



doi: 10.17473/LawArt-2022-3-13



3 (2022) 319-362

FOCUS – Sebald and the Law

A Discussion around C. Angier, *Speak, Silence. In Search of*

W.G. Sebald, London, Bloomsbury Publishing 2021 *

FOCUS – Sebald e il diritto

Discussione intorno a C. Angier, *Speak, Silence. In Search of*

W.G. Sebald, London, Bloomsbury Publishing 2021

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ABSTRACT. W.G. Sebald is one of the most widely read German authors of the second half of the 20th century. His seminal works are milestones for literature of trauma and of the atrocities of the Second World War. Despite Sebald's premature death in 2001, his pages continue to question the readers with the same disturbing force. The two essays collected in this focus, taking inspiration from Carole Angier's recent biography of this iconic scholar and writer, explore the possible relevance of Sebald's discourse for a reflection on law. Massimo Meccarelli considers the dilemma of transitional justice, by means of an itinerary on the emergence of memory, the issue of restitution and the right to resentment. Cristiano Paixão deals with the temporalities of law considering the dimensions of ruin, urban palimpsest and the problem of war crimes.

ABSTRACT. W.G. Sebald è uno dei più letti autori tedeschi del secondo Novecento. I suoi scritti costituiscono dei capisaldi per la letteratura del trauma e delle atrocità della seconda guerra mondiale e, nonostante la sua prematura scomparsa nel 2001, continuano a interrogare i lettori con la stessa inquietante forza. I due saggi raccolti in questo focus prendono spunto dalla recente biografia di Carole Angier dedicata a questo emblematico scrittore e si interrogano sulla possibile rilevanza del discorso sebaldiano per pensare il diritto. Massimo Meccarelli considera il dilemma della giustizia di transizione con un itinerario su emergenza della memoria, questione della restituzione e diritto al risentimento. Cristiano Paixão riflette sulle temporalità del diritto considerando le dimensioni della rovina, del palinsesto urbano e il problema dei crimini di guerra.

KEYWORDS / PAROLE CHIAVE: Temporalities of Law; Transitional Justice; Democracy; War Crimes; Fundamental Rights / Temporalità del diritto; giustizia di transizione; democrazia; crimini di guerra; diritti fondamentali

FOCUS – Sebald and the Law.

A Discussion around C. Angier, *Speak, Silence. In Search of W.G. Sebald*, London, Bloomsbury Publishing, 2021

Telluric Memory.

Restitution and Right to Resentment in W.G. Sebald

Massimo Meccarelli

«From bitter searching of the heart
We rise to play a greater part
Reshaping narrow law and art
Whose symbols are the millions slain»
Leonard Cohen, *Villanelle for Our Time*

SUMMARY: 1. In the Writer's Workshop. – 2. Fiction and the Truth of History. – 3. Aesthetics and Ethics in Literary Writing. – 4. A Social Function for Literature? – 5. The Device of Telluric Memory. – 5.1. The Issue of Restitution. – 5.2. The Right to Resentment. – 6. The Problem of Transitional Justice.

1. *In the Writer's Workshop*

There are writers whose legacy consists in entrusting the reader with a task of continuation. Carol Angier seems to have taken up this message from W.G. Sebald; in dedicating a dense and accurate biography to him, she ideally relates to that dynamic of transmission that typifies the entire oeuvre of the great German author. In this successful book¹, we find a reconstruction that is rich in detail, well supported by the large biblio-

¹ Another successful biographical work by Carole Angier is dedicated to Primo Levi. See Angier (2002).

graphical, documentary and direct testimony base; but this is also an investigation into the creative process behind Sebald's texts. Angier enters the author's workshop, identifies what his sources were and how he combined them to create his prose. She clarifies the genesis and aims of his endeavour as a writer and scholar, and makes a contribution to the understanding of his literary theory, although, with a certain understatement, she points out that the analytical plane chosen is biographical and not that of narratology and literary criticism. Above all, Angier succeeds in illustrating, even on the biographical-intellectual level, the value of that highly original ethical and aesthetic experience that the reader encounters in Sebald's pages.

Considering the limit of my expertise, I cannot here attempt to engage in an analysis of the literary significance of this important biographical research although this is something that would certainly deserve to be done. Rather, I aim to dwell on a few issues that Angier's work contributes to highlighting, and that question my thinking as a historian and jurist.

It should be noted that although Sebald deals with major themes with considerable relevance for law and justice, he does not pursue this path. However, a closer reading allows us to also perceive in his work some hints for a new look at legal issues. The intention of the following pages² is to focus on this perspective. I do not intend to answer the question 'who is W.G. Sebald?'; rather, I want to ask how his work can contribute to renewing and improving our view of justice, law and history.

2. *Fiction and the Truth of History*

A feature of Sebald's writings is that it narrates stories of real characters, but with approximations, artfully altering aspects of the reference model, in some cases mixing different reference models³. The highly original way

²I thank Cristiano Paixão for suggestions and discussion.

³Angier (2021), pp. 19-26, 80-81 416-424. This is the case of Cosmo or Dr. Selvyn, in *Die Ausgewanderten*, or Austerlitz in *Austerlitz*.

of incorporating real facts and events into the fictional creation makes his works uncategorisable⁴.

Carole Angier devotes a great deal of attention to the relationship between the story and its sources («the extraordinary work of Sebaldian bricolage»), precisely in the sense of verifying the degree of correspondence it has with real underlying models⁵. The biographical reconstruction clearly shows how the creative origin of Sebaldian writing lies precisely in the encounter with real people, either through personal testimony or through the traces they left behind (for example, the relevance of diaries in the development of the stories).

