry* 663, 664.

[10] Ibid 670.

[11] For instance, Mieke Bal, reading Berlant, is careful to notice these nuances and make them part of her writing method: 'The major problem the case study poses, Berlant suggests, is that of generalization on the basis of a single case; an overextended form of induction. […] Rather than over-generalizing, my analysis is, if anything, over-singularizing'. Mieke Bal, *Of What One Cannot Speak: Doris Salcedo's Political Art* (University of Chicago Press, 2010) 5.

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I contend that seeing these texts through the genre lens of a 'case' is useful in two key ways. Paying attention to 'case' helps us not only to notice the way some of these texts anchor their work to legal institutions but also how the authors use 'case studies' as an attempt to keep their work in flux and keep it fragmented and singular – not allowing generalisation or resolution. Secondly, and somewhat contradictorily, using the form of a case emerges as a way that these authors open up the possibility of a moment of judgment, or force a claim on the reader – at the very least, it results in an invitation to consider.[12]

3.1.1.2 TRANSCRIPT. The other genre that is relevant to my selected texts is the form of a 'transcript'. For instance, Bäcker's work of poetry, entitled *transcript*, signals within its title it belongs in a genre which can cross between literary and other documentary forms of text. With the etymology of transcribe being 'to copy, write again in another place, write over, transfer',[13] there are similarities, too, between transcription and the glossatorial traditions discussed in Chapter 2 of this book.[14] The transcript as a legal document purports to be the complete written record of occurrences of speech in a courtroom; it is premised on the illusion of being able to capture the entirety of a proceeding in words.[15] Attached to the genre of the transcript, therefore, are connotations of fact and authenticity, as well as a sense of the suspended present: reading a court

[12] Parallel to my characterisation of 'case', see Desmond Manderson's discussion regarding the polyphony form of the novel and the implications for judgment in: Desmond Manderson, 'Judgment in Law and the Humanities' in Austin Sarat, Matthew D. Anderson and Catherine O. Frank (eds), *Law and the Humanities* (Cambridge University Press, 2009) 496.

[13] *Online Etymology Dictionary* 'transcribe'.

[14] As well as the modes of translation across languages, continents and disciplines which are occurring generally in this book.

[15] Relatedly, see Marianne Constable's work on law and speech, especially *Our Word Is Our Bond: How Legal Speech Acts* (Stanford University Press, 2014). On paying attention to the dimension of sound in the courtroom and its technologies, see generally James E. K. Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford University Press, 2015). James Scott uses the form of the transcript as a way to expose the operations of power relations and discourse; he offers an alternative conceived as 'hidden transcripts', which are a complete record that includes non-speech acts such as gestures and expressions. See James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (Yale University Press, 1990).

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transcript can be like reading a drama script. The resulting text, however, is an archival object which enables critique and re-interpretations.[16]

In this chapter, I observe how Bäcker views texts relating to the aftermath of the Holocaust as transcripts in order to take them apart and make them again. Key to his approach is the way his citations, these tiny poems, are interleaved with other sources and modes of writing; his technique actively resists the allusion of a complete record which is attached to the transcript as a form. In addition, I note how Kluge and Sebald's writing practices also complicate an idea of a 'transcript' in the sense of its etymology as 'writing again in another place'. Their work thematises the difficulties inherent in the writing and recording process when this writing is situated in the aftermath of the NS regime and the Holocaust.

3.1.2 THE SETTING. The aftermath of the NS regime and the Holocaust is full of moments of literature. Despite Adorno's oft-quoted phrase, '[t]o write a poem after Auschwitz is barbaric',[17] the literary treatment of the Holocaust began almost immediately in the shadow of the Second World War and continues today.[18] Ruth Franklin enunciates the imperative paradox facing authors and readers: 'confronting the Holocaust is impossible, yet the Holocaust requires us to confront it'.[19]

[16] Working in the tradition of law as literature scholarship, Marco Wan undertakes a new reading of Oscar Wilde's trial transcripts to argue they form part of Wilde's aesthetic vision: 'A Matter of Style: On Reading the Oscar Wilde Trials as Literature' (2011) 31(4) *Oxford Journal of Legal Studies* 709.

[17] 'Cultural criticism finds itself faced with the final stage of the dialectic of culture and barbarism. To write a poem after Auschwitz is barbaric. And this corrodes even the knowledge of why it has become impossible to write poetry today.' Theodor W. Adorno, *Prisms*, Samuel Weber and Shierry Weber Nicholsen (trans) (MIT Press, 1983) 34. See Michael Rothberg's critique of the use, revision and (mis-)translation of Adorno's phrase in scholarship in *Traumatic Realism: The Demands of Holocaust Representation* (University of Minnesota Press, 2000) 279–280 (footnotes 1 and 2 in chapter 'After Adorno').

[18] See, for example, scholarship on Holocaust literature: Lawrence L. Langer, *The Holocaust and the Literary Imagination* (Yale University Press, 1975); James E. Young, *Writing and Rewriting the Holocaust: Narrative and the Consequences of Interpretation* (Indiana University Press, 1988).

[19] Ruth Franklin, *A Thousand Darknesses: Lies and Truth in Holocaust Fiction* (Oxford University Press, 2011) 6. This paradox is constantly undermined, however, by new representations in all forms of media. As Ruth Klüger, a Holocaust survivor, remarks: 'There's no business like Shoah business': *Von hoher und niedriger Literatur* (Wallstein, 1996) 35.

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In this book I do not interrogate the philosophical approaches which view the Holocaust as a caesura,[20] nor do I attempt to make an overt contribution to the ethics of representation debates, which map aesthetics and language onto these problems of articulation.[21] The poet and Holocaust survivor Paul Celan is one of the only writers able to refract this into words:

> it, the language, remained, not lost, yes in spite of everything. But it had to pass through its own answerlessness, pass through frightful muting, pass through the thousand darknesses of deathbringing speech.[22]

However, this chapter does investigate the question of being in a position of obligation concerning the past. As Carroll writes, reflecting on Lyotard's work:

> To 'come after' means no longer to know what painting, writing, thinking and memory are […] And yet it is still to feel oneself called, even in some sense obliged, to continue to paint, write, think, and remember.[23]

In terms of literary works written in the aftermath, broadly speaking, Kluge and Sebald's texts examined in this chapter would fit into the literary genre of 'documentary fiction', while Bäcker's poetry also alludes to its potential. This could be named a 'second-generation' concern in

[20] For instance, Jean-François Lyotard's metaphor of the Holocaust as an earthquake: 'Suppose that an earthquake destroys not only lives, buildings and objects but also the instruments used to measure earthquakes directly and indirectly': *Le Différend*, Georges van den Abbeele (trans) (University of Minnesota Press, 1998) 56.

[21] For example, George Steiner's phrasing: 'Auschwitz lies outside speech as it lies outside reason'. From: 'K' (1963) in *Language and Silence: Essays 1958–1966* (Faber and Faber, 1985) 182. In response, Andreas Huyssen's reasoning in the 1990s still seems sound: 'the Holocaust has […] become dispersed and fractured through the very different ways of memorializing it. Obsessive focus on the unspeakable and unrepresentable, as it was compellingly articulated by Elie Wiesel or George Steiner in an earlier time and as it seems to inform the ethical philosophy of Jean-Francois Lyotard today, blocks that insight'. Andreas Huyssen, 'Monument and Memory in a Postmodern Age' (1993) *Yale Journal of Criticism* 249, 257.

[22] Paul Celan, *The Selected Poems and Prose of Paul Celan*, John Felstiner (trans) (W.W. Norton, 2001) 395.

[23] David Carroll, 'Memorial for the *Différend*. In Memory of Jean-François Lyotard' (2000) 6(4) *Parallax* 3, 24.

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literature after the Holocaust: one which has deliberately moved away from the eyewitness memoir and the early realism to a hybrid fictional form, a practice of writing *in and about* the aftermath itself.[24] Despite the symbolic emptiness of categorising authors within forms of 'generations' noted by Weigel,[25] I use this term as a way to ground these texts to a time and a place.

In this way, the setting of 'the aftermath' and the question of generations matter on two counts. These authors reflect on their placement in the 'second-generation'[26] by thematising the shift in concern from 'what' to 'how' – a movement towards acknowledging the mediated nature of the past – and one which highlights its archive.[27] Secondly, I observe in this chapter that often these texts are addressed to a reader situated in this aftermath: in order to be effective, the texts presume a certain basic knowledge of events, places and people.[28] In order to set up this relationship of text, author and reader in time, therefore, I offer

[24] For an overview on German narrative literature about the Second World War, see Jürgen Egyptien, 'Erzählende Literatur über den zweiten Weltkrieg aus dem Zeitraum 1945 bis 1965. Einleitende Bemerkungen zu Forschung, Gegenstand und Perspektiven' in Jürgen Egyptien (ed), *Der Zweite Weltkrieg in erzählenden Texten zwischen 1945 und 1965* (Iudicium, 2007) 7. For an overview of German post-war literature and a description of why Sebald fits into a post-war generation, see Dora Osborne, 'Introduction: Post-Postwar Literature' in *Traces of Trauma in W. G. Sebald and Christoph Ransmayr* (Legenda, 2013) 1.

[25] Sigrid Weigel, '"Generation" as a Symbolic Form: On the Genealogical Discourse of Memory since 1945' (2002) 77(4) *Germanic Review* 264.

[26] Note Alexander Kluge's work could also be counted within a first-generation response: the boundaries between 'generations' are not static.

[27] This is a written and a visual archive. Even though I focus more on the written nature of the archive in this chapter, Bäcker's project is designed to make us aware of the visual nature of (typewritten) text, while Sebald's inclusion of photographs and other reproductions of objects draws attention to the importance of visual materials. In Chapter 4 to follow, I discuss how the artist Gerhard Richter confronts the afterlife of Holocaust photographs. For a discussion of selected images in Holocaust literature, see Ernst van Alphen's chapter 'Caught by Images' in his *Art in Mind: How Contemporary Images Shape Thought* (University of Chicago Press, 2005).

[28] On Holocaust iconography, see Oren Baruch Stier, *Holocaust Icons: Symbolizing the Shoah in History and Memory* (Rutgers University Press, 2015). On the pervasive nature of war imagery and recognisability of Holocaust photographs, see Susan Sontag, *Regarding the Pain of Others* (Picador, 2003). Barbie Zelizer also discusses the saturation of images of atrocity and the effect of this: Barbie Zelizer, *Remembering to Forget: Holocaust Memory through the Camera's Eye* (University of Chicago Press, 2000).

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brief descriptions of the biography of each author at the start of their section to place their work and its reception.[29]

Finally, even though I do not engage directly with the moral imperatives surrounding the work of 'Holocaust literature',[30] I do thematise a sense of responsibility that may emerge through the personae of authors and readers in this chapter. My argument in this chapter is that some of these moments of literature can also become moments of restitution, or more precisely, that they show the way that restitution as a writing practice could be performed. These are accounts of – and through – 'making-again'.

3.1.3 THE RESPONSIBILITY OF MAKING-AGAIN. To conclude this introductory part, I give some initial shape to the question of responsibility attaching to a German author and their readers. One of the key authors in this chapter, German academic and author W. G. Sebald, had a specific approach. Born in 1944, Sebald emigrated to England in 1970 and lived there until his death in 2001. I briefly examine one of his last public statements before his death – a speech to the Stuttgart

[29] I acknowledge my reliance on the traditional 'author-function' of a text. As Foucault theorised, '"literary" discourse was acceptable only if it carried an author's name; every text of poetry or fiction was obliged to state its author and the date, place and circumstance of its writing'. Michel Foucault, 'What Is an Author?' in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, Donald F. Bouchard (ed), Donald F. Bouchard and Sherry Simon (trans) (Cornell University Press, 1977) 126. However, as Cornelia Vismann points out, these are not only literary but also legal questions: 'Files, Not Literature' 164. The more interesting move is to note how one of the authors, Bäcker, names himself as the author of a 'transcript', which is a genre of writing usually not given an author designation. This complicates the nexus between genre, text and author, as well as the traditional demarcations of disciplines. For instance, when Vismann discusses files and their categorisation, she elaborates: 'They are not literature, simply because files lack an author. With this simple distinction between author-created literary texts and authorless archival ones […], storage is likewise distinct from prose, archives from aesthetics and accordingly laws from narratives.' Ibid 164–165.

[30] A term which I use with hesitation, see Sebald's remarks on 'Holocaust literature': 'it's a dreadful idea that you can have a sub-genre and make a specialty out of it; it's grotesque'. Quoted in: Maya Jaggi, 'Recovered Memories', *The Guardian* (22 September 2001) <www.theguardian.com/books/2001/sep/22/artsandhumanities.highereducation>.

