CHAPTER 6

Making-Good-Again? A Conclusion

In the introduction to this book, I quoted the text of Bundespräsident Steinmeier's speech on the anniversary of the end of the Second World War regarding the way Germans 'accept [their] historic responsibility'[1] and discussed the conceptual understandings of responsibility. However, another reading of the speech would be to describe its moment of delivery, situating it in a place. The site of the speech was the *Neue Wache* in Berlin, which is situated close to Bebelplatz, where we began our walking tour in Chapter 5. The *Neue Wache* is not a passive site. It has housed successive German political memorials, from the Prussians to the NS regime to the DDR and now the Federal Republic of Germany. This space in Berlin has always been a memorial to the German experience of war.

Since 1993 the *Neue Wache* has also housed an enlarged version of a Käthe Köllwitz sculpture, a form of a *pietà*, with a mother and son hunched over in the middle of the room, under an oculus. It is exposed to the elements and also subjected to the regular ritual of receiving cut flowers wound into circles with flags. Inside the *Neue Wache*, caught between her legs, the son has his face raised up to his mother and to the sky and clouds above. The eyes of the mother are unformed, they are lowered. One cannot look her in the eye. Her hand covers her mouth. On 8 May 2020, when Steinmeier gave his speech, an official photo from

[1] Frank-Walter Steinmeier, 'Speech – 75 Anniversary of Liberation from National Socialism and End of WWII in Europe' (Neue Wache, Berlin, 8 May 2020).

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his website shows five leaders standing inside the *Neue Wache*.[2] The official wreaths are resting. Hands are clasped or joined in a circle. Heads are lowered, gesturing.

As mentioned in the introduction, the structure of this book loosely followed Paul Celan's poetic progression of *read*, *look*, *go*.[3] To emphasise this, the two opening paragraphs of my conclusion repeat this structure, situating Steinmeier and a moment of German *Wiedergutmachung* through my approach of making-good-again. Like my focus on the writing practices of restitution, to begin, I focused on the written text of Steinmeier's speech. I concluded by beholding the site of delivery and, like Chapters 4 and 5, described the resonance of the Köllwitz art work in a place, noticing the conduct and embodiment of legal meaning through gesture. Despite this call-back, the substance of this book was not about the official German *Wiedergutmachung*. Rather, I forged a different and more subtle path, following practices which I termed making-good-again. This enabled me to ask how other accounts of restitution also connect with modes of thinking about law, using jurisprudence to situate restitution within a tradition of law and humanities scholarship.

In short, this book focused on how particular people working in different genres ask the question of restitution within texts, objects and through their reception. Restitution is never achieved; there is no answer. Asking the question is always a practice of failure. What I have done in this book, however, is to argue that asking the question is a way to imagine how to take responsibility for restitution. Parallel to this, I unfurl these questions of restitution in a way which shows how they also hold lessons for the work of jurisprudence. I draw out the way literary and artistic works also contain jurisprudential commentary. Such commentary is valuable because it demonstrates different ways of doing legal research. They show that one can not only interrogate law through its representation in aesthetic genres but also how aesthetic genres can

[2] 'Der Bundespräsident / Speeches / 75th Anniversary of the End of the Second World War' <http://bit.ly/435dCk1>.

[3] From his poem *Engführung* (1958), in Paul Celan, *Gedichte in zwei Bänden* (Vol. 1) (Suhrkamp, 1983) 197.

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prompt thinking about how forms, ways of conduct and sites all carry legal meanings.

This book therefore expands the way scholars in law and the humanities use jurisprudence as a methodology. Traditional understandings of jurisprudence as a discipline bind it closely to scholarship from the legal academy, viewing it as a genre of written commentaries, theories and principles. My approach builds on this, but I source these commentaries on law from other genres. My method is to write jurisprudence in a broad sense, refined and given different emphasis in each chapter. Schwarz's glosses and the literary excerpts are textual, but the chapters on visual and memorial art show how one can also express a jurisprudential account in a visual or spatial, embodied dimension. Emerging from these accounts of restitution in this book, therefore, are three central arguments about the telling of jurisprudence.

The first is the recognition that form and technique matter. Form and technique are the containers of law which mould the content within. They are not often interrogated. A turn back to legal forms, as found in Chapter 2 with glosses, and Chapter 3 with transcripts and cases, shows not only how genre thresholds govern meanings but also influence the way stories are recognised as 'legal' through the form in which they are told. In parallel with this, I would contend that especially with regard to art works, there is a tendency in law and humanities scholarship to focus on the role of representation of law in art. Focusing on form and technique, and on sites of display and response, is one way to try to avoid the seduction of the image; it helps us see more clearly other threads of connection and critique.