The point of interest in this regard is that at the basis of his poetics is «his experience» threaded «with references from his reading, from art and history, and transformed into literature»⁶. Angier emphasises the transformative effect⁷ that the real fact must necessarily undergo in literary transposition. Sebald operates such manipulations not for mere narrative purposes; the aim is that the reader believes in the reality of the characters in the story⁸. The narrative dimension (fiction) is used to derive the *effet du réel*⁹, making it a place that allows readers to grasp the ‘truth’ of the experience better than the strictly documentary level (non-fiction)¹⁰. The artifice of narration serves to investigate the truth of facts at a deeper level; after all, the act of memory itself is like an «act of narrative»¹¹.

⁴ Angier (2021), pp. VIII-IX.

⁵ Angier (2021), pp. 284-291.

⁶ Angier (2021), p. 331.

⁷ «Most of what he used he transformed»: Angier (2021), p. 285.

⁸ Angier (2021), p. 287.

⁹ Franklin (2011), pp. 186-188.

¹⁰ Here the influence of Walter Benjamin appears relevant. See Angier (2021), pp. 198, 248, 264; Banki (2016a); Agazzi (2012), pp. 8-12; Matteini (2017), p. 165. Consider in particular the essay *Goethe Wahlverwandschaften* where Benjamin writes about the “truth content” of the work of art (Benjamin, 2014, pp. 163-164).

¹¹ Franklin (2011), p. 12.

Sebald himself explains this concept. In *Luftkrieg und Literatur* he stated how the point of view of the eyewitness had to be «supplemented by what a synoptic and artificial view reveals»¹². And, again, he suggests this perspective by analysing the hyperrealism and «radical objectivity» that characterises the work of the painter Jan Peter Tripp¹³; as has been observed¹⁴, this idea of art as a means of entering more deeply into the representation of reality is also readily applicable to the very nature of Sebald's writing.

The added value of artistic representation concerns the understanding of the underlying truth of empirical reality¹⁵ which is what differentiates it from mere photographic reproduction, just as literature is distinct from mere documentation. And conversely, «the most precise study of the past» cannot, on its own, achieve the truth of history¹⁶.

In other words, Sebald's narrative is organized as a way of reporting to the reader true stories that really happened¹⁷; but this is done by means of a constant field of tension between reality and fiction, on which the reader, confronted with the verisimilitude of the story, tends to continuously question himself. With this ploy, the narrative reaches towards a deeper degree of truth and achieves a transfer and restitution effect, as we will explain later. This is one of the main goals for Sebald as writer, scholar and intellectual.

¹² Sebald (2004a), p. 26; Sebald (2004b); and the interview by Cuomo (2010), p. 108. See also Franklin (2011), pp. 13 and 188-189; Simic (2010), p. 149.

¹³ Sebald (2013), pp. 157 e 160: «The exact reproduction of reality achieves an almost unimaginable degree of precision».

¹⁴ Franklin (2011), pp. 183-184.

¹⁵ Sebald (2013), p. 164. This is due to the fact that art «depends on ambiguity, polyvalence, resonance, obfuscation and illumination, in short, the transcending of that which, according to an ineluctable law, has necessarily to be the case».

¹⁶ Sebald (2006), p. 13; Sebald (2004a), pp. 80-81.

¹⁷ Angier (2021), p. 26.

3. *Aesthetics and Ethics in Literary Writing*

To some extent we can say that through narrative we can promote an ‘ethical reorientation’ of collective memory¹⁸. And it is precisely from an ethical placement that storytelling draws its strength in transmitting the truth of history. This is superior, as Sebald says, to what the science of the past is capable, adding that there is no other way of thinking about literature. Angier also explains how ethics and aesthetics are inseparable in Sebald; the rightness of the aesthetic canon corresponds to the moral rightness of the writing¹⁹.

And indeed, his critique of German studies and German writers in the second half of the 20th century focuses on this problem; in his eyes, they are culpable of preferring a merely formal approach to literature. This concerns not only the way of approaching literary criticism but also the type of literature that was produced.

In Sebald’s opinion, German literature, especially that of the 1950s and 1960s, showed an obvious ethical deficit when it did not want to face the experience of the annihilation of the years of the Second World War and Nazism but on the contrary, contributed to neutralising the memory of it²⁰. He also renews his criticism, although in less indignant tones, of those literary tendencies which, from the mid-1960s onwards, were then actually faced with the weight of the past; the reasons, once again, lie in the undeniable «ethical and aesthetic inadequacies»²¹ that he also finds in that form of remembering the past.

¹⁸ In this sense also Franklin (2011), p. 189; Kilbourn (2013), p. 251.

¹⁹ Angier (2021), pp. 260, 344-345. See also Agazzi (2012), p. 37; Franklin (2011), pp. 18 and 193; Russell (2013), p. 251.

²⁰ Sebald (2004a). Writing about the writer Alfred Andersch, Sebald states that «when a morally compromised author claims the field of aesthetics as a value-free area it should make his readers stop and think» (p. 131). See Assmann (2006), pp. 109 and 184-185. She credits Sebald’s polemical initiative with having posed the problem and opened a debate. However, she assesses the lack of mourning in the literature of those decades as a symptom of the trauma itself.

²¹ Sebald (2004a), p. 146. It is the essay on Jean Améry: *Mit den Augen des Nachtvo-*

It is perhaps useful to emphasise that this ethical tension in Sebald is part of a more general critique of modernity and its post-modern outcomes, where, in his view, the aesthetic project tends to overwhelm the ethical one; the «responsibility to remember the past», and this applies to Germany in particular, gives the intellectual the task of opposing this trend²².