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Literaturhaus (Stuttgart House of Literature) in front of 800 guests.[31] Titled 'An Attempt at Restitution', it was a call to German authors to account for their writing.[32] These are the last lines:

> So what is literature good for? […] There are many forms of writing; only in literature, however, can there be an attempt at restitution, over and above the mere recording of facts, and over and above scholarship. A place that is at the service of such a task is therefore very appropriate in Stuttgart, and I wish it and the city that harbours it well for the future.[33]

Sebald's speech therefore offers a description of the duty and responsibility of a German author, which is to be 'in service' to the task of an 'attempt at restitution'. From the perspective of conduct, Sebald is outlining a clear statement about the way he perceives the role and persona of the writer of literature. Note again the context: Sebald is speaking to a large audience of writers, publishers and literary professionals who would attend the opening of a literary foundation, and he is back from England and speaking in Stuttgart, which, as he makes clear, is a place with ghosts in its past. His finishing line, describing the foundation as a space 'in the service of such a task',[34] emphasises this challenge to the assembled audience.[35] It is my contention in part four of this chapter that Sebald led by example, and this speech was an articulation of a restitutive practice which he undertook in his own writings.

[31] 'Zerstreute Reminiszenzen – Literaturhaus Stuttgart' <www.literaturhaus-stuttgart.de/programm/publikationen/zerstreute-reminiszenzen/>.

[32] W. G. Sebald, *Campo Santo*, Sven Meyer (ed), Anthea Bell (trans) (Hamish Hamilton, 2005). The speech was first published under the title: 'Zerstreute Reminiszenzen: Gedanken zur Eröffnung eines Stuttgarter Hauses' in the *Stuttgarter Zeitung*, 18 November 2001. See Jeannette Baxter, Valerie Henitiuk and Ben Hutchinson, 'Introduction: "A Quoi Bon La Littérature?"' in Jeannette Baxter, Valerie Henitiuk and Ben Hutchinson (eds), *A Literature of Restitution: Critical Essays on W. G. Sebald* (Manchester University Press, 2013) 1, 12.

[33] Sebald, *Campo Santo* 214–215.

[34] Ibid 215.

[35] Twelve years later, this artistic challenge was taken up directly by the city theatre in Stuttgart, *Schauspiel Stuttgart*, referencing Sebald's speech as the impetus for their 2013/2014 season. See Jan Hein, 'Stuttgart, Blicke' in Spielheft 2013/2014: 'Schauspiel Stuttgart' (29 September 2013).

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3.1.4 RESTITUTIVE ENDEAVOURS AS A READER. Sebald described restitution in his speech as a concern for taking responsibility for the writing of literature and literature's potential as a gesture, an offering. This translates into a form of ethics: not just regarding the telling of stories, but rather a care that needs to be taken by authors for the way in which these stories are produced. This is a prudential method of thinking, a concern for conduct, and it fits with the approach to jurisprudence I am following in this book by Genovese, McVeigh and Rush (outlined in my introduction).

However, readers are not exempt from taking responsibility.[36] As Junot Diaz remarks, 'it is in the simple act of reading where the living and the dead, the real and the imagined, meet'.[37] Literary theorists working in the field of reception studies distinguish between the real reader and the implied, implicit reader set and directed up by the text;[38] suggest a form of readerly hospitality towards texts;[39] and view reading as a 'process' that 'is always a dynamic one, a complex movement and unfolding through time'.[40] Peter Fitzpatrick, bringing these concepts across to legal scholarship, highlights the way 'the work now in the world cannot exist apart from the relation to its readers'.[41] In addition, Audrey Golden

[36] For instance, Jean-Paul Sartre rhetorically charges that 'You are perfectly free to leave that book on the table. But if you open it, you assume responsibility for it': *What Is Literature?* Bernard Frechtman (trans) (Philosophical Library, 1949) 48.

[37] Junot Diaz, 'Literature Opens the Door to Compassion in Our Brief Lives' *The Sydney Morning Herald* (26 May 2008) <http://bit.ly/4hxLBYn>.

[38] See, for example, Wolfgang Iser, *The Act of Reading: A Theory of Aesthetic Response* (Routledge & Kegan Paul, 1978). For a concise overview of the field of reception studies in literature, see Ika Willis, *Reception* (Routledge, 2017).

[39] Derek Attridge describes this as a 'readiness to have one's purposes reshaped by the book one is reading' in *The Singularity of Literature* (Routledge, 2004) 79–80.

[40] Terry Eagleton, *Literary Theory: An Introduction*, 2nd ed. (Blackwell 2008) 67.

[41] Peter Fitzpatrick, 'Reading Slowly. The Law of Literature and the Literature of Law' in Ruth Buchanan, Stewart J. Motha and Sundhya Pahuja (eds), *Reading Modern Law: Critical Methodologies and Sovereign Formations* (Routledge, 2012) 193, 197. See further regarding the application of reception theory to the legal process: Jonathan Yovel, 'Running Backs, Wolves, and Other Fatalities: How Manipulations of Narrative Coherence in Legal Opinions Marginalize Violent Death' (2004) 16(1) *Law and Literature* 127. The role of the audience, however, is generally under-theorised in law and humanities scholarship, as noted by Leslie Moran in 'Judging Pictures: A Case Study of Portraits of the

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also gives substantial weight to the role of the reader when she characterises a literary text as a supplement to the work of the International Criminal Tribunal for the former Yugoslavia (ICTY). She makes the reader of a specific novel into a record-keeper, which can link directly to law, arguing

> the reader plays a key role in transforming this distinctly literary testimony into a form of historical record that makes clear its own fractures and omissions, and provides an important bridge to international law.[42]

Building on these approaches, I notice the way the texts themselves direct their readers to respond in particular ways and elevate the reader into being an explicit partner in the co-creation of the text.[43] For instance, Sabine Zelger examines the question of historical knowledge and the potential of Bäcker and Kluge's literature. She contends their 'books remove the reading public from their position as an object and turn them into creators and governors of knowledge'.[44] In this way, a reader takes part in the work of providing an account of restitution through their own imaginative reading practice.[45]

Chief Justices, Supreme Court of New South Wales' (2009) 5(3) *International Journal of Law in Context* 295, 306–307.

[42] Golden, 'Remaking the Record' 161.

[43] See also the way Mark Sanders constructs the roles of law, literature and the reader in the aftermath of the South African Truth and Reconciliation Commission in: Mark Sanders, *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (Stanford University Press, 2007).

[44] Sabine Zelger, 'Wider die Macht des autorisierten Blicks. Die Arbeit am Wissen in Alexander Kluges *Schlachtbeschreibung* und Heimrad Bäckers *nachschrift*' in Jürgen Egyptien (ed), *Der Zweite Weltkrieg in erzählenden Texten zwischen 1945 und 1965* (Iudicium, 2007) 39, 40. Her comment relates to Bäcker's *transcript* and Kluge's book *Schlachtbeschreibung*.

[45] Due to space constraints, I could not include analysis of the landmark film *Shoah* (1985) by Claude Lanzmann. However, Lanzmann's remark regarding the participation required on the part of the audience to view his film has important parallels with the methods used by the texts in this chapter. 'There are no commentaries. […]. There is no voice-over that explains things. That implies work on the part of the audience'. Claude Lanzmann, 'Intervention de Claude Lanzmann' *Mémoire et histoire: Actes du XXVe Colloque des Intellectuels Juifs de Langue Française* (Denoel, 1986), 72–75, 75. Cited in: Robert Brinkley and Steven Youra, 'Tracing *Shoah*' (1996) 111(1) *PMLA* 108, 125. On similarities of method between Kluge, Sebald and the film *Shoah*, see Raul

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In this part I situated my analysis of the works to come through providing the markers of two literary and legal genres which emerge in these texts. I also placed the texts, authors and readers within a particular setting – the second generation and the aftermath. I described how Sebald, speaking in Stuttgart, took on an explicit approach to responsibility and restitution within his persona as a German author, and I then drew out how the relationship between a reader and a text can also be one of responsibility and restitution. The next three parts are divided up by author. I analyse selected stories from each author to examine how these themes of persona, setting, responsibility and restitution interact within their texts.

3.2 WORD AND VOICE: ALEXANDER KLUGE

To begin my analysis of the texts, I examine selected stories from two books by Alexander Kluge, who was born in 1932 and is still alive (at the time of writing). Kluge trained as a lawyer and worked as a lawyer early on in his career but then became one of Germany's best-known film and television directors as well as a literary author.[46] I read Kluge's stories through the lens of Sebald's assertion that it is the duty of a German author to attempt restitution. I follow, on the level of form and technique, how Kluge presents a version of making-again in his approach to literature.

The broad theme of Kluge's literary oeuvre is not explicitly the Holocaust, but rather German histories in the twentieth century, including the First World War, the Second World War, and subsequent life in West and East Germany. Kluge takes on the office of the German storyteller – whether in film or in texts – reproducing stories of German experience. Kluge also deals directly with the NS regime and its aftermath,

Calzoni, 'Witnessing and Visualizing Trauma. Peter Weiss, Alexander Kluge and Claude Lanzmann Representing the Shoah' (2015) 3(1) *Trauma and Memory* 4.

[46] It has been reported that as a young lawyer, Kluge prepared (his friend) Theodor Adorno's restitution claim. See Jürgen Kaube, 'Alexander Kluge: Ein Ingenieur seiner Geschichten' *Frankfurter Allgemeine Zeitung* (11 September 2009) <www.faz.net/1.856943>. However, I made enquiries regarding the role of Kluge in Adorno's restitution claim and this assertion could not be verified by the Adorno archive.

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and I have selected some of these stories to analyse. Kluge does not use a new writing style for these stories to separate them from other moments in German history: he continues the same form and style, relativising all experiences.[47]

Kluge has a recognisable prose style, whether it is in a sustained longer text or a short-form story. Often fragmented, his texts describe chosen details from a constellation of occurrences: short paragraphs from different points of view and events. The details chosen are often everyday, obscure moments. Working from historiographic and legal sources, but without explicit referencing or citation, the texts do not have a narrative form: there is often no resolution, no ending to the case. In a foreword to one of his works, Kluge remarks

> [a] few of the stories appear to have been *cut short*. Then it is precisely this being-cut-short which is the story. The form of a bomb blast makes an impression. Such a form is constituted by being cut short.[48]

Kluge's literary texts present fragmented voices; they have a distinct oral quality. Reading Kluge is like hearing snippets from a radio which is scanning through the channels but not properly picking up a consistent frequency. His books are ideally suited to being produced as radio plays and have been enjoying major exposure through this format on German radio.[49]

In my analysis, I contend Kluge does not offer a direct account of restitution. Rather, it is a literal form of 'making-again' which is based around the concept of repetition; a repetition designed to estrange. His

[47] This could be seen as a controversial approach to the Holocaust. However, Huyssen points out regarding Kluge's work (but not specifically in the context of Holocaust literature): 'The multiplicity of stories, voices, events prevents any individual event or life story from becoming representative. It is precisely the precision with which each particular is presented that points to the nonrepresentability of the social whole.' Andreas Huyssen, 'An Analytic Storyteller in the Course of Time' (1988) 46 *October* 116, 125.

[48] Alexander Kluge, 'Selections from New Stories, Notebooks 1 – 18 "The Uncanniness of Time"', Joyce Rheuban (trans) (1988) 46 *October* 103, 103 [emphasis in original].

[49] For instance, the Bavarian Radio Broadcasting Service produced in 2009 the ten-part radio play of Alexander Kluge's book *Chronik der Gefühle*; in 2012 the radio play *Auf dem Dach der Welt* and in 2015 a two-part radio play of his novel *30. April 1945: Der Tag, an dem Hitler sich erschoss und die Westbindung der Deutschen begann*.

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repetition and fragmentation of 'objective' genres of legal writing (as found in judgments, case files and reports) make them seem unfamiliar and grotesque. His account of restitution therefore is not a gesture of return to victims through repeating the content of their stories. Instead, his attempt at restitution is found within his method – his practice of paying attention to the way stories are told – and training the reader to notice.

The first book I examine is Kluge's first literary work *Case Histories* (1962).[50] The second book is the more recent *Anyone Who Utters a Consoling Word is a Traitor: 48 stories for Fritz Bauer* (2013).[51]

3.2.1 CASE HISTORIES (1962). On the first page of the book there is the statement:

> The stories in this volume question tradition from a number of very different aspects. They are case histories, some invented, some not; together they present a sad chronicle [*Geschichte*].[52]

It is difficult to convey the double meaning of the German word *Geschichte* into English, which fittingly means 'history' in the traditional sense of a chronicle but also means 'story'. The statement explicitly points to the mixture of invention and 'facts' which make up the texts, but there are no indications as to the sources of the material. In this way, Kluge's works differ, for example, from Bäcker's apparatus of end notes and bibliography (discussed in part three of this chapter to

[50] Alexander Kluge, *Case Histories: Stories*, Leila Vennewitz (trans) (Holmes & Meier, 1988) [translation of: *Lebensläufe* (Goverts, 1962)].