As part of this, I demonstrated that focusing on technique does not only mean a form of close reading or viewing but rather is an attempt to de-familiarise and break down. Thinking technique means thinking about how questions turn into practices; how texts and objects do their 'work'; the audiences whom they address. The way I have described different techniques in this book was to try to hold on to their discursive power and material force. For instance, in Chapter 3, I name the techniques of literary restitution *as* fragmentation, citation and re-writing. I am aware of the 'as'. To write with metaphor is to write around and on top – it is to make visible through naming something else; it is a practice

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of displacement. In a circular way, I take up this technique to describe the different techniques of 'making-again'. The effect is to push the burden of recognition and action back onto the technique. More tangible is the 'making-again' phrase, which becomes literalised and materialised throughout this book – the fragments, layers and accumulations describe ways of taking responsibility for restitution through creating iterations, forcibly marking up and making again.

Focusing on form and technique also makes visible how the processes of archiving (in the past) and embodiment (in the present) are part of the making and telling of jurisprudence. Making-good-again was shown not only to be a textual story of insertions, citations and re-readings. It is an archival practice that is inscribed in and through materials, which one then encounters in institutional places – in libraries, in galleries, in the entranceway to a Parliament – as well as being embodied and lived on the streets.

As a result, the question of institution is entangled with the question of restitution. Institutions and institutional gestures resonated throughout different strands of the book. At times, institution became a question of legal conduct and of legal language – for example, the slowness of the bureaucracy of *Wiedergutmachung*, which Schwarz protests against in his glosses in Chapter 2, or the institutional voices and texts as cited and fragmented by Kluge and Bäcker in Chapter 3. Institution also became a question of place and conduct through memorial art in Chapter 5, where I layered my own demonstration of making-good-again on top of the gestures of *Wiedergutmachung* which had already been made by different levels of German government.

In other strands, I tied the questions of institution and restitution together and noticed how they are connected to buildings in a place, noticing the layering of buildings in Munich, or the display of art works in MONA and the Reichstag. As part of this, libraries, especially, are prominently featured in each chapter of this book – the libraries I visit (the Berlin City Library, the Central Institute for Art History), the libraries I behold (Kiefer's leaden books, Ullman's empty shelves) and the libraries which are mentioned in or emerge through the texts themselves (Sebald's protagonist Austerlitz's recounting of the Grande Bibliothèque in Paris; Heimrad Bäcker's poetry that creates a form of absent library

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where the books are hidden inside the words). Libraries are not neutral research spaces – by focusing on them, I hoped to show how libraries are repositories which control the way knowledge is catalogued and accessed by people in a space, either by disciplines (see my long traipse down the corridor to find room 120) or by the state itself.

I also drew attention to the strata of historical practices and sites represented by these libraries – they were places of Nazi law, places where books were stolen, places where books were burnt, collection depots for stolen Jewish goods, collection depots to restitute art works – and now they are places for provenance research. Writing my visits to the library into the text was not only a way to situate myself as a scholar in a place and in a time; instead, the 'library' became a 'metonymy'[4] for trying to think about continuities between past regimes, disciplinary traditions and the present. Therefore, trying to unpick all these strands of institution and restitution became a way for me to think about the residues of obligation and responsibility which subsist through time and place.

This book tracked practices of making-good-again which take place inside, outside and alongside institutions. In doing so, I also made visible the way that jurisprudence is not something only found in a book and held in a library. Rather, it is all at once in the senses and in the body: in the feet, in the torso and in the thrown head which looks up and looks down. It is about having 'standing' and is carried with us when we walk down the street, performing our choreographed dance (as individuals and as collectives) of legal relations.

This is connected to my second approach to the making and telling of jurisprudence. The prompts provided through visual and memorial art in this book regarding responsibilities as an audience, and responsibilities to place, work to disperse the sites and personae of law. Sites of crimes, sites of law-making, sites of restitution: these all are shown to criss-cross and permeate everyday life and everyday movements. As part of this, the sites of response and sites of responsibility are found within, alongside and around institutions and are also held within individuals.

[4] See J. J. Long on the library, continuities between the past and the present and regulation of the body in space in *Austerlitz*: *W. G. Sebald – Image, Archive, Modernity* (Edinburgh University Press, 2007) 83.

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To embrace this, I emphasised the term 'beholding'; promoting a way of viewing which takes on a responsibility for seeing and your standpoint and place in doing so. I described and enacted an interactive, corporeal mode of storytelling, a personal mode of writing jurisprudence.

Finally, I have phrased this book around the question of 'making-good-again' – a purposeful mix of literal translation and open-endedness in order to capture the failure of restitution in practice and as a concept. Focusing on 'making-good-again' was a way of articulating a new phrasing of restitution which did not use the language of German scholarship regarding *Wiedergutmachung* or traditional legal approaches to restitution in English. Even though this was an attempt to re-phrase the question of restitution, there was an underlying deference to the power of recognising where things come from and the histories of ways of approaching the past in this book. However, my approach is more than a plaidoyer for attention to tradition or provenance. Instead, it is to acknowledge that the telling of jurisprudence itself is partial and situated, inflected and inseparable from languages, inheritances, institutions and ways of being in the world. My re-phrasing of restitution as making-good-again, therefore, came from an understanding that the way one asks a question ultimately affects the way one is able to shape a response – and therefore take responsibility.