4. *A Social Function for Literature?*

The previous considerations lead us to address a key question in assessing the possible contribution of Sebald's work to a reflection on law and its justice. What is the function of literature? Does it have a social or even a political function? Angier expresses a fairly clear opinion in this regard: «His work is not about society», she states in the final pages of the volume, rather Sebald is interested in the investigation of the «true nature of reality which lies beyond physics»; he is moved by a metaphysical tension²³.

Indeed, Sebald himself explains this: art is able to capture the truth of things understood as «the metaphysical underside of reality»²⁴. He does not limit himself to the social and political level, he wants to go deeper, he wants to understand human nature. It is this quest that leads him to the desolating contemplation of a natural history of destruction; a destruction caused by mankind which, by subjugating other species, undermines «the balance of nature»²⁵.

gels (1987)). In this perspective see also *Konstruktionen der Trauer. Zu Günter Grass «Tagebuch einer Schnecke» und Wolfgang Hildesheimer "Tynset"* (1983) in Sebald (2006). It may be interesting to point out that here, Sebald attributes to legal events such as the Auschwitz trial in Frankfurt am Main, the impulse for a change in the attitude of men of letters towards the problem of the genocide of the Jews. See also Wachtel (2010), p. 48; Angier (2021), pp. 196-197; Schütte (2019), p. 107.

²² Agazzi (2012), p. 12; Kilbourn (2013), p. 251.

²³ Angier (2021), p. 428. See also Simic (2010), p. 149 and Schütte (2019), pp. 205-207.

²⁴ Sebald (2013), p. 166.

²⁵ Angier (2021), pp. 342 and 398. The history of mankind for Sebald, is a history of a

Yet this does not resolve the questions posed above. His research, in fact, however much it intends to go to the underside of reality, assumes as an analytical basis the facts of history, society and its problems. And his discourse on destruction is then structured specifically as a critique of the history of modernity, that is, of contemporary history that has been unfolding since the Enlightenment²⁶. And then in Sebald «a concern for the human being in the anthropological-social perspective»²⁷ is undeniable.

The natural history of destruction is thus not just a way of expressing a nihilistic view of reality. Through *bedingungslos negativ* (unconditional negative) writing²⁸, Sebald seeks «the possibility of redemption from an ‘obscene’ history»²⁹. In this way, I want to argue that it is possible to observe a social and political relevance in his discourse, even though this only considers a superficial level compared to the depth of which it is capable.

Sebald’s literary criticism referred to above, on closer inspection also concerns German society, or rather the way in which post-war West German society has been re-established: under the sign of a removal and

‘long account of calamities’, as explained by Schwartz (2010), p. 9. In his works, Sebald speaks not only of the tragedy of WWII, but also of that of colonialism, and of the destruction of Corsica’s natural paradise. See Sebald (1998) and (2006), pp. 35-46; Gray (2017), pp. 316-412; Schütte (2019), pp. 77-103.

²⁶ Agazzi (2012), *passim*, in partic. pp. 73-76, 120, 128, 184. Schütte (2019), p. 86. E.g. the interest in the figure of Rousseau in Sebald (2013). E.g. the Napoleonic vicissitudes in *Schwindel. Gefühle* or in the essays dedicated to Corsica. Sebald (1990) and (2006), pp. 1-14. Napoleon, as pointed out by Agazzi (2012), p. 76, represents for Sebald «the initiator of the European dream in which a disordered continent was to be made into something more orderly, more regulated»; this is the beginning of the «dream of power politics» that will lead to the catastrophes of the 20th century.

²⁷ Agazzi (2012), p. 12. Sebald himself expresses his interest for «cultural and social history» in the interview by Wachtel (2010), p. 44.

²⁸ The negative (e.g. the recurring ‘*Unworte/unwords*’) is «enacted in his language – in his development of particular words and phrases, in his syntax, and in the rhythm of his prose» Weller (2013), p. 57. It is a revival of the “to do negative” idea formulated in Adorno’s thought (*Dialectic of Enlightenment*, 1947). See Agazzi (2012), p. 11.

²⁹ Weller (2013), p. 72.

of what he called the ‘conspiracy of silence’³⁰. «The deep state of mind in our country», Sebald observes when commenting on the fact of the bombing of German cities, was not formed by the confrontation with the event of annihilation, it did not take on the value of «an experience capable of public decipherment»³¹.

The critique against the literature of the 1950s, which failed to ‘explore the truth’ is, at the same time, a critique of the way in which the «postwar society» was re-founded³²; the «*absence of reactions of mourning* [...] left *negative impressions* on the internal life of the new society», with a «*distorted mental attitude*»³³, deprived it of social and political categories such as guilt, penance, atonement and repentance. This, Sebald concludes, tackles «the question of the *authenticity of democracy* in Germany»³⁴, since any true project of democratic rebirth cannot do without a confrontation with the past and a «direct or mediated confession of guilt»³⁵.

Sebald’s thinking both as a scholar and as a writer, while undoubtedly justified by an investigation into the nature of man and the natural drift to destruction towards which his story seems to be heading, is nonetheless within the framework of a civic concern and a commitment to the transformation of society.

There is one final aspect that confirms this conclusion: the dynamics of transmission that literature is called upon to perform and to which we have already alluded. This dynamic is built into the story, in which the narrator is often also the listener (think for example of the narrator of Max Ferber or Austerlitz) to whom the memory of facts is transmitted³⁶.