[51] Alexander Kluge, *Anyone Who Utters a Consoling Word is a Traitor*, Alta L. Price (trans) (Seagull Books, 2020) [translation of: *Wer ein Wort des Trostes spricht ist ein Verräter: 48 Geschichten für Fritz Bauer* (Suhrkamp, 2013)].

[52] Kluge, *Case Histories: Stories*, no page. [*Geschichte* added in square brackets]. Note this work has been reprinted in Kluge's two-volume *Chronik der Gefühle* (Suhrkamp, 2000). In this version, the word *Aspekte* (aspects) is changed to *Blickwinkeln* (vantage points) and an extra line is added: 'It must be noted that occasionally also short documentary passages and inserts from other texts are included.' Ibid 675 Band II. The title *Lebensläufe* was translated into English by Leila Vennewitz as *Case Histories* – which fittingly gives the stories a bureaucratic framework – but does not capture the other meaning of the word *Lebenslauf* (literally: life-course), which is used in German as the word for curriculum vitae or life achievements.

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follow) which allows verification and continuation of his project by a reader. By such methods of 'questioning tradition' and ignoring conventions, Kluge is deliberately challenging 'official' methods and their archival tendencies.[53]

The stories follow a set format, with most focusing on an individual person who is named in the title (*Anita G.*, *Sergeant Major Hans Peickert*) or an event (*Attendance List for a Funeral*). I examine two stories: *Anita G.* and *An Experiment in Love.*

Anita G.

Anita G. traces the experience of being a child survivor of the Holocaust; the story cuts across three major German political periods: the Second World War and the division of Germany into East and West. It begins:

> The girl Anita G., crouching under the staircase, saw the boots when her grandparents were taken away. After the capitulation her parents returned from Theresienstadt, something no one would ever have believed possible, and founded factories in the vicinity of Leipzig. The girl attended school, looked forward to a normal life. Suddenly she became frightened and fled to the Western zones. Of course she committed thefts. The judge, who was seriously concerned about her, gave her four months.[54]

From this beginning paragraph there is a rigid tone of narration: the style is of a case report, but not at the first instance. It appears to be a case that is being re-told, with added value judgments. This disjunction of a recitative form with the inclusion of opinion and the subsequent confusion of meaning – why is it inevitable that she committed thefts? – leaves a reader on unsure footing from the beginning, forced to

[53] For instance, Tara Forrest asserts: 'Kluge is driven by a desire to redeem those voices, memories, materials and ideas that cleave open a space within official accounts of the relationship between the past and the present within which the possibilities of both the past and the future can be imagined and explored anew': 'Editor's Introduction' in Tara Forrest (ed), *Alexander Kluge: Raw Materials for the Imagination* (Amsterdam University Press, 2012) 13, 15.

[54] Kluge, *Case Histories: Stories* 15. Note that in the German version of this story, which is reprinted in *Chronik der Gefuhle*, the names of the cities are capitalised, for example, LEIPZIG, which lends the story more of the character of a case file: Kluge, *Chronik der Gefühle* 734ff Band II.

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encounter an unreliable narrator who is purporting to deliver a report but is constantly interrupting it.

The first section of the story continues with a series of rhetorical questions which are interpolated into the recitation:

> Why doesn't this intelligent person regulate her affairs in a satisfactory manner? She moves from one rooming house to another, mostly she has no room at all because she quarrels with the landladies. One can't drift around the country like a gypsy. Why doesn't she behave sensibly?[55]

In this paragraph Kluge is using satire here to show the inability of such a robotic language to reproduce human impulses and motivations. Andreas Huyssen describes Kluge's style as copying the 'frozen languages' of various genres. This is a useful phrase as it captures the rigidity of bureaucratic case writing but also describes its detached coldness. Huyssen explains:

> [Kluge] mimics the frozen languages of factual reportage and bureaucracy, of the protocol, the document, the official letter, the legal deposition, the chronicle, and so forth, and modifies them for his own purposes, often through methods of logical extrapolation, ironic distance, satire or humor.[56]

Purportedly neutral but filled with moral asides, the style of voice of the narrator is also that of the spoken word – this account has the quality of speech, as if this was a story being retold orally, a rant to a silent colleague or verbal notes for a transcript. Kluge's provocation therefore is to challenge ideas of the 'rational' and the 'irrational' through demonstrating their construction through certain forms of language and speech patterns.[57] For instance, the last line of the first section is telling for Kluge's purposes: 'Why doesn't she face facts? Doesn't she want to?'[58] The narrator is implying that 'the girl' is rebelling against her 'administered

[55] Kluge, *Case Histories: Stories* 16.

[56] Huyssen, 'An Analytic Storyteller in the Course of Time' 120.

[57] Huyssen asserts: 'Kluge's whole project, whether in film, theory, or literature, questions the classical oppositions between the rational and the irrational, the analytic and the emotional, the real and the unreal, and it attempts to unravel their dialectical reversals and mutual, often opaque, implications.' Ibid.

[58] Kluge, *Case Histories: Stories* 16.

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human life'[59] and, in so doing, we also see the limitations of the case file as a genre. It is shown to be inadequate: not only as a method of writing (as the narrator constantly exceeds its limits with asides) but also as a way of organising knowledge, with the narrator caught within the discourse, unable to comprehend anything beyond 'the facts'.

This first book of Kluge's takes its power from the use of a consistent format, deploying a repetitive fetishisation of form. The characters are written as if they are seemingly drawn along and controlled by their contact and relationship with institutions, such as Anita G. and her involvement with the legal system, and are presented as lacking in agency. It is the effect of the accumulation of 'cases' in the same format which becomes important. Kluge's work leaves these characters (and hence the reader) defenceless and somehow defensive, with no overt narrative structure to help give them a place in space and time. The anti-narrative form and anti-fictional quality of the work mean it is difficult to identify with the characters; nevertheless, the reader still takes on their confusion and despair. These affects are programmed into the story; they are pre-empted by the introductory quote to the book which promised 'a sad chronicle'. At the start of 'Anita G.', there is a different voice – the otherwise silent interlocutor has one line – but it is only to ask the sardonic question: 'Don't you know a more cheerful story?'[60]

An Experiment in Love

Kluge's texts rely on a reconstruction of atmosphere: of places, of actions as well as mindsets. In contrast to *Anita G.'s* story of a survivor set in the aftermath, *An Experiment in Love* reconstructs the mindset of the perpetrator during the NS regime. First published on the cusp of the Auschwitz trials, the story opens:

> In 1943 the cheapest method of carrying out mass sterilization in the camps appeared to be the use of X-rays. There were some doubts as to whether or not the infertility thus achieved was of a lasting nature. We brought a male and a female prisoner together for an experiment.[61]

[59] Huyssen, 'An Analytic Storyteller in the Course of Time' 125.
[60] Kluge, *Case Histories: Stories* 15.
[61] Ibid 35.

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The experiment in question is described by the narrator: the two prisoners are brought together and expected to make love, and the text is the transcript of this experiment: 'According to the files, the subjects could not fail to experience considerable reciprocal erotic interest.'[62] The German published version of *An Experiment in Love* uses typesetting to reinforce the genre of this text as a transcript, with the questions asked about the experiment printed in bold and the answer underneath forming a paragraph.[63]

During the experiment, the text describes how their clothes were taken away, music was played, lighting was 'corrected' and they were provided with fresh egg whites, alcohol and meat. The 'subjects' were also deliberately pressed together or made to freeze with cold water hoses so that the need for warmth might bring them together. However, '[h]opes that in their nuptially furnished cell the prisoners would comply with the requirements of the experiment were not fulfilled'.[64] As a result, the inevitable happens: 'The recalcitrant subjects were shot.'[65] As in *Anita G.*, such 'frozen language' is objectifying and dehumanising, with the people involved described as 'the two prisoners' or 'the test subjects' and later only by their initials. The treatment of the prisoners is therefore reflected and justified in the language used by the narrator in their recording of the transcript.

A turning point towards the end of the story complicates the format when the question asked is: 'Were we aroused ourselves?' – a question that implicates the questioner in the action. In the middle of the response to this question, there are two lines, in italicised prose, interpolated in the text:

If I love thee and surrender,
Com'st thou to me in the night?[66]

An interruption of the transcript by music (possibly echoing the music which was played in the cell) these two lines are in the style of the old

[62] Ibid 36.
[63] Kluge, *Chronik der Gefühle* 770–772 Band II.
[64] Kluge, *Case Histories: Stories* 35.
[65] Ibid 39.
[66] Ibid 38.

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sentimental *Schlager*-type of songs. This haunting of the text by a poetic interlude is a dramatic shift in tone: it amplifies the effect of the strict focus on repeating and mimicking the earlier institutional rhythms of speech.

In addition, the question implicating 'ourselves' demonstrates the interpolation of the readers too – they are also a witness, partaking alongside the other guards and doctors looking in through the peephole – due to their participation in this staged re-telling of the story, their imputed listening to the transcript. The final line, 'Would this indicate that, at a certain level of misfortune, love can no longer be generated?'[67] is left unanswered: the transcript is cut short, the listener left to their own ending.

This story makes an impact due to its realism – even if it is completely fictional, Kluge's reconstruction of this experiment is plausible from the position of a reader aware of the murderous cruelty of NS doctors towards prisoners. Kluge's account of restitution, however, is not so much about exposing this past. Instead, Kluge's gesture in this story is to take on the responsibility of looking forward; a warning to pay attention to the violence held within and perpetuated through these institutional forms of language.

3.2.2 ANYONE WHO UTTERS A CONSOLING WORD IS A TRAITOR: 48 STORIES FOR FRITZ BAUER (2013). The second work I analyse by Kluge was published in 2013, when Kluge was aged eighty-one. The text is reported to have been written by hand and then dictated to Thomas Combrink over the telephone.[68] Kluge's title *Anyone Who Utters a Consoling Word is a Traitor* signals that his aesthetic programme will be continued in this work – rather than being allowed to 'speak' comforting words, here there will be a continuation of a strict protocol of form that explicitly shuns sentimentality.[69]

[67] Ibid 39.

[68] Combrink's role as collaborator is acknowledged on the bibliographic page. See Marla Böhme, 'Alexander Kluge "Es geht ihm um Wirklichkeit"' *Mitteldeutsche Zeitung* (10 February 2013) <www.mz.de/kultur/alexander-kluge-es-geht-ihm-um-wirklichkeit-2160010>.

[69] The title of the work is from a quote by Bazon Brock which has been shortened; it was originally printed on a metal sign which read (in my translation): 'Death must be

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The sub-title of the work – *48 Stories for Fritz Bauer* – refers directly to the jurist Dr Fritz Bauer. Bauer was instrumental in bringing about the first major criminal proceedings relating to the events of the Holocaust.[70] In 1965, a few weeks after the Frankfurt Auschwitz trials, he participated in a podium discussion at the opening night of Peter Weiss's *Die Ermittlung* (The Investigation) – a theatrical re-presentation of the trials. Bauer gave the famous remarks:

> I, as a jurist, say to you, we jurists in Frankfurt called out in alarm, with our whole souls, to the poet, who could express what the trial was not able to express. […] I wished that the poet would capture it in words, so that we would all be filled and moved and Auschwitz would really become a living event, which we bring to reality.[71]

Kluge's explicit dedication to Bauer, therefore, is perhaps in fulfilment of this call – it could be seen as Kluge attempting to take on the responsibility to 'express what the trial was not able to express'. The book begins with a pre-text, a foreword printed in italics. It is set at Bauer's funeral and situates the unnamed first-person narrator in a milieu of friends and acquaintances. There is an explicit resonance with the rule against speaking in the title, as it is stated that Bauer had expressly wished that there were no speeches to be made at his funeral. The foreword itself introduces the themes of obligation and responsibility, with the narrator concerned with the conduct of this burial, Adorno's choice of funeral music and the rituals which the living go through to pay their respects.

abolished, this damn mess has to stop. Whoever speaks a word of solace is a traitor.' The text on the sign itself was a truncated version of Brock's funeral eulogy for Siegfried Kracauer.

[70] There has been recent cultural interest in Fritz Bauer, with two German films set in the time around the Frankfurt Trials and the kidnapping of Adolf Eichmann (which Bauer was instrumental in organising): Giulio Ricciarelli, *Im Labyrinth des Schweigens* (English title: *Labyrinth of Lies*) (Claussen Wöbke Putz Filmproduktion, Naked Eye Filmproduktion, 2014); Lars Kraume, *Der Staat Gegen Fritz Bauer* (English title: *The People vs. Fritz Bauer*) (Zero One Film, Terz Film, Westdeutscher Rundfunk, 2015).

[71] Stephan Braese et al (eds), 'Auschwitz auf dem Theater? Ein Podiumsgespräch im Württembergischen Staatstheater Stuttgart am 24. Oktober 1965 aus Anlaß der Erstaufführung der Ermittlung' in *Deutsche Nachkriegsliteratur und der Holocaust* (Campus, 1998) 71, 75ff.

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In this way it also sets up the forty-eight stories/histories as being a gesture or offering to the dead.