Articulated as 'making-good-again', the question of restitution in the context of the aftermath of the Second World War in Germany is shown to be plural, iterative and necessarily open. I reiterate the way this is a dynamic which has not only been thought within the domain of state law, but rather has also been imagined within the genres of legal commentary, literature, visual art and memorial art. This is not an exclusive list, but rather a beginning: this book is offering a way of thinking about restitution as making-good-again, which opens it up to other gestures practiced within other forms.

I include the audience and different publics into these practices of responsibility in the aftermath. Due to the portability of art, this also shifts the possible site of restitutive practice across territorial borders, as was demonstrated by the beholding of Anselm Kiefer's art work in Hobart. It brings the question of restitution explicitly into the Reichstag, or into the neighbourhood streets of Berlin, away from centralised memorial

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sites. My work implies that the reading of Sebald or listening to Kluge's radio play is also some form of the staging of responsibility. In this way, I notice the power of texts and objects through the term 'beholding' – and its resonances with *beholden* – a way of making one obliged.[5] This is only a gesture, however, and further work needs to be done to articulate the relationships of with whom and when this may resonate, and with whom it does not, or could not.

In addition, the texts and art works in this book resist any sense of closure. Instead, I follow the way they turn questions into practices: how to struggle with the past, how to practice failure, how to push up against the boundaries of a genre and a craft, a profession. In addition, the texts and objects analysed are fragmentary: the gloss is a type of fragmentary genre, but the other works examined in this book also have jagged edges or do their work in fragmentary ways, through putting together materials in new and contingent formats. Denying the possibility for wholeness or return, their forms suggest that restitutive obligations are ongoing and immediate.

To give an account of restitution in the aftermath is to be connected to the past, it is to work in a shadow. However, the past in this book is not experienced as something which can be 'overcome' or 'worked through'. Rather, it is the opposite. The accounts of restitution in this book force a reckoning with the past through an intimacy and every-day-ness of the present. In this way, there is a temporal dissonance which emerges; the restitutive work of visual and memorial art, literature *and* the work of law all appear to contain both a looking back and a looking forward: they are often caught on the threshold of the present.

I have described the practices of restitution in each chapter as 'accounts'. This means they hold within them a sense of accounting, of reckoning and keeping a ledger, noting and tallying and placing things on a scale. Restitution, too, is often understood as a balancing of the scales, and the image of Justitia with her scales hovers behind this concept, and, hence, this book. In his speech entitled *The Redress of Poetry*, Seamus Heaney speaks of the way poetry can offer a counter-reality, a gesture: its redress can be embodying an action of placing a

[5] *Online Etymology Dictionary* 'beholden'.

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counterweight on the scale.[6] In contrast to this approach, making-good-again emerges in this book as a form of struggle, a method to reject equilibrium. I have used it as a way of describing the tension held within practices towards their forms, people with their professions, aesthetics rubbing up against law.

The practices of restitution described in this book emerge as part of the work of the aftermath, of making and then letting texts and objects take over, leaving them, in turn, to work. In this book, there is not the relationship of direct call and response which usually characterises actions of responsibility. Rather, there are just responses and more responses: divergent, accumulating, adrift. Like a message in a bottle, they may not reach a destination, an audience. Or, as my book has shown, even if they are read, viewed, walked around or installed on a different shore, they may interact with their setting in a different way at different moments.

However, in using the idiom of 'making-good-again' to describe these activities of restitution, I have implied that the 'good' cannot be separated out from these practices, actions (and repetitions). Again, a displacement: I moved the 'good' into the realm of action and iteration, focusing on the practices of 'making-again'. The premise of this book is that there is something 'good', something of value, in these texts and objects, but I have left its definition opaque. I have implied that the 'good' oozes invisibly out onto the canvas, silently blots the page – and percolates through time and place, running through the 'porous'[7] orders of norms in which we are immersed, and we inherit. But all of this making, all of this moving and all of this engagement are not replacements for justice. 'Good' is not a metaphor for justice, it does not re-inscribe justice into the re-phrasing of restitution. Rather, the question of justice remains, running parallel to the question of 'making-good-again'. It is not my question to ask.

[6] Seamus Heaney, *The Redress of Poetry: An Inaugural Lecture Delivered Before the University of Oxford on 24 October 1989* (Clarendon Press, 1990) 4.

[7] 'We live in a time of porous legality or of legal porosity, of multiple networks of legal orders forcing us to constant transitions and trespassings.' Boaventura de Sousa Santos, 'Law: A Map of Misreading. Toward a Postmodern Conception of Law' (1987) 14(3) *Journal of Law and Society* 279, 298.

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