³⁰ Sebald, in the interview by Wachtel (2010), pp. 44 and 48 and by Silverblatt (2010), pp. 84-85. See Simic (2010), pp. 145-158. Angier (2021), pp. 126-130.

³¹ Sebald (2004a), p. 4.

³² Sebald (2006), p. 97; Sebald (2004a), p. 69.

³³ Sebald (2006), pp. 97-98. Italics mine.

³⁴ Sebald (2006), p. 104. Italics mine.

³⁵ Agazzi (2012), p. 39.

³⁶ Sebald (1998) and (2001). See Schwartz (2010), p. 17.

He then also acts on the readers of his stories. Sebald wants to dialogue with the reader and give him an active role³⁷ in the search for the ‘truth content’ of the text. This conversion of the reader into a witness³⁸ makes possible the effect of the transmission of a knowledge of the past and an awareness of the need to rethink society.

5. *The Device of Telluric Memory*

The events that Sebald narrates and to which the readers are made witnesses, all concern the emergence of trauma, predominantly related to the years of the Second World War and the campaigns of extermination. He therefore deals with issues, as noted at the beginning, that are certainly relevant to law and that question the demand for justice: crimes against humanity or genocide, transitional justice towards democracy, colonialism, emigration, exile and the great Napoleonic epics, which open up the realisation of the new modern order in the 19th century³⁹, as an announcement of the destruction and tragedies of the 20th century. In order to assess the relevance of Sebald’s discourse to these problems of law and politics, it is necessary to start with a few notations.

The first is that Sebald, in narrating these traumas, always makes use of an indirect, or, as he calls it, tangential approach⁴⁰. This is due primarily to the enormity of the theme that is not easy to write about directly, according to the ethical-aesthetic canons Sebald gives to literature. In my opinion, however, the tangential approach to the narrative of trauma also depends on the choice of focus. Sebald, in fact, does not seem interested in describing the event in itself, but rather in illustrat-

³⁷ Murray (2013), p. 196. Baxter/Henitiuk/Hutchinson (2013), pp. 11-12. Angier (2021), p. 146.

³⁸ See Murray (2013), p. 202; Banki (2016b).

³⁹ Which in historiography, significantly, has been defined as the “legal century”. See Solimano (2021) and (2016); Ferrante (2015).

⁴⁰ Sebald (2004b); interview by Silverblatt (2010), pp. 79-81; Matteini (2017), p. 164.

ing its after effect, both on the victims who survive the trauma, and on those who have been touched by it even only indirectly and, therefore, remain hooked on that past they have not experienced⁴¹. This seems to be an important aspect as it emphasises that the act of remembering the past applies above all to the present, or, in other words, that the perspective of meaning of the act of remembering is to be found in its further effects.

The second observation relates to the moment of the emergence of the trauma. The facts that provoke it are not directly reported, but are recalled, that is, they are the outcome of a memory that arises and changes the vision of the present and the future. It is necessary to reflect on this device of memory.

It is a telluric memory⁴², which destabilises to the point of inducing the protagonists to commit suicide (for example Paul Bereyter) or in any case to retreat from society (as in the case of Amos Aldewahrt or Austerlitz). It affects different figures (persecuted Jews, political dissidents, writers, artists, intellectuals) but they all share the fact of suffering from a «form of failed symbiosis with the social fabric»⁴³. The telluric effect is caused by a «clash of individual and collective memories»⁴⁴, which provokes the self-exclusion of those who feel its unsustainability.

The focus of the narrative rests, therefore, on the process of individual disengagement from the social bond, and on society's inability to include the problem of the weight of the past among the factors of social cohesion. The memory that arises endorses this situation: marks a disillu-

⁴¹ «Shaped by the war that happened before they were born» observes Angier (2021), p. 386. See also Franklin (2011), p. 186.

⁴² Sebald in the interview with Wachtel (2010), pp. 54-56; Here, it is Sebald himself who, in explaining the device of memory, speaks of «the natural world» and of «that other world which is generated by our brain cells» as «tectonic plates rub against each other»; memory leads «where the sources of pain are» and causes the clash.

⁴³ Agazzi (2012), p. 13.

⁴⁴ Baxter/Henitiuk/Hutchinson (2013), p. 1.

sionment with a project of society that pretended to be based on the value of human dignity (and this is particularly true in the case of federal Germany⁴⁵), but is only superficially succeeding.

The most significant fact to grasp is, therefore, the deconstructive function of telluric memory. Rather than acting as a social glue, it calls into question the social bond at its foundation. Studies on the subject⁴⁶, as well as other contributions from literature⁴⁷, have already highlighted how important the question of collective memory is in determining the possibility of social cohesion. In other words, the critique of the contemporary world, which we have already mentioned above and which drives Sebald's commitment as a writer and scholar, returns on the narrative level.

In this respect, then, there could also be a *pars construens* in the telluric memory: the narration of stories of exclusion or self-exclusion from the social fabric becomes «a proactive means of awakening consciences against 'the sleep of reason'»⁴⁸. Indeed, the major failure for which Sebald reproaches post-war literature lies precisely in the fact that it has contributed to preventing the past from exercising «its rights over the present»⁴⁹ and thus the dynamic of the infuturation of the past⁵⁰. Sebald wants to address the question of the «future of the past», since any condition of collective amnesia is equivalent to «forgetting what defines us»⁵¹.

⁴⁵ *Grundgesetz für die Bundesrepublik Deutschland*, 1949, Art. 1: «Die Würde des Menschen ist unantastbar».