The foreword is followed by two stills of a gravestone out of Kluge's film *Yesterday's Girl* (1966), which is the film adaptation of the *Anita G.* story discussed earlier. Bauer had a cameo role in the film, giving two long speeches relating to his vision of a humane justice system. In a letter to Thomas Harlan from 1965,[72] Bauer described a meeting with producers and directors where he was trying to get his own film project off the ground:

> The aim of the meeting was, and is, to direct a German film which represents a contribution to overcoming our sad past. The young people in the audience should identity with the young anti-Nazi powers in the film, and by all means it should not only un-mask the 'Oldies' but also move them to insightfulness and a form of *Wiedergutmachung*.[73]

Bauer's presence in this book, therefore, is a powerful one – a presence evoking the legal aftermath and bringing it into dialogue with literature. The end material in the book reinforces this, with a photo of Bauer at a desk, pen in hand, piles of files next to him, eyes down, engaged in the practice of writing. There are no acknowledgements in the book relating to the photo, and no date attributed to the photo, which gives it a timeless, representative quality.[74] Bauer is pictured in his persona as a lawyer, and it is to Bauer *in this role* that Kluge dedicates the book, describing him only as the 'District Attorney of the State of Hesse'.[75] However, apart from the foreword and the dedication, Bauer is absent from the stories in the book; he is a framing device used by Kluge to give hints regarding context and purpose.

[72] There is also a description of Bauer's funeral in Thomas Harlan's book: *Heldenfriedhof* (Rowohlt Taschenbuch Verlag, Revised ed., 2011). This book lists hundreds of names of people who (due to specific laws regarding de-Nazification) were never convicted of crimes.

[73] Letter from Fritz Bauer to Thomas Harlan, 18 March 1965. Cited in: Bettina Schulte Strathaus, 'Fritz Bauer: Gespräche, Interviews und Reden aus den Fernseharchiven 1961–1968' DVD Booklet (Fritz Bauer Institut, no date) 8 <www.fritz-bauer-institut.de>.

[74] Kluge, *Anyone Who Utters a Consoling Word* 96. It is a still from Kluge's movie *Yesterday's Girl* (1966).

[75] Ibid 97.

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Each story in this collection is presented as a fragment on a separate page, given a bold heading but no other context, introduction or pretexts. I have reproduced this formatting in my analysis in an attempt to replicate the effect of the serial accumulation of one story after the other; the stories are seemingly randomly ordered.

Massacre as Reprisal for an Assassination in Odessa

This fragment begins with a statement regarding a report from 'Hermann Stransky' to 'Erich Rodler' but offers no further details or sources or explanations as to their identities.[76] The report from Stransky is then replicated and indented on the page. It relates the distress of Stransky regarding the disposal of hundreds of bodies – they won't burn, he can't get rid of them and he is worried about what the Russians will think when they arrive. It explicitly names people involved, but there is no scholarly apparatus surrounding this 'report', no footnotes or source material: the reader is asked to read it outside of any context. Thus, within the forum of literature, one is presented with the report – evidence – of a massacre. Kluge's choice of form forces a reader to engage directly: they are challenged to identify with the voice of someone who is distressed about the disposal of bodies rather than with the fact that there has been a mass murder of people.

The Iaşi Pogrom

Another fragment has similar subject matter relating to a description of a massacre.[77] In this story, however, there are asides made by a narrative voice; the story begins: 'On 26 June 1941, in the capital of the former Principality of Moldavia – which, in retrospect, should never have been freed from the tolerant Ottomans – "retaliatory strikes" […].'[78] This inclusion of a separate narrative voice makes the retelling of the story take on a different tone and gives it a level of commentary apart from the bureaucratic jargon. The story finishes with a lyrical and horrific last

[76] Ibid 84.
[77] Ibid 70.
[78] Ibid.

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line: 'The first train […] held the bodies of 1,194 people who had died of suffocation and thirst.'[79]

The Unexpected Homecoming of a 'Full Jewess'

Moving away from the usual tone of strict reportage, this fragment reads like a tale, almost a ballad: it could be a folktale about a family, following the travails of young Gerti's attempt to find her mother who is Jewish and had been arrested.[80] Gerti finds her at a work camp, and she manages to get in to see her. Her mother escapes and miraculously her father also returns from the front. Apart from the title, which reproduces the categories of description used in the NS regime, Kluge presents this one story of hope, perseverance and family bonds in a warmer tone, which sets it apart from the other fragments.

Witnesses from Another World

The final story I analyse begins: 'I am the Commander of Radio Surveillance with the British forces in the Western Mediterranean.'[81] It is another odd one out in the collection due to its use of the first-person narration and an explicit literary approach, using metaphorical and mythological allusions, including the line: 'We work much like angels or gods'.[82] The story finishes:

> I consider our role – charting and collecting intelligence while staying above the fray, which sometimes also prevents us from saving human lives – comparable to that of Ashur, the deity 'who withdrew from humankind'.[83]

As I reproduced earlier in the quotation, there are punctuation marks included in Kluge's text to indicate quotations but as is standard for his work, there is no indication given as to their source material. It gives the work a scholarly appearance, a trace of a system of fact-checking,

[79] Ibid.
[80] Ibid 61.
[81] Ibid 43.
[82] Ibid.
[83] Ibid.

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which then slips away.[84] Also in this fragment, we have an explicit performance of the cinematic long shot, the wide view. In other stories in this book, there is a zooming in for sudden close-ups and focus on individual characters. This switch in narrative perspective demonstrates Kluge's mastery of cinematic techniques but can be disorientating for a reader, as there is often no stable middle ground.[85]

In his dedication to Bauer, Kluge quotes him on the importance of knowing the past:

> 'The moment they come into existence, monstrous crimes have a unique ability,' Bauer once said, 'to ensure their own repetition'. He insisted on the importance of keeping our powers of observation and memory razor sharp. There are 'eerie long-distance effects' and 'non-causal networks' between past and present, between those who are evil attractors and us. They must not be allowed to become more powerful than our own experience.[86]

In dedicating them explicitly to Bauer in his legal persona as a public prosecutor, these stories amount to a collection of possible case files which Bauer could have theoretically taken up – a recitation and observation of 'monstrous crimes': details of massacres, mistreatment and missing persons. Bauer's words amount to a succinct wording of Kluge's methodology in this text: an attempt to record and atomise experiences through preserving the detail and reciting the tone.

3.2.3 CUT-SHORT RESTITUTION. Kluge's process of literary creation functions like the radio monitor he has narrated, plucking out and dictating moments, voices and details out of the deep sea of

[84] This lack of recognition of source material is a problem for some reviewers, see Hazel Rosenstrauch, 'Woher ist das Material?' *der Freitag* (11 April 2013) <www.freitag.de/autoren/hazel-rosenstrauch/woher-ist-das-material>.

[85] I found it difficult to read and take the texts seriously without a source list. I also wanted to find out more about these stories – I attempted to research Gerti, and Buchenwald, as I inferred from the place names mentioned that is where her mother was interned, but there is nowhere for a reader to turn, I can't find out any more information.

[86] Kluge, *Anyone Who Utters a Consoling Word is a Traitor* 97.

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documentation from the aftermath of the NS regime. As the reviewer Hanitzsch emphasises, reflecting on the book:

> It is the details which are painful, judicial details, details which are meaningful for legal prosecution. […] They are not court files, they are court stories.[87]

The result, however, leaves a distanced reader; one who is not sure how to hold on to this disparate collection of fragments that do not conform to the standard practices or genres of legal, history or literary writing.[88]

Reading Kluge's text in light of Sebald's comments regarding how the role of literature is to go over and above the recording of facts, over and above scholarship, one can see how Kluge's writing has parallels to Sebald's description of how to take responsibility for restitution through writing. However, instead of going over and above facts, Kluge goes the other way – he uses literature to go underneath them, transporting experiences which have not yet reached the label of 'fact' into his fragmented stories. These are stories shorn of their context; they do not yet have the weight they usually obtain through historiography or their role in a legal process.

If Kluge views his role less as a writer and a storyteller of the German past and as simply a collector, a cartographer of the past, then he is perhaps stepping away from the perceived obligations that attend to these other personae – as the commander states, if you are simply a collector of stories, you are not bound to be involved. This is problematic, as it means you then elide the craft that has gone into producing this work:

[87] Konstanze Hanitzsch, 'Ein Buch des Nicht-Trostes für den Generalstaatsanwalt Fritz Bauer' [2013] (2) *Undercurrents ~ Forum für linke Literaturwissenschaft* 4 <https://undercurrentsforum.com/index.php/undercurrents/article/view/26>.

[88] There is a haunting parallel drawn by Saul Friedländer between the problem of using systematic historical method and the effect of distancing a reader – he likens it to the bureaucracy of atrocity, in the way that it 'neutralizes the whole discussion and suddenly places each one of us, before we have had time to take hold of ourselves, in a situation not unrelated to the detached position of an administrator of extermination. Interest is fixed on an administrative process, an activity of building and transportation, words used for record keeping. And that's all'. Saul Friedländer, *Reflections of Nazism: An Essay on Kitsch and Death* (Indiana University Press, 1993) 91.

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the shaping of the voices of others, the decision-making as to what to include and what to leave out, and the way Kluge, as a public intellectual, has a forum – a public persona and a respected publisher – which enables him to tell and re-tell these details.

Even though it was published fifty-five years later than *Case Histories*, this book *Anyone Who Utters a Consoling Word is a Traitor: 48 Stories for Fritz Bauer* is a continuation of Kluge's 'cut-short' fragmented story form. In dedicating it to Bauer, Kluge sets up an expectation of a memorial book to victims of the Holocaust. It is telling that he did not produce one; this book reads more like a continuation of his initial gesture made in *Case Histories* to show there are no representative stories. He flattens form and conflates and relativises all experiences. In so doing, however, Kluge does introduce moments of interruption to juxtapose ambivalence with lyricism and neutrality with violence. He draws attention through this process, like in his earlier works, to the specific tone, rhythms and patterns of institutional language. As a result, Kluge's account of how to 'make-again' in the aftermath is given through a writing practice that creates a deliberate dissonance between the content of what he is re-telling and his method in doing so.

In this book dedicated to Bauer, he ends with a cataloguing of his finds, a ritual speaking of the texts out loud: the creation of yet another transcript. Kluge has spoken a patched-together vessel of lost words into existence – one that cannot hope to, and does not attempt to, hold together all of the stories of Germany from last century but simply elevates a few chosen details to the status of publication and then sets them adrift. No cases are brought to court; no judgments are given; no endings. Read as an account of how to practice restitution through literature, it is unsatisfying – it does not offer a consoling word. But perhaps that is exactly the point.

In the next part, I move from Kluge's spoken word fragments to Heimrad Bäcker's fragments, which make images on the page. My analysis of form also shifts from the genres of the short story and the case to examining Bäcker's use of poetry and the genre of the transcript. I also move from paying attention to the spoken forms of institutional language which are highlighted by Kluge to the way Bäcker focuses on their material and visual presentation.

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3.3 WORD AND IMAGE: HEIMRAD BÄCKER

This section moves to Vienna to focus on the Austrian writer Heimrad Bäcker (1925–2003). I contend that his text *transcript*, in the genre of concrete poetry, offers a related, but different, account of restitution to Kluge. Not directed at a broad German literary and cultural public but rather a small audience of Austrian readers, Bäcker's model for restitutionary practice also involves fragmentation. However, in contrast to Kluge's missing scholarly apparatus, Bäcker deploys direct citation, usually from institutional texts, such as legal transcripts or historical reports.

3.3.1 PERSONA AND PROJECT OF HEIMRAD BÄCKER. Bäcker was open about his involvement in the NS Party. As part of his biography on the back flap of his book *nachschrift 2*, he lists his involvement in the Hitler Youth and states that he was an NS Party member at age eighteen.[89] He was a volunteer at the *Linz Daily Newspaper (Local)* from 1941 to 1943, where he published a book review of Hitler titled 'Wir haben den Führer gesehen' (We have seen the leader).[90] However from 1968 he went to Mauthausen and began gathering materials and documents relating to the NS regime and the Holocaust.[91] This material ultimately became his work *nachschrift*, which was first published in 1986, with *nachschrift 2* following in 1997. The first work has been translated into English as *transcript* and this is the text which will be considered in this chapter.[92] Bäcker was also a photographer and key part of the avant-garde literature scene.[93] In contrast to W. G. Sebald's chosen emigration from Germany, or Alexander Kluge's status as a well-known German film and cultural producer, Bäcker is writing for a relatively

[89] Heimrad Bäcker, *nachschrift 2*, Friedrich Achleitner (ed) (Droschl, 1997).

[90] Paul Jandl, 'Nachschrift' *Neue Zürcher Zeitung* (9 May 2003) <www.nzz.ch/article8UIT7-ld.256230>.

[91] Patrick Greaney, 'Afterword to the English Edition' in Heimrad Bäcker, *transcript*, Friedrich Achleitner (ed), Patrick Greaney and Vincent Kling (trans) (Dalkey Archive Press, 2010) 149.