⁴⁶ For example, Assmann (2006) and Ricoeur (2000).

⁴⁷ For example, a novel such as *L'orologio* by Carlo Levi (1950), when considering authors writing about the post-WWII transition. See Meccarelli (2020).

⁴⁸ Agazzi (2012), p. 13.

⁴⁹ Agazzi (2012), pp. 12 and 176-187, where he points out that Sebald shares Walter Benjamin's vision of history. See Benjamin (2014), p. 76.

⁵⁰ Sebald explains (2004a), p. 7, that the effect of that removal is to have prevented people from looking back to the past, thereby «pointing the population exclusively towards the future». And again, in the writing of *Campo santo*, in Sebald (2006), pp. 32-33, he returns to the subject of deploring «present without memory».

⁵¹ Schwartz (2010), p. 14. For Sebald, memory and restitution through literature are a way out of the «nightmare of a world without memory» argues Gilloch (2013), p. 144.

There is then a third consideration to bear in mind when observing the relevance of Sebald's discourse to the problems of law and justice. There is an awareness in Sebald that responding to the injustice of events such as mass extermination implies an additional, pre-legal task. The experience of Nazism and the war, the crimes committed in that past, exceeded the limits of law⁵², to the point that, afterwards, legal instruments were inadequate to deal with the demand for justice; as has been observed, «what had happened profoundly changed the ways in which it was possible to think about justice and judgement»⁵³. For the reasons we mentioned above regarding the removal and conspiracy of silence, transitional justice after the end of the Second World War failed to provide an adequate response.

Telluric memory, confronted with this inadequacy, helps to build a new image of justice. In particular, there are two contributions it can make: implementing an attempt at restitution and enabling the exercise of a right to resentment.

5.1. *The Issue of Restitution*

Sebald thematised the concept of *Restitution* in one of his last official speeches; the passage is well known: «only in literature, however, can there be an attempt at restitution over and above the mere recital of facts and over and above scholarship»⁵⁴. Restitution is an act that can only be attempted through literature; it is a pre-legal act of reparation,

⁵² For example, the Nuremberg trials raised the need for an updating of the legal framework including the setting up of veritable new categories and instruments. E.g. the debate on crime against peace, crime against humanity and genocide. See Sands (2017), pp. 329-387; Stonebridge (2011), p. 25. E.g. also of the debate on the notion of *Unrecht* and State crimes. See Vassalli (2001); Stolleis (2014).

⁵³ Stonebridge (2011), p. 2.

⁵⁴ Sebald (2004b). *Ein Versuch der Restitution* was first delivered as a speech at the opening of the House of Literature, in Stuttgart, in 2001, then published in the posthumous essay collection *Campo santo* – Sebald (2006) – and in an English version in 2004 in the print edition of *The New Yorker*.

before a law and a political project that have been shown to fail in their most essential task: to produce justice.

It is indeed a central aspect of Sebald's discourse that complements the other two identified above: the 'transformative capacity' of fiction to understand the truth of history and the 'dynamics of transmission' in the reader made witness. Literature has the capacity to break the division between space and time⁵⁵. Therefore, it can also act as a means of transmitting the memory of the traumatic events of the 20th century – events that social conventions would have put into oblivion – to those who did not experience those moments.

The relevance of the theme of restitution has been the subject of many Sebaldian studies⁵⁶. Angier highlights it in the final chapter of her volume. For her, the concept of *Restitution* rather than in the compensatory sense of 'recompense' should be understood as 'restoration': what is irretrievably lost can be «recalled and preserved in art»⁵⁷.

It is in this capacity for recovery and at the same time preservation that the redemptive⁵⁸ or at least restorative⁵⁹ potential for those who have suffered the «greatest injustice» is expressed. The restorative effect, although it can also be interpreted as a form of individual rehabilitation with respect to the victims⁶⁰, lies in the propagation of this awareness within society.

In this respect, *Restitution* is thus addressed more to the reader than to the protagonists of the memorable events narrated. The idea of restitution, in other words, is created from an appreciation of the victim's point of view with respect to the way in which the problem of justice was col-

⁵⁵ Angier (2021), p. 439.

⁵⁶ See for example Baxter/Henitiuk/Hutchinson (2013).

⁵⁷ Angier (2021), pp. 438-439. See also Franklin (2011), pp. 193-194; Finch (2013), p. 112; Kilbourn (2013), pp. 260-261.

⁵⁸ Finch (2013), p. 112.

⁵⁹ Kilbourn (2013), p. 261.

⁶⁰ Franklin (2011), p. 194 who speaks of a restoration «of a person's legal status, taken away from the violation of international law».

lectively solved in transitional phases; it tends, however, to produce its effects precisely with respect to the entire community, since it reconstructs, as Angier argues, «the consolation of fellowship across the years»⁶¹.

The attempt at restitution puts back into the circuit of collective memory problems, values and instances that had been removed from the identitarian horizons of the new democratic societies. In so doing, it contributes to the formation of a collective consciousness, adding a component that was missing at the moment of the *ex novo* constitution of society⁶² from the ashes of the destruction of the Second World War. Recovering the past, in the sense of «cultivating the memory of past events» appears in this sense as a means of building the future⁶³.

5.2. *The Right to Resentment*

Alongside restitution there is another ‘legally relevant’ outcome of the effect of telluric memory, the identification of a human right: ‘the right to resentment’ (*Recht auf Ressentiment*). This aspect is rarely considered in studies dedicated to Sebald⁶⁴; Angier herself does not make it a specific object of analysis. Although it may be marginal in the complex of meanings Sebald’s work is able to produce, it is of particular interest for our reasoning.