[92] Heimrad Bäcker, *transcript*, Friedrich Achleitner (ed), Patrick Greaney and Vincent Kling (trans) (Dalkey Archive Press, 2010).

[93] See Vanessa Place's review of Bäcker's exhibition 'Landscape M': 'The Dilemma of Nazi Art' (2014) 16(4) *X-tra: Contemporary Art Quarterly* 54. Bäcker was the editor of the journal *neue texte* as well as the publishing press *edition neue texte*.

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small cultural milieu.[94] Nevertheless, his work illustrates a personal dilemma of craft. What to do when the tool of your craft as a writer, the German language, was the tool which you also deployed in service for the NS Party? Like every poet, Bäcker uses his writing practice as a way to isolate words on a page. His choice of source material, however, makes a reader think explicitly about their relationship with language and its resonance in the setting of the aftermath.[95]

Bäcker's technique used in *transcript* is citation. His approach is described by Greaney as 'quotation, documentation, isolation and abbreviation'.[96] This method, combined with the structure of the book, demands an active reader. On each page of the book, there is a short poem printed out of text or numbers and a page number at the bottom. However, there are no quotation marks, no footnotes: none of the usual scholarly signals which are used to indicate derivation. But an alert reader notices that at the end, there is an appendix entitled 'notes and bibliography' which starts with the following statement:

> Every part of *transcript* is a quotation; anything that might seem invented or fantastic is a verifiable document. Slight changes and omissions (which allow the unaltered contents to stand out in sharper relief) are not explicitly indicated. The notations *from* or *based on* (for example, *based on Hilberg*) indicate that new textual patterns were configured from passages reproduced verbatim, sometimes to the point of a methodical gibberish that replicates a deadly gibberish.[97]

[94] Austrian attempts at *Wiedergutmachung* are obviously different to Germany's attempts and such complexity cannot be gone into in any depth here. For a comparison, see David Forster, *'Wiedergutmachung' in Österreich und der BRD im Vergleich* (Studien Verlag, 2001). See also Stefan Karner, *Schweres Erbe und 'Wiedergutmachung': Restitution und Entschädigung in Österreich; die Bilanz der Regierung Schüssel* (Studien Verlag, 2015).

[95] As Greaney argues, '*transcript* emphasizes the fact that the destruction of European Jewry was not unspeakable but a program that was spoken about, extensively, by thousands of people' with the effect that this stance 'opposes Bäcker […] to many literary critics who rely on the notion of ineffability to understand literature about the Shoah'. Greaney, 'Afterword to the English Edition', 151.

[96] Patrick Greaney, *Quotational Practices: Repeating the Future in Contemporary Art* (2014) 90.

[97] Bäcker, *transcript* 131. Note the translation of *Kauderwelsch* here into 'gibberish'. For a discussion of the role of *Kauderwelsch* generally in Bäcker's works, see Patrick Greaney, 'Aestheticization and the Shoah: Heimrad Bäcker's *transcript*' (2010) 37(1) *New German Critique* 27, 32.

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However, even the first part of the 'notes and bibliography' section remains puzzling, with often only one opaque word such as 'Frankfurt' or 'Adler' listed, which only makes sense once you turn to the 'bibliography' in part II. Embedded therefore even within the *structure* of the book is a layering of texts and their references, creating an interrupted and active reading experience.

3.3.2 CONCRETE POETRY. Working within the genre of concrete poetry, Bäcker's text focuses attention on how word formation as well as the visual formation of words makes meaning. Bäcker uses the techniques common to this genre such as word repetition and changing typography throughout the book. For example, in the second poem, the justified column of 'legal bulletin of the reich' forms a literal column, or monument, in the middle of the page.[98] The two bottom lines with the words 'einsatzgruppe A' through to 'D' create the foot of the monument. As a result, the formatting becomes part of the meaning of the poem, presenting the Reich's legislation as an institutional wall of solidity – a unified object, with the justification of the font and chronological progression giving the block of legal bulletins a repetitive harmony. This visual presentation matches the way the NS regime incrementally built one law upon the other in an attempt to create a foundation for legitimisation. At the foot of the column are the 'einsatzgruppe', the literal black boots of the law, which appear to be the logical, predetermined result of this progression of legal bulletins.

Other objects are created within their mode of presentation; for instance, the numbers of telephones in Auschwitz are presented like a telephone, with the heading forming the handset which cradles the numbers,[99] while there are other pages where the font changes[100] or the words go into the gutter of the page[101] as well as covering up the page number[102] or two pages are presented explicitly as one.[103] For instance,

[98] Bäcker, *transcript* 8.
[99] Ibid 29.
[100] Ibid 52–53, 112–113.
[101] Ibid 53.
[102] Ibid 104–107.
[103] Ibid 112–113.

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presenting two pages as one means that the text, lists of numbers of kilometres of evacuation marches, itself tramps up and down into the page gap and up through to the next page. Other statements within the form used by Bäcker include his overwhelming use of columns, numbers and abbreviations. In addition, he primarily uses a lowercase font, which is striking in the German original, which usually capitalises all nouns, and so this immediately relativises and alienates words in their printed presentation.

3.3.3 CITATION AS A METHOD OF 'MAKING-AGAIN'. The quotations in *transcript* are taken from a variety of accounts, including statements from the victims as well as those from the perpetrators. Even though the poems could be seen as following a very loose thematic structure, moving from the legal isolation of the Jewish people to their transportation, deadly experimentation, murder and the legal response, there is no explicit or overarching attempt to order and give a beginning, middle and end to these events.

A significant proportion of Bäcker's citations are from legal materials.[104] However, apart from his citations from the transcript of the Nuremberg Trials,[105] all Bäcker's sources are edited works. They cite, quote and interpret the archival documents, but they are not primary sources. Two of the key texts used by Bäcker are by Hermann Langbein[106] and Adalbert Rückerl.[107] Both works could be defined as legal historiography, as they integrate material from criminal proceedings with editorial commentary, translating the trial documentation into

[104] This situates his work within a genre of poetry that incorporates legal events and even replicates legal documents. One of the most striking uses of legal material in contemporary poetry is by Vanessa Place, in her *Statement of Facts* that forms part of her Apologia trilogy. Place defines her work as 'conceptual poetry'. See Vanessa Place, *Tragodía 1: Statement of Facts* (Blanc Press, 2010).

[105] International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, 14 November 1945–1 October 1946* (Nuremberg, 1947) [46 vols].

[106] Hermann Langbein, *Der Auschwitz-Prozess. Eine Dokumentation* (Europäische Verlagsanstalt, 1965). [Translation of title: *The Auschwitz Trial. A Documentation*].

[107] Adalbert Rückerl, *Nationalsozialistische Vernichtungslager im Spiegel deutscher Strafprozesse: Belzec, Sobibor, Treblinka, Chelmno* (Deutscher Taschenbuch Verlag, 1977). [Translation of title: *NS Concentration Camps as reflected in the German Criminal Trials: Belzec, Sobibor, Treblinka, Chelmno*].

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a narrative. For instance, Langbein states that he chose material 'which was meaningful for the representation of the events in Auschwitz'.[108] But he also acknowledges that 'mostly, but not always, this coincides with the attempts of the court'.[109] As such, Langbein recognises the status of the legal proceedings as an archive of history but also acknowledges that the responsibilities of the historiographer and that of the court are not necessarily the same.[110]

What is the responsibility of the poet to this material? Bäcker's response is to emphasise the layers of documents which make up these events; he slices vertically through these palimpsests of record to extract and isolate numbers and words. For example, if one follows his notes to look up the transcript of the International Military Tribunal (IMT), it is clear the transcript itself contains and reproduces layers of documents of history (for example, the inclusion as evidence of a facsimile of the original document requesting equipment for gassing).[111] It also becomes clear the way a legal proceeding itself mainly involves working through documents. For example, one of Bäcker's poems references a discussion in the court about a previous court, the enclosures and the witness finding the correct page.[112] In addition, two of Bäcker's poems, presented as a list of text[113] and a list of numbers,[114] are taken from NS Party charts that are included in the IMT transcript. I looked up the IMT transcript and the charts emerge suddenly in the sea of text: they are striking as visual objects, interpolated into the reams of print.[115] Bäcker's project

[108] Langbein, *Der Auschwitz-Prozess* 15.

[109] Ibid.

[110] See, for example, on history writing in the context of international criminal law: Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge University Press, 2011). See also Aldo Zammit Borda, 'History in International Criminal Trials: The 'Crime-driven Lens' and Its Blind Spots' (2020) 18 (3) *Journal of International Criminal Justice* 543.

[111] Bäcker, *transcript* 56; International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, 14 November 1945–1 October 1946*, vol 26 (Nuremberg, 1947–1949) 107.

[112] Bäcker, *transcript* 102.

[113] Ibid 77.

[114] Ibid 79.

[115] International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, 14 November 1945 – 1 October 1946*, vol 25 (Nuremberg, 1947–1949) 591–607.

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encourages such moments of seeing anew, seeing visually and seeing the way these legal texts are put together as material levels. He reproduces and highlights moments from these proceedings in a way that they can be seen again from different angles. Making word-images from the IMT transcript also has a certain material symmetry – it is a transcription of the way audio-visual evidence was made a key part of the trial.[116] Poetry that is to work through the past, for Bäcker, means a literal act of working through the documents.

Other poems from legal sources thematise the record as well as the language used. For example, one poem not only demonstrates the use of obfuscatory language by NS defendants but also integrates the citation of the case into the middle of the quoted text. This serves as a literal invocation that one must begin with the source:

> to begin with
> FHdg.-Cent.Loc.:208 FReg,-Cent.251/59, vol.V, p. 988
> procedures for annihilation were carried out[117]

Another poem draws attention to the form of a charge sheet of one of the defendants:[118]

> (I) …
> (II) …
> (III) in the persecution and eradication
> 1. their murder
> 2. their concentration
> 3. …[4]

The ellipsis in the final line as well as the footnote number [4] are found in the original page in Rückerl.[119] Rückerl has elided the information for the purposes of his book, and the inclusion of a footnote points to

[116] On the way images appear materially and technologically in the Nuremberg trials and become able to be read by the Court as evidence, see Peter D. Rush and Maria Elander, 'Working through the Cinematography of International Criminal Justice' 19–35.

[117] Bäcker, *transcript* 66.

[118] Ibid 26. I have placed the footnote here to avoid confusion with footnote number 4, which is part of the poem being quoted.

[119] Rückerl, *Nationalsozialistische Vernichtungslager* 333.

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the layering of information: Rückerl's book itself is drawing upon other sources. Through isolating the numbering style and language, the citing of this passage by Bäcker again highlights the visual properties of legal documents as concrete poetry: the way they are made up of aesthetic configurations of characters, punctuation, letters and numbers. In addition, the quotation of only four key nouns – persecution, eradication, murder, concentration – strips away all other information to let these terms vibrate on the page.

The most striking visual object reproduced in *transcript* is a cross which is formed out of a numerical list.[120] This is sourced from Rückerl, who reproduced it from a judgment of a Schwurgericht in Hagen.[121] In the source note to this poem, Bäcker writes: 'Escalating numbers of those killed from 2 April to 1 June 1942 in Sobibor. The form of a cross is a direct result of the statistical arrangement.'[122] Neutral in tone, Bäcker's note clarifies that he did not manipulate the list to create such a poignant form but is only citing it from the source material.

Running parallel in *transcript* to the theme of the aesthetic form of the legal record is the aesthetics of violence of the NS regime. For instance, this poem stands out:

> he played chess with them
> and a small IV-B-4 ensemble made music
> eichmann's instrument was the second violin[123]

Furthermore, Bäcker's quotations show how the people involved understood their actions and the entire program of extermination as an aesthetic one:

> see to it that you find someone who can develop this whole incentive system in all of the camps in an ingenious and artistic way[124]

[120] Bäcker, *transcript* 33.
[121] Rückerl, *Nationalsozialistische Vernichtungslager* 155. A *Schwurgericht* is a type of criminal court in Germany.
[122] Bäcker, *transcript* [source note for p. 33].
[123] Ibid 42.
[124] Ibid 40.

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And, even more chilling, a description of the steps needed to kill someone by hanging is striking in its clinical simplicity expressed through musical phraseology:

cadence 1 to the stool
cadence 2 onto the stool
cadence 3 reading of the sentence
cadence 4 stool removed[125]

In this way, Bäcker's poems are a method of 'making-again' that exposes the entwined nature of writing and aesthetics with the atrocities that occurred and their depiction in the legal transcripts which remain.