Sebald mentions this in the essay dedicated to Jean Améry. Here he also resorts to legal terminology, such as when he explains that through the work of writing it is a matter of promoting a demand for the «recognition of the *right* to resentment»⁶⁵, or when he makes reference to the insufficiency of ‘compensation’ as a hypothetical ‘remedy’ for the ‘tort’ suffered by the victims of persecution, or again when he speaks of the exclu-

⁶¹ Angier (2021), p. 403; Schwartz (2010), p. 17.

⁶² Sebald (2004a), p. 69.

⁶³ Agazzi (2012), 147. Moreover, the memory Sebald (2004a) refers to is not only individual memory but also collective or cultural memory.

⁶⁴ A reference can be found in Schütte (2019), p. 34.

⁶⁵ Sebald (2004a), in particular p. 158. Sebald himself puts the term ‘right’ in italics. See also Schütte (2019), pp. 33-34.

sion of ‘revengei and *ius talionis*⁶⁶. While the concern is certainly moral and ethical, here Sebald also intends to reflect in legal terms on the problem⁶⁷.

The basis of a right to resentment is identified in the fact of the violence inflicted by society on the surviving victim, the irreparable condition in which the victim was placed. It is a condition marked by the «long delayed effects of an injustice»⁶⁸, from the loss of the Heimat⁶⁹, from the sense of guilt of having survived and from being trapped in an existence in which «the thread of chronological time is broken, background and foreground merge, the victim’s logical means of support in his existence are suspended»⁷⁰; the memory of the violence suffered, the experience of death while remaining alive are eternalized (in the sense that the traumatic event of the past still persists in the present, giving it form). The victims of these atrocities therefore have an indisputable right to resentment.

Sebald also reflects on the content of the right to resentment: it is the faculty to express an «implacable resentment», a «necessity of continuing to protest», an «unremitting denunciation of injustice». And this, more than for its effects on the victims, is thought of in terms of its effects on society. In fact, with the exercise of the right to resentment, it is possible to promote a «truly critical view of the past», it is possible to reopen «the

⁶⁶ Sebald (2004a), in particular pp. 146-158.

⁶⁷ It might be interesting to mention here that Sebald also shows an express interest in law in his early work devoted to Arnold Zweig: Sebald (1977). The essay – which deals with themes such as the «gross injustices» of war (and in particular of its «administrative mechanism») (p. 127) the «fallibility of martial law» (p. 128) and the contrast between law and power (pp. 127-130) – law is considered as an instrument for anchoring society to the value of humanitarianism: «where law is swept aside [...] politics becomes criminal and society of men reverts from civilisation to barbarity» (p. 131).

⁶⁸ Angier (2021), p. 166.

⁶⁹ Sebald (2004a), pp. 158-163, See also Matteini (2017), p. 168; Gray (2017), pp. 191-212; Schütte (2019), pp. 28-34; Angier (2021), pp. 168 and 318.

⁷⁰ Sebald (2004a), p. 150.

conflict – which never in the moral sense took place – between the overpowered and those who overpowered them»; this is not in order to enact revenge, nor even to be compensated (considering that the damage suffered is irreparable). The right to resentment reopens the question between victims and perpetrators to «*actualize the conflict*» over time, so as to make possible «a programmatic attempt to sensitize the consciousness of a people “already rehabilitated by time”»⁷¹.

In short, the right to resentment, which literature allows one to exercise, is a social transformation device, serving to move society towards a ‘moral question’ that was not adequately addressed when it was re-founded according to the new coordinates of democracy, and the new values of human dignity, material equality, and human rights. However, such a legal construction, if accepted, has an important implication on how we understand transitional justice.

6. *The Problem of Transitional Justice*

I would now like to make a few concluding remarks. Indeed, as a jurist and historian, at this point in the discourse, it is only possible to open up questions rather than summarize them. I will therefore make a short list of opportunities and possible research paths that the reading of Sebald invites us to attempt.

The first observation has to do with the approach to the study of transitional justice. Sebald suggests we adopt a different point of view, that is, starting from that of the victims. In fact, the study of the problems of transitional justice has often been based on the categories, principles and general causes that guided the choices between the restorative or pacifying need, in relation to the objective of reconstructing the social fabric. Some recent research⁷² confirms the plausibility of this

⁷¹ Sebald (2004a), pp. 157-158.

⁷² See for example Paiva (2021); Osmo (2021); Lessa (2022); Carotenuto (2015).

victimological reconstructive viewpoint. Following the victim's perspective, moreover, the theme of 'transitional justice' extends to that grey, not strictly legal area, which includes not only the phenomenon of truth and justice commissions, but also all those forms of self-organization and strategies of social actors carried out to promote the exercise of a 'right to truth'.

A second opportunity, which derives from following Sebald's thought, is to consider a change of focus in studying transitional justice. We should think more about the 'dynamics of re-opening' rather than re-composition of conflict. It would not be so much a question of understanding how transitional justice makes it possible to achieve the re-establishment of social peace or the reconstruction of a social fabric or of a political and legal order. Instead, it would be a matter of reflecting on its selective character, the silencing action with which it carried out these processes and the «zones of irresponsibility»⁷³ it helped to construct. This reconstructive approach⁷⁴, appears particularly useful for understanding the long duration of the problems faced during transitions to democracy.