The gesture of restitution, however, is also left by Bäcker to be taken up by the reader. The effect of aposiopesis, used often in these poems, plays on the knowledge of the reader as one being situated in the aftermath. This rhetorical form involves 'a sudden breaking off in the middle of a sentence'.[126] It is used both for material presented in the voice of the perpetrator (where punctuation is left hanging) and for quotations from victims where their words are 'cut short', for example, the one-line poem:

> i turned twelve on june second and are still alive for the time being[127]

In contrast, the examples from the perpetrators recall Kluge's earlier focus on administrated, objectified language:

> of the jews and jewesses who are being emigrated from germany,[128]
> the experiments, in which the experimental subject of course may die[129]

Often, this technique of fragmentation is combined with omission. It is used to focus on details and elides reproducing their consequences. For instance, this poem presents the reader with technical details regarding an engine:

[125] Ibid 83.
[126] *Macquarie Dictionary* 'aposiopesis'.
[127] Bäcker, *transcript* 50.
[128] Ibid 16.
[129] Ibid 74.

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> it was a heaving russian benzene engine, presumably a tank engine or a tractor with at least 200 h.p. (V-8 engine, water cooled). we switched from 'open exhaust' to 'cell,'[130]

Following up the source material in Rückerl, one finds this material is taken from the testimony of a defendant under interrogation by the prosecution regarding the gassing of women in Sobibor. However, Bäcker removes, without indication, any mention of the women, or the gas chamber, from this quotation. In the original testimony, after the switch is on 'cell' – 'the gas flows into the chamber'.[131] However, reading the transcript as reproduced in Rückerl, I was struck by the way the defendant is more concerned and interested in imparting the exact details of the motor rather than the death of the women – horror is given a matter-of-fact description – and so Bäcker's omission here fits the state of mind of the defendant.

This is further enhanced by the poem, which is a list of charges of accessory participation in murder taken from the Sobibor trial.[132] Bäcker literally omits the 'sentences' which were given to each defendant by the court. He lets the names, charges and the number of murdered persons be an open statement; leaving them hanging on the page.

With so much legal material included, *transcript* overflows with the language of the perpetrators: descriptions of their actions and their responses to being questioned. Voices from the victims are reproduced as well (and some names) but they are mainly present as numbers documenting their death or as details – dates, times and places. However, the snippets of voices from the victims which *are* included have an otherworldly quality, speaking in the present. This sense of time-shifting is emotively encapsulated by Bäcker in poems which juxtapose tense and meaning:

> you will find my body before you get to the school, it's by the street watch-man's house, where albegno is, before the bridge. you can come and pick me up right away.[133]

[130] Ibid 57.
[131] Rückerl, *Nationalsozialistische Vernichtungslager* 166.
[132] Bäcker, *transcript* 122.
[133] Ibid 114.

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this is my last letter, and i'm letting you know that i was shot on
september 1st at six o'clock.[134]

It is in this interplay between the voices in different registers, the clarity of detail and the everyday moments of cruelty which give *transcript* its power.

Bäcker's poetry insists that the project of documenting the Holocaust can only remain incomplete and there is always more to include: the transcript is always being written and rewritten. Fittingly, one of the last poems in *transcript* is a list of inclusions:

after *explained* add:
after *prohibiting* add:
after *ran contrary* add:
after *penetrated* add:
after *suspended* add:
after *changed* add:
after *piled up* add:
after *named* add:
after *shanghaied* add:
after *thrown* add:
after *punish* add:
[…][135]

The repetition of the line format here allows the italicised verbs to carry the affectual weight of the poem, relying on the reader's imagination to provide the context in which these actions are being taken. However, this poem, taken from a list of errata to the transcript of the IMT, also makes a statement relating to the continual, repeated writing of the record.

Due to Bäcker using the methodology of citation, there is a strong sense of incompleteness and fragmentation in the text.[136] It is

[134] Ibid 115.

[135] Ibid 126 [my ellipsis].

[136] Greaney argues that this is evidenced through the supporting apparatus: 'Its documentary impulse admits incompletion and even emphasizes it: notes and bibliographies are not closed systems but necessarily open, expansive. Far from completing the text and filling in the gaps left by quotation and montage, the note *incompletes* the text, and this incompletion is a central formal principle in Bäcker's works.' *Quotational Practices: Repeating the Future in Contemporary Art* 103 [emphasis in original].

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self-reflexive, with references to the process of writing. In the middle of *transcript*, there are five pages that reproduce handwritten text. One of the handwritten entries is a facsimile of Hitler's handwriting.[137] Others are not given sources, are not noted as quotations and I assume are in Bäcker's script.[138] The key page is the handwriting which repeats the phrase 'der schreiber schreibt'.[139] The handwriting is reproduced in German in the English translation, but with an extra note at the end of the book which translates it as 'the record-keeper/writer writes'. The words are written in three waving columns and at times on top of each other, cancelling out the words below.[140] The word choice in this poem highlights the lack of differentiation in the German language (but also in his book) between a writer and a record-keeper. It encapsulates Bäcker's project of thinking about the act of writing, recording and registering, and what it means to do so in the aftermath. Through these handwritten pages, he alludes to the complicit role of the practice of writing (in its myriad forms) and how it can often obscure as much as it reveals. In any case, there is a programmatic element to this approach. The obscurity and incomprehensibility of some of the poems invite the reader to follow the source material, to embark on their own research and attempt to comprehend the material themselves. Once a reader does begin their own document trail following Bäcker, however, there is always another layer to be added: further details and always further text.

3.3.4 POST-SCRIPT. To conclude, it is clear the translation of the title *nachschrift* into *transcript* is not a direct translation but a creative intervention by the translators Patrick Greaney and Vincent Kling. It fittingly encapsulates the process of 'transcription' which Bäcker is undertaking in his poetry and the resonance with the legal 'transcripts' of proceedings which add to the documentary impulse in the work. However, the original German title *nachschrift* has other connotations

[137] Bäcker, *transcript* 93.

[138] Note this is in opposition to Bäcker's assertion at the end of the book that everything within is a quotation.

[139] Bäcker, *transcript* 119.

[140] Note how the etymology of the word 'transcript' includes 'to write over' (1550s). To do it poorly is to 'transcribble' (1746): *Online Etymology Dictionary* (transcript).

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as well: it literally means 'post-script' and is used to designate something added at the end (as in a post-script in a letter) or to designate an afterword. It also has a second meaning as 'apostille' – a legal stamp of authenticity given to a copy of a document – which is fitting given the focus on legal materials and the re-telling of evidence. The temporal quality of the title is also important: Bäcker's title could be read as 'post-script' / 'after-writing': offering a reflection on how to write when the process of writing itself is a complicit technology in atrocity.

Bäcker's project in *transcript* revolves around aesthetics, text and repetition: a literal 'making-again'. His project is an invitation to a reader to piece together and to continue the work of affirming the details, the textual remains. As part of taking up this responsibility on his own terms, Bäcker invites a reader to 'look' at and to 'read' these texts differently, to pay attention to their materiality, and to the images and shapes which printed text can form on a page. Reading Bäcker, one has the sense of being inundated with material, even though each poem often only contains one or two lines. However, this blank space is integral to the effect: the chosen words or numbers stand isolated and alone at the top of the page, pushing down on and against the weight of absence.

Unlike Schwarz in Chapter 2, Bäcker does not explicitly take on the role of glossator, nor, like Kluge, does he re-write these fragments. Rather, his writing practice of restitution is more ambivalent: he deposits citations, seemingly abandons them to the blankness, but then offers their textual history at the end, a link to their archive. Bäcker's *transcript* is an account of restitution reliant upon the continued enjambment of shards of words. It is left to the reader to see their refractive possibilities.

In the final part of this chapter, I move from Bäcker's images of fragments to Sebald's explicit crafting of fragmented narratives. Sebald's texts are a long-form version of Bäcker's mode of reflecting on the assemblage of texts, the role of the reader and the practice of writing as 'making-good-again'.

3.4 WORD AND CRAFT: W. G. SEBALD

The final texts I analyse in this chapter are by W. G. Sebald (1944–2001). Introduced at the start of this chapter as proscribing the task of

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literary writers as attempting restitution, Sebald held an academic post in England but wrote his texts in German that were then translated and published throughout the rest of the world. The reception of Sebald's work has become a scholarly phenomenon.[141] However, there is limited academic scholarship that engages directly with the speech held in Stuttgart and its proscription for literary restitution in a meaningful way.[142] In this section, I discuss W. G. Sebald's writing practice in light of his call for a form of writing which goes beyond 'facts' and goes beyond 'scholarship' in order to attempt restitution. Huyssen's comments on Sebald are a useful starting point:

> As a German of the post-war generation, he accepts his responsibility to remember while fully acknowledging the difficulty of such remembering across an abyss of violence and pain. Sebald remembers not as an objective historian of the real, but as a writer of fiction which, in its mediated form and periscopic strategies of telling, *renders the stories told by others.*[143]

This process of 'rendering' other stories is Sebald's writing practice: a mode of assemblage, which is often self-reflexive, making visible the joins of construction. It is this writing practice of restitution which will be investigated in two of his works later: the Max Ferber story from *Die Ausgewanderten / The Emigrants*[144] and *Austerlitz*.[145]

[141] There has been a large scholarly handbook published on Sebald in German as well as a collection of miscellany in English. Both give an indication of the extent of his influence and reception with extensive bibliographies on secondary sources. See Jo Catling and Richard Hibbitt (eds), *Saturn's Moons. W. G. Sebald: A Handbook* (Legenda, 2011); Claudia Öhlschläger and Michael Niehaus (eds), *W. G. Sebald-Handbuch* (J. B. Metzler, 2017).

[142] See Jeannette Baxter, Valerie Henitiuk and Ben Hutchinson (eds), *A Literature of Restitution: Critical Essays on W. G. Sebald* (Manchester University Press, 2013). The most useful characterisation is from Ruth Franklin, who asks the question: 'If fiction inescapably takes something away, then what does it return […] to the Jews and other victims of history who appear in Sebald's work?' She answers that 'the writer restores them to life – although in a somewhat different form'. Franklin, *A Thousand Darknesses* 194.

[143] Andreas Huyssen, 'Gray Zones of Remembrance' in David E. Wellbery, Judith Ryan and Hans Ulrich Gumbrecht (eds), *A New History of German Literature* (2004) 970, 973 [emphasis added].

[144] W. G. Sebald, *The Emigrants*, Michael Hulse (trans) (Vintage, 2002). English translation first published in 1996; German original first published in 1993.

[145] W. G. Sebald, *Austerlitz*, Anthea Bell (trans) (Penguin, 2002). English translation first published in 2001; German original first published 2001.

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3.4.1 THE 'MAX AURACH/MAX FERBER' STORY FROM THE EMIGRANTS. Sebald's *The Emigrants* has the subtitle in German: 'Vier lange Erzählungen' (four long stories/narratives/reports).[146] It contains four of these reports on people of Jewish origin, titled with their names; these are stories which attempt to mimic a form of case history, or *Lebenslauf*, in the same way Kluge uses the term. In contrast to Kluge's institutionalised and distanced third-person voice, however, Sebald's first-person narrator presents these cases in a personalised tone. These stories are represented as personal case files regarding the past: an intimate, interconnected search for traces and meaning by the narrator. As a result, in Sebald's work, the link between auto/biography and storytelling becomes deliberately blurred. Nevertheless, Sebald was open regarding the assemblage techniques which he used to put his stories together, even though, like Kluge, his work is also devoid of any explicit references to his source material.

My reading of his work begins at this initial construction stage: I pay attention to selected pre-texts to one of his stories. I follow the integration of characters – real-life and fictional – as well as the integration of texts – art historical, personal and fictional – all within the layers of one short story. In this way, I pay attention to Sebald's writing practice, tracing its own material process of 'making-again' as a practice of restitution.

3.4.1.1 BACKGROUND LIVES: FRANK AUERBACH AND PETER JORDAN. The story titled 'Max Aurach' (German original) or 'Max Ferber' (English translation) from *The Emigrants* is set in Manchester (I explain the change in name in the next paragraph). In an interview, Sebald revealed he formed the main character out of the biographies of two real-life people: Frank Auerbach, who is a painter, and Peter Jordan, who was Sebald's old landlord in Manchester.[147] Both Jordan and

[146] Note this subtitle is missing from the English translation of the work.

[147] Sebald states: 'Ferber is actually based on two people. One is my Manchester landlord, D. The story of Ferber's escape from Munich in 1939, at the age of fifteen and of what subsequently happened to his parent's is D's. The second model is a well-known artist.' Carole Angier, 'Who Is W. G. Sebald?' (1996) 43(4) *Jewish Quarterly* 10, 14. Klaus Gesseleder explains that 'D.' is actually Peter J. and connected to Peter Jordan who is attempting to arrange *Stolpersteine* in Munich. See Klaus Gasseleder, 'Erkundungen zum Prätext der Luisa-Lanzberg-Geschichte aus W. G. Sebalds *Die Ausgewanderten*' in

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Auerbach came to England on the *Kindertransporten* as Jewish children during the Second World War to escape persecution.