The third opportunity consists in reflecting on the necessarily inconclusive character of transitional justice. It is necessary to consider that the configurations that law and institutions have assumed in the time of transition are affected by the need to respond to the multiplicity of interests and values that fragment the demand for justice. In other words, the solutions it offers in legal terms are very much dependent on the situation. Transitional justice is affected by the attributive force of the time in which it takes place.

However, this original constraint, given the resilience typical of legal institutions, tends to have effects even in the stages following the transition itself. Transitional justice, in addition to being situational, is ultra-

⁷³ Matteini (2017), p. 163; Agamben (2016), pp. 16-19.

⁷⁴ See Paixão (2020); Neuenschwander (2021); Aragonese (2021); Meniconi/Neppi Modona (2022).

active. On the one hand, it serves to fix a starting point, but at the same time it proposes solutions that are necessarily impermanent, because the composition of interests and values that it balanced are destined to confront each other again (and for an indefinite time) in the social fabric. What legal solutions are appropriate for taking account of a demand for justice that will necessarily remain open?

The emergence of telluric memory reminds us that there is a magmatic base beneath our legal foundations; taking care that these can be dipped into is crucial for the effectiveness of the democratic project and its commitment to justice.

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**Temporalities of Law:
Ruins, Urban Palimpsests, and War Crimes
in W.G. Sebald's Literary Project**

Cristiano Paixão

SUMMARY: 1. Introduction. – 2. «The first trauma»: The War Experience in Sebald's Literature. – 3. Ruins, Urban Palimpsests, and the Politics of Memory – 4. Stranded in Time: War, Trauma, and the 'Unthinkable'.

1. Introduction

W.G. Sebald introduced a new kind of literary narrative about the passage of time. Known for floating between various literary genres – the novel, the essay, autobiography, travel literature – he defied classifications throughout his career. However, his work consistently contemplated a multiplicity of times: the individual time of each character, in a constant flux of trauma and memory, the time of urban transformations, with the peculiar topography of cities in the post-war period, the broad time of the European historical panorama, from the Napoleonic battles to the two world wars, the subjective and unreducible time of Sebald's own experiences which merge with the characters' trajectories and their inner dramas, among others drawn from the author's works in poetry and prose.

The release, in 2021, of the first comprehensive biography of Sebald, by Caroline Angier, does justice to the importance of his work for contemporary literature and raises interesting themes about the relationship

between law, time, and narrative¹. To illustrate this relationship, we will pursue a somewhat twisted path: first, we will discuss some aspects of Sebald's description of the urban transformations which occurred in the 20th century in several European cities. Afterwards, it will be the moment to propose a reflection on contemporary history based on the idea of palimpsest. Finally, we shall look at the connection between time and law in Sebaldian literature from the perspective of an institute of international law².

2. «The first trauma»: *The War Experience in Sebald's Literature*

Sebald's prose texts feature many depictions of buildings, castles, fortresses, libraries, railway stations. This is particularly vivid in *Austerlitz*, his last prose book. This subject, like everything in Sebald's work, allows for many interpretations. One of them is the connection between modernity, destruction, and the presence of ruins. Other, directly connected to the first, with obvious repercussions on contemporary politics of memory, deals with the metamorphosis of buildings formerly used by authoritarian regimes. In such urban transformations, we can glimpse choices, silences, and omissions.

Urban ruins appear repeatedly in Sebald's work. They are an important part of his biography. And, to some extent, they had been present in his life even before he was born. At this point, we need to clarify the historical context of the last years of the war in Germany and its connection to the Sebald family. For this purpose, Carole Angier's book is insightful.

Winfried Georg Sebald was born in the small town of Wertach in far southern Germany on May 18, 1944. His father, Georg Sebald, had joined the German army in 1929, amidst a great economic crisis, and made a ca-

¹ Angier (2021).

² I thank Massimo Meccarelli, Rafael Bernardes Lucca and Maria Celina Monteiro Gordilho for suggestions and discussion.

reer in the military. He took part in the war from its very beginning. As Angier remarks, «in the first part of his war, the invasion of Poland in 1939, he was still probably a driver; in the second part, the invasion of Russia in 1942, a technical inspector; in the third and final part, in France from 1944, the head of the transport unit of his Panzer Division»³. As the war ended, Georg Sebald went to be captured in the French town of Tulle and remained a prisoner of war in the Causse du Larzac camp, returning to Wertach only in 1947. W.G. Sebald made it clear in many interviews that his relationship with his father was constantly filled with tension and estrangement⁴.

It becomes clear from reading Sebald's work, all of it connected with the catastrophes of the war and its aftermath, that the main reason for the estrangement between the writer and his father involves his past in the Nazi army. According to Carole Angier, the photo of his parents' wedding in 1936 made a strong impression on the author – Georg Sebald is wearing his military uniform⁵.

One of the main themes of Angier's biography is the so-called 'conspiracy of silence', meaning the fact that the German experience in the war, with all its consequences, was never made clear, discussed, and subjected to criticism in German households and schools. Angier recalls the day when the teenager W.G. Sebald watched a film about the Nazi concentration camps for the first time. It was a striking impression, for which he was not prepared, and one that has always been present in his essayistic, poetic, and prose work. This same non-conformity with the silence on the German past lingered during Sebald's years at the University of Freiburg, at which he was a student from 1963 to 1965. According

³ Angier (2021), p. 48.

⁴ Sebald always stated that his main reference on a fatherly level was Josef Egelhofer, his grandfather on his mother's side. When Josef died, the author was twelve years old. In a brilliant essay on Robert Walser, Sebald compares the Swiss writer to his own grandfather, and mentions that he never fully recovered from his death. See Sebald (2013), p. 94.