Frank Auerbach is a painter who uses the same distinctive styles of drawing and painting as the protagonist described in the story by Sebald. He is also reclusive and, like the character, has a similar connection to his studio and neighbourhood. In the German original (1992) and reprinted editions, one of the pictures reproduced in the text is a drawing of a woman, and there is also a photo of a man's eye, implied in the text to be of the main character.[148] In my version of the English translation, which was published in 2002, these two pictures have been removed.[149] The title of the story and the name of the character have also been changed from Max Aurach to Max Ferber. Reportedly, the painter Frank Auerbach complained to the publisher about Sebald's book.[150] In an interview, Sebald had stated that he used publicly available information:

> While all four emigrants are based on real people, the painter Max Ferber, who obsessively scratches out then redoes his work, is a composite of Sebald's Mancunian landlord ('I found out he'd skied in the same places as I had') and the London-based artist Frank Auerbach. Without naming Auerbach, Sebald says he felt he had the right – 'because the information on his manner of work is from a published source'. Auerbach, however, refused to allow his paintings to appear in the English edition. Sebald modified the character's name from Max Aurach in the German. 'I withdraw if I get any sense of the person's discomfort,' he says.[151]

Marcel Atze and Franz Loquai (eds), *Sebald. Lektüren* (Ed. Isele, 2005) 157, 160–161 Footnote 12.

148 W. G. Sebald, *Die Ausgewanderten. Vier lange Erzählungen*, 12th ed. (Fischer, 2008) 240, 265.

149 Sebald, *The Emigrants*. The English translation was first published in 1996. I could not find out whether they were included at all in the English translation or only deleted from subsequent editions.

150 According to his biographer and curator Catherine Lampert: 'Auerbach found the story an invasion into his personal life and misleading.' When asked to elaborate for a newspaper article, he responded through Lampert: 'The story has misunderstood the relationship between the personality and biography of an artist to the creation of art, and it was completely without humour.' Quoted in: Markus Hesselmann, 'Frank Auerbach floh vor den Nazis: Aus dem Flüchtling wurde der Künstler' *Der Tagesspiegel* (22 February 2016) <www.tagesspiegel.de/berlin/aus-dem-fluchtling-wurde-der-kunstler-8544262.html>.

151 Jaggi, 'Recovered Memories'.

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In my research on Frank Auerbach, the real-life painter, it became clear that Sebald's description of his character Aurach's painting style and studio was derived from Robert Hughes' book *Frank Auerbach*.[152] Reading Hughes' account of visiting Auerbach's studio, the similarities to the studio described in the story are striking. Sebald describes, the same as Hughes, the lettered sign 'TO THE STUDIOS' which hangs outside Auerbach's studio and his description of the room closely mirrors Hughes' description.[153] Sebald even uses the same metaphor of 'lava' coined by Hughes to evoke the sedimented remains of paint and charcoal dust left behind by Auerbach's working style.[154] The end line of this section by Hughes: 'In the end, the likeness is retrieved, but as a ghost, the colour of very tarnished silver'[155] may have also inspired the evocative phrase by Sebald describing the end version of a work by Aurach, 'rendered unto ash but still there, as ghostly presences, on the harried paper'.[156]

The drawing of the woman by Frank Auerbach, initially reproduced in Sebald's German original and then deleted in the translation, also appears in Hughes' book on Auerbach. It is titled 'Head of Catherine

[152] Robert Hughes, *Frank Auerbach* (Thames and Hudson, 1990). In the interview with Angier, Sebald states: 'I got all my information about him [the painter] from published sources, mostly from a huge tome about him by an American. If one is describing a creative process, one must be able to use material of this sort.' Angier, 'Who Is W. G. Sebald?' 14. Sebald appears to be wrong about Hughes' nationality, as despite Hughes living and working in the US for a substantial period of his life, he never became an American citizen. See Robert Hughes, *American Visions: The Epic History of Art in America* (Alfred A. Knopf, 1997) 3.

[153] Hughes, *Frank Auerbach* 13–16; Sebald, *The Emigrants* 160–165.

[154] Hughes: 'Because Auerbach paints thick and scrapes it off all the time, the floor is encrusted with a deposit of dried paint so deep that it slopes upwards several inches, from the wall to the easel. One walks, gingerly, on the remains of innumerable pictures. Where he sets his drawing easel, this lava is black from accumulated charcoal dust.' Hughes, *Frank Auerbach* 13. Sebald, translated by Michael Hulse: 'Since he applied the paint thickly, and then repeatedly scratched it off the canvas as his work proceeded, the floor was covered with a largely hardened and encrusted deposit of droppings, mixed with coal dust, several centimetres thick at the centre and thinning out towards the outer edges, in places resembling the flow of lava.' Sebald, *The Emigrants* 161.

[155] Hughes, *Frank Auerbach* 13.

[156] Sebald, *The Emigrants* 162.

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Lampert VI' (1980).[157] The other picture not included in the English translation of the book is the photo of the eye, which must be presumed to be Auerbach's (hence the removal). This photo of an eye could have been seen as a deliberate counterpoint to Auerbach's painting style. His work studiously avoids painting or drawing eyes in any detail onto his figures, leaving them as swift brush strokes or black voids, as Hughes writes in describing his own portrait: 'eye contact almost obliterated'.[158]

The other half of the character 'Max Aurach' came from Sebald's description of his landlord in Manchester, Peter Jordan. In an intertextual link to this book, Jordan has a main role in the documentary *Stolperstein*, which I discuss in Chapter 5.[159] Part of Sebald's story of 'Max Aurach' recounts sections of a manuscript written by a character called 'Luisa Lanzberg'. The pre-texts relating to this part of Sebald's story and the connections to Peter Jordan and his relatives have been traced carefully by Klaus Gasseleder.[160] Gasseleder, at the end of his account, writes about his ambivalence in revealing the pre-texts used by Sebald to craft his story. He attempts to put the emphasis not on the 'what' but on the 'how', arguing that it enables Sebald to 'question the objectivity of telling stories about history'.[161] I agree on one level: Sebald's work does make an important statement through form about the impossibility of objective biographical or historical writings. But in coming across the similarities with Hughes's work, my first reaction was a sense of disappointment realising Sebald had taken Hughes's descriptions of Auerbach's studio, including his key metaphor of 'lava', without any attribution. This is in

[157] It is owned by the Museum of Modern Art in New York and is not currently on public display. A copy of the painting is accessible online: <www.moma.org/collection/works/36886>.

[158] Hughes, *Frank Auerbach* 16. The next section of Hughes' account recounts biographical details of Frank Auerbach. His parents were Charlotte Nora Borchardt and Max Auerbach: ibid 17. Sebald himself often chose to go by the name 'Max' in England rather than use his given names Winifred Georg. Angier's snapshot of his office door at the University of East Anglia shows the name 'Professor Max Sebald': Angier, 'Who Is W. G. Sebald?' 10.

[159] Jordan in the film is trying to get *Stolpersteine* for his parents to be laid in Munich, one of the only cities in Germany resisting these forms of memorials.

[160] Gasseleder, 'Erkundungen zum Prätext der Luisa-Lanzberg-Geschichte'.

[161] Ibid 174.

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addition to explicit use of the biographical details of the two men who are still alive (Auerbach and Jordan).[162] This copying of Hughes' work is, of course, only one very minor example of a practice of re-writing and copying that occurs repeatedly and characterises the entire oeuvre of Sebald's writings.[163] In the Angier interview, he states parts of this story were also taken directly from Nabokov's work *Speak. Memory*. Sebald states to Angier 'What you need is just a tiny little shift, to make it match up. I think that's allowed'.[164] Sebald is a writer but also a reader – and he turns his reading into an account, a literal 'making-again' through content and form.

3.4.1.2 ARTISTIC PROCESS. Sebald explicitly thematises the artistic process of his characters, focusing on the practice of their craft. For instance, the narrator notices how Aurach, the fictional painter in the story (like Frank Auerbach, the real-life painter), uses large amounts of paint and then, as part of the work, scrapes them off again and again.[165] This leads the Sebaldian narrator to a long discourse on his own difficult working process:

> Often I could not get on for hours or days at a time, and not infrequently I unravelled what I had done, continuously tormented by scruples that were taking tighter hold and steadily paralysing me. These scruples concerned not only the subject of my narrative, which I felt I could not do justice to,

[162] Jordan did give his consent to Sebald to use his story as well as his aunt's autobiography, which he gave to Sebald (and Sebald used as the basis for the Luisa Lanzberg story). See Angier, 'Who Is W. G. Sebald?' 14.

[163] Sebald's characterisation of memory as a quotation gives some insight perhaps into his writing process: 'Remembrance, after all, in essence is nothing other than a quotation. And the quotation incorporated in a text (or painting) by montage compels us – so Eco writes – to probe our knowledge of other texts and pictures and our knowledge of the world. This, in turn, takes time. By spending it, we enter into time recounted and in the time of culture.' W. G. Sebald and Jan Peter Tripp, *Unrecounted: 33 Texts and 33 Etchings*, Michael Hamburger (trans) (Hamish Hamilton, 2004) 90.

[164] Angier, 'Who Is W. G. Sebald?' 14.

[165] Sebald, *The Emigrants* 161–162. There are also similarities with the South African artist William Kentridge's artistic process. On William Kentridge and transitional justice: Carrol Clarkson, *Drawing the Line: Toward an Aesthetics of Transitional Justice* (Fordham University Press, 2014). See also Karin van Marle, 'Law's Time, Particularity and Slowness' (2003) 19(2) *South African Journal on Human Rights* 239, 248–250.

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> no matter what approach I tried, but also the entire questionable business of writing. I had covered hundreds of pages with my scribble, in pencil and ballpoint. By far the greater part had been crossed out, discarded, or obliterated by additions. Even what I ultimately salvaged as a 'final' version seemed to me a thing of shreds and patches, utterly botched.[166]

Here we see a description of the narrator doubting his writing process, questioning the possibilities of words. It fits with the way Sebald phrases his approach to restitution as an 'attempt' – restitution through writing is not a fluid movement which can be completed but something which needs to be rehearsed and repeated: it is part of 'making-again'. I turn to Sebald's later book, *Austerlitz*, in order to examine how this description of a writing process is part of the 'rendering of the stories' told by others, exemplifying his method of attempting restitution.

3.4.2 AUSTERLITZ (2001). This section is a close reading of selected passages from Sebald's book *Austerlitz* to contend that Sebald's text does go 'over and above the mere recording of facts and over and above scholarship' to attempt a form of restitution. I highlight excerpts from the book which demonstrate Sebald's concern with the practices of being an author and a scholar: the way writing practices of creation, annotation and re-writing are explicitly performed in this text.

Like *The Emigrants*, *Austerlitz* is written in the first person, by a narrator who is also a writer, and who shares other characteristics known about Sebald the person, such as his German background and his academic work. The narrator is again not named in this text and his status is left deliberately ambiguous. The narrative frame is that the book is a collation of writings and objects from the narrator's travels and encounters with a person named Austerlitz. These encounters occur in various time frames and in various places throughout Europe. When they meet, they talk. Austerlitz tells him stories: sometimes musings about the place and time where they are meeting, but mainly about his search for his origins, which becomes the key driver of the plot. Austerlitz discovered he was raised under a false name and that he came to England on a

[166] Sebald, *The Emigrants* 231.

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Kindertransport. He eventually goes back to Prague and finds his old neighbour and nanny, Vera, who tells him how his parents are missing. His father escaped to Paris, never to be heard of again and his mother is assumed dead in Theresienstadt. Even though the fragmented structure of the text could be seen to re-enact the fragmented, recurring trauma of Austerlitz's childhood, I am more concerned with the way it also maps this re-enactment of a search. It could also be read as another form of case: the mystery case of the past, and, crucially, the clues to this puzzle are self-reflexively written down by the narrator.

Like many works of fiction, Sebald creates the characters of the narrator and Austerlitz and brings them to life through literary mimesis. However, the book is hard to define within a specific genre. It is not a historical novel, but also not a biography or a memoir as they are usually understood. Like the character of Max Aurach, the character of Austerlitz created by Sebald is a mosaic of all these things.[167] Also like *The Emigrants*, *Austerlitz* is a textual palimpsest of a book, created through an assemblage of text, photos, maps and other visual reproductions of objects, all ostensibly working to authenticate its perambulations through Europe in the aftermath. Like *The Emigrants*, part of this palimpsest are quotations, and these intertextual and intratextual links open up other layers to the printed letters on the page. *Austerlitz* attempts to capture, within its own pages, the threads of its own existence – it goes through the pretence of showing a reader the seams of how it is put together and commenting on this.

The reader is given hints regarding the writing process throughout. For instance, in the beginning there is an asterisk, the only asterisk or footnote in *Austerlitz*.[168] This asterisk draws attention to the other less obvious practices of citation which are used in the work but also reminds us that it is not 'scholarship' – an academic style of writing which Sebald is deliberately avoiding. By its very presence, interrupting the flow, the asterisk draws attention to the construction of the text. But the content of

[167] Reportedly Susi Bechhöfer, whose biography apparently inspired Sebald, was unhappy about the use of her story without permission in *Austerlitz*. See discussion in Wolff, *W. G. Sebald's Hybrid Poetics* 133.

[168] Sebald, *Austerlitz* 10.

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the asterisk does as well – the smaller font recounts how the narrator was embarking on the process of writing, 'looking through these notes'[169] of the meeting in Antwerp, while remembering the time of a fire in the railway station in Lucerne, corroborated by the insertion of grainy photos in the text. Asterisks, and their scholarly cousin, the footnote, are inherently open and interruptive devices. They are also signifiers of authority (particularly when used in a legal judgment to invoke a precedent). Here these interruptions to the text create an opening for the narrator to exert his fictional authority over the text and remind the reader of his control and choice of the material in its collation.

Crucial to the task of writing these stories is this stated reminder of the mediating role the narrator, and hence, the writer, plays in creating these marks on paper. For instance, when Austerlitz recounts his story of his travels to Prague, at one point there are four layers of narrative reproduced in the text, as Vera, his old neighbour and nanny, is retelling a story told by Maximillian, Austerlitz's father, to Austerlitz, who is then passing it on to the narrator.[170] In the beginning of the text, in what could be seen as a metafictional nod to this iterative process, the narrator draws attention to Austerlitz's speaking style. He describes it as

> the way in which, in his mind, the passing on of his knowledge seemed to become a gradual approach to a kind of historical metaphysic, bringing remembered events back to life.[171]

This is also a commentary on the narrator's writing process too: his transcription of fictional and non-fictional stories into the new form of an account.

One final example of this occurs when Austerlitz and the narrator visit an institution of law: the Palace of Justice in Brussels. The Palace is pointedly referred to twice in the text as being situated on Old Gallows' Hill, a detail that hints at the strata of historical events on one site.[172] Austerlitz describes the Palace of Justice as a maze, a labyrinth, where legal decision-making occurs in an impenetrable and a closed space,

[169] Ibid 10–11.
[170] Ibid 239.
[171] Ibid 14.
[172] Ibid 23, 38.

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> [this] huge pile of over seven hundred thousand cubic metres contains corridors and stairways leading nowhere, and doorless rooms and halls where no one would ever set foot, empty spaces surrounded by walls and representing the innermost secret of all sanctioned authority.[173]

His stories are told to the narrator on the steps *outside* the building; the characters remain on the threshold. The narrator recounts how Austerlitz told him that the building and its legal authority were undermined and used covertly by outsiders, modified by the populace. The narrator describes these as stories that don't fit the official legal story of the building; they are apocryphal, 'anecdotes'.[174] Here is another indicator of the importance given by Sebald to the mode in which stories are told, highlighted by the way in which he situates his characters on the entry portal but does not let them enter. This exchange also brings together the way the form of the *telling* – official stories compared to anecdotes – and the listening to and subsequent *transcription* of stories are made to seem important in the text.

The first encounter between the two protagonists is staged at the Antwerp train station, with Austerlitz describing the '[m]arks of pain, which, as he said he well knew, trace countless fine lines throughout history'.[175] Reading these lines in the aftermath is to also know these tracks through history are materialised in such spaces, with this railway station used by the SS to link into the Mechelen transit camp and on to the labour and concentration camps further East. The book's final scenes are in Antwerp as well, travelling through Mechelen. The final page refers to a wall in the Fort at Breendonk, describing names and dates scratched into stone. These are attempts to say – mark our suffering, we were here, in this place, at this time.[176] As Eagleton asserts

[173] Ibid 39.
[174] Ibid 41.
[175] Ibid 16.
[176] Buss offers an insightful reading of the role of this fort in *Austerlitz*, situating it within a history of European legal violence and using it to introduce an argument regarding the spatial framing of international law. 'First, the walls of the citadel are physical reminders that spaces are not solely metaphoric. The violent presence of the citadel underscores the materiality of oppression. Walls exclude, contain, limit, obscure and remove. Second, this materiality also signals fixity. While spaces and boundaries by definition

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regarding literary works, '[c]haracters, events and emotions are simply configurations of marks on a page'.[177] In addition, close to the end of the book, Austerlitz continues his search for his father in the Bibliothèque Nationale in Paris, describing himself as someone that 'had devoted almost the whole of his life to the study of books'.[178] At the same time, he notices how the site has a complicit history – it is built on top of the location of the Austerlitz-Tolbiac storage depot, the holding place for stolen goods from the Jews of Paris. The restitution of these goods is impossible, as 'the whole affair is buried in the most literal sense beneath the foundations of our pharaonic President's Grande Bibliothèque'.[179] In drawing attention to his writing practice and the role of books themselves within the text, Sebald's work, itself typeset and published, encourages us to think about the question of what it means to leave any sort of a mark in the aftermath, and the sites where we can encounter them. Regardless of whether it is as 'literature', as the ghostly remains of an obsessively scratched-off painting, or here, as the graffiti of victims inscribed in stone, Sebald's work re-enacts the omnipresence of these traces of the past in the present.

3.4.3 CRAFTING RESTITUTION. As I have emphasised, Sebald's texts are a palimpsest: not only in their inclusion of photographs and objects but also in their inter- and intratextual linkages. They also have a pre-history, with the lines between biography of the characters and the biography of 'real life' people, as well as the author, Sebald and his narrator, being intertwined and re-written. I have paid attention to this writing process: both at the level of pre-text in the story of Max Ferber from *The Emigrants* and at the level of the descriptions of writing by the narrator in *Austerlitz*.

are fluid, negotiable and porous, they also endure. […] We might, as Sebald has done here, look more closely at structures themselves as materialisations of dominance and oppression.' Doris Buss, 'Austerlitz and International Law: A Feminist Reading at the Boundaries' in Doris Buss and Ambreena S. Manji (eds), *International Law: Modern Feminist Approaches* (Hart, 2005) 87, 93.

177 Terry Eagleton, *The Event of Literature* (Yale University Press, 2012) 63.

178 Sebald, *Austerlitz* 393.

179 Ibid 403.

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Sebald describes an attempt at restitution, in his words, as being 'over and above the mere recording of facts, and over and above scholarship'. By focusing on his writing practice, we notice how his technique, however, does not ignore facts and scholarship. Rather it relies on them in order to act out a subversion of form: it plays with the expectations of other genres of writing (such as the scholarly footnote) but does not give any proper attribution; it makes a point to describe the layering of narratives and how they can be recorded (but not facts); it includes photographs and other evidentiary material that appear to give the illusion of authenticity but are not what they purport to be. In this way, Sebald's restitutionary model for literature is not a decisive move away from 'scholarship' that works with the past, such as in law or history. Rather it is an account which appears to shadow their methods of working, exposing and questioning different practices of writing in the aftermath.

3.5 CONCLUSION: LITERARY RESTITUTION

In this chapter, I have examined how three authors give an account of how to take responsibility for restitution through their writing practice. My analysis did not centre on the content of their work, but rather the genres in which they work, paying attention to the different mutations of 'case' and 'transcript' in each text; as well as attempting to map the techniques, such as fragmentation, citation and assemblage, which were deployed in different ways by each author.

For W. G. Sebald, the key responsibility of a literary writer at the start of the millennium in Germany was connected to 'restitution'. His view of literary restitution focuses on its ability to soar 'over and above' factual or scholastic writing. The task, however, of making these marks on the page is necessarily one which is fraught – the writer portrayed in his works *The Emigrants* and *Austerlitz* (performed through his narrator in his texts) is hesitant, often seemingly in despair about his own ability to adequately rehearse and re-write his story even as it unfolds.

Heimrad Bäcker, to follow this theme of conduct of a literary writer, also demonstrates conflict and ambivalence regarding the ability and meaning of 'the writer' in a post-Holocaust Austria, with his full page of

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handwritten text 'the writer/record-keeper writes' interpolated into his otherwise printed, ready-made poetry. Bäcker's technique, however, is not to reflect on how to re-write, but to cite: letters and numbers, ostensibly shorn of context, plotted onto a page but also given a reference, an origin outside of the text. In this way, perhaps Bäcker offers a different setting for the aftermath, situating it in the spaces between words and in the gaps between documents.

In contrast, Alexander Kluge, even in his recent work from 2013 explicitly about the NS regime, continues his atomisation of German experiences and as such does not explicitly take on the persona of being a writer after the Holocaust. Nevertheless, Kluge's explicit dedication of the book to the renowned jurist Fritz Bauer demonstrates an attempt to take up Bauer's call for literature to continue the tasks of restitution after the Auschwitz trials. Kluge's technique in doing so is found in his rehearsal of tone: his abrupt paragraphs are tutorials in paying attention to the patterns and rhythms of institutional language.

My method in this chapter was to follow how each author used a different way of making-again to give an account of restitution. This meant I viewed their accounts of restitution also as a strategy, a method of how to 'make-again', a literal enactment of this concept. In this way, they are restitutive manuals, imparting an ethos of writing and of reading. I argue these literary texts, therefore, offer models of practice: forms and techniques that explore how to take responsibility for restitution through text.

The texts by all three authors have as one of their key themes the creation of the work within the work itself, either explicitly performing and re-creating the writing process (Sebald, Bäcker) or by omission – by removing any context or reference to the origin of the text from the text (Kluge). In other words, the texts themselves are open, leading to questions about their own methods of creation, anticipating their encounters with a reader and their own imaginative iterations. Part of this is to question what it might mean to be a reader in the aftermath. I noticed the slippage in persona, paying attention to the cycles of words which at times went from source to reader, reader as a writer, writer as an author, author as a record-keeper, record-keeper as a writer – and so on and back again in different permutations – as part

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of these practices of demonstrating responsible writing and engaging with texts.

In addition, I tracked the way each author engages with institutional language or responds to an institutional setting. For instance, Kluge re-writes the spoken voices of officialdom and Bäcker cites and cuts institutional records to turn them into images. I also draw attention to the way the placing of the Literaturhaus in Stuttgart prompts Sebald's restitution speech or how he brings the Palace of Justice into *Austerlitz* as a way to think about craft – and the form of how stories are told. As such I created a movement from voice to image to craft in this chapter, oscillating parallel questions of institution and restitution through three techniques of doing things with words.

But these accounts of restitution through words are not only relevant for the scholar of literature, but they also matter to the making and telling of jurisprudence. Specifically, the attempt by these texts to acknowledge the possibilities and limits of conduct and language emerges not only as a question of persona but also as a question of form. Coming out of my analysis of these texts is a lesson for jurisprudents to pay attention to the form – here represented by the case, the transcript – and how the form itself shapes what can be known and how it can be known about law (as well as how one can then cite it and write it). The form of my own writing in this chapter is therefore also a statement about the making and telling of jurisprudence. My deliberate inclusion of runs of fragments by Kluge – which also mimics the way I quote the glosses in Chapter 2 – is reminiscent of a legal case book: it follows the same format of fragmentation and comment, with the title of each story italicised like the name of the case (see also the way I focus on the title *Birkenau* in Chapter 4). In addition, my focus on the personae, the setting, and the timeframe is a way of setting up the jurisdiction of my argument. By this I mean that the space in which I can perform my authority as a scholar is constrained by the forms through which I choose to write. In this chapter, my choice of structure is one which is designed to allow me to speak about law and literature together. Such overt self-reflexivity also mimics, at times, the way all three of these authors show the workings behind the curtain, thematising their practice of writing through writing itself.

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Therefore, my writing with law and literature together in this chapter raises questions about the inheritance and politics of form.[180] Working in a shared genre – across law and across literature (and others) – means there is a residue of expectation which adheres to a particular genre and its responsibilities. In this chapter, for instance, we see Kluge using the form of the 'case' in different ways: as a recitative form, but also as a carrier of detail and particulars: tending these excerpts as unfinished statements of claims. He uses the 'case' in a literary way which returns it to the juridical; holds it up as a possibility of judgment. Similarly, Bäcker's rendering of a new 'transcript' from other recorded 'transcripts' makes a statement about the inheritance of completeness which attaches to this genre. He subverts this through reinforcing the constant re-writing of the legal record, enacting the way details fall outside time and then return. Mediated through literature and law, it is this constant and ineffable return of words – the cycles of making-good-again – which I make visible in these texts.

In Chapters 4 and 5, I move away from the writing practices undertaken by legal and literary personae to examining different artistic practices of restitution. Despite the change in discipline to art history and in modes of practice to painting and sculpture, I still follow the same themes of persona, form and technique as ways to understand these modes of responsibility and making-good-again.

[180] See further Greta Olson and Sarah Copland, 'Towards a Politics of Form' (2016) 20(3) *European Journal of English Studies* 207. In any case, perhaps we are all afflicted by Jameson's 'sedimented' mode of reading, which argues that it is difficult to disturb the ideological structures that surround our reception of texts – how can one read afresh? See Fredric Jameson et al, 'Interview: Fredric Jameson' (1982) 12(3) *Diacritics* 72, 73.

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