⁵ You can see the photo in Angier's book (2021), p. 46.

to the author himself, «I talked about the conspiracy of silence in, for instance, my hometown. And of course when I went up to university at age of nineteen, I thought it might be different there. But it wasn't, not at all. The conspiracy of silence certainly dominated German universities throughout the 1960s»⁶.

In exposing the conspiracy of silence, revolving responsibilities and behaviors of Germans during the war, Sebald is one of several German-speaking writers who took this path, in different ways, but with a clear impact on contemporary literature. Sebald, however, would go a step further and take this stance against silence in the post-war period to its ultimate consequences by including in his essayistic work the delicate subject of the bombing of German cities at the end of the war.

On October 30, 1997, Sebald delivered the first of a series of lectures at the University of Zurich. The lectures focused on post-war German literature, but from a critical perspective. Revisiting a perception already expressed in his lessons at the University of East Anglia in Norwich, Sebald points out that Germany's Nazi past was not the only one affected by the conspiracy of silence. According to Sebald, the leading German writers simply could not generate narratives about the trauma of the bombings – the few authors who did touch on the subject did not explore its complexity and unfolding. In his view, this was due to several reasons, among them a kind of 'mythification' of the war experience and an impossibility of breaking the silence regarding the time of war.

The conferences were published in Germany in 1999 and sparked controversy. The English language edition, used here, was issued with the title *On the Natural History of Destruction*⁷. As Ruth Franklin pointed out, Sebald received some criticism for not mentioning the war atrocities committed by Germany itself, having only highlighted the suffering of the civilian population in German cities⁸. As indicated by Sebald, «This

⁶ Wachtel (2010), p. 60. For a comprehensive account of Sebald's years at the University in Freiburg, see Angier (2021), pp. 177-201.

⁷ See Sebald (2004a), pp. 1-104.

⁸ See Franklin (2010), pp. 134-143.

intoxicating vision of destruction coincides with the fact that the real pioneering achievements in bomb warfare – Guernica, Warsaw, Belgrade, Rotterdam – were the work of the Germans»⁹. He then recalls that in August 1942, even before the air raids on cities like Cologne, Hamburg, and Dresden, Germany conducted a major military operation in Stalingrad, where in a single bombing «forty thousand people died»¹⁰.

On the Natural History of Destruction, Sebald's best-known non-fiction work, is connected directly with the author's life. As already noted, he was born in 1944 in a small town in the Allgäu region of Bavaria in the far south of Germany. Even though Wertach was not bombed, the experience of the destruction of war would leave its mark on the author's childhood.

In an interview with Arthur Lubow, Sebald recalls the first time he visited Munich. He was three years old, and his parents took him to see the city. The panorama was one of destruction. In Sebald's own words: «You might have a few buildings standing intact and between them an avalanche of scree that had come down». He adds that «people didn't comment on it», and that was his main concern at the Zurich lectures. For Sebald, that picture of destruction «seemed to me the natural condition of cities», that is to say «houses between mountains of rubble»¹¹.

A city in ruins, this is Sebald's first impression. We said above that this presence of ruins (brought about by the destruction of the air raids) marked Sebald's existence even before he was born. According to Carole Angier, Rosa Sebald, the writer's mother, went to Bamberg in 1943 to

⁹ Sebald (2004a), p. 104.

¹⁰ Sebald (2004a), p. 104. As one can tell from reading the English edition of *Campo Santo* (a posthumously edited collection of prose and literary criticism), he had published an article in German on the topic in 1982. See, on this subject, Sebald (2006), pp. 65-95. This 1982 paper was the basis of the Zurich lectures, which were published in 1999 with a postscript containing replies to letters he received. See Sebald (2004a), pp. 69-104. There are subtle differences between the 1982 and the 1999 versions. In Andreas Huyssen's accurate remark, the 1999 piece can be read in the light of Sebald's own prose created in the 1990s, especially *The Emigrants*. See Huyssen (2003), pp. 155-157.

¹¹ Lubow (2010), p. 161.

meet her husband, when he was taking a day off from the army. On her way home, Rosa had to stop in the town of Fürth and delay her trip. This was because Nuremberg, the city she was due to cross on her way, was suffering from intense bombing. It was during this stop in Fürth that Rosa discovered she was pregnant (of the future writer). For Carole Angier, «this is plainly another case of trauma, unable to be registered or recalled. The first trauma of his own life»¹².

Such experience is chronicled in Sebald's long narrative poem, *After Nature*, in the following excerpt:

During the night of the 28th
582 aircraft flew in
to attack Nürnberg. Mother,
who on the next day planned
to return to her parents'
home in the Alps,
got no further than
Fürth. From there she
saw Nürnberg in flames,
but cannot recall now
what the burning town looked like
or what her feelings were
at this sight.
On the same day, she told me recently,
from Fürth she had travelled on
to Windsheim and an acquaintance
at whose house she waited until
the worst was over, and realized
that she was with child¹³.

Years later, while in Vienna, Sebald came across Albrecht Altdorfer's painting *Lot and his Daughters*, which depicts a scene of a burning city (Sodom). Upon gazing at the picture, Sebald immediately associated it with the episode of the Nuremberg bombing. As he himself describes in *After Nature*:

¹² Angier (2021), p. 7.

¹³ Sebald (2003), p. 86.

As for the burning city,
in the Vienna Art-Historical Museum
there hangs a painting
by Altdorfer depicting Lot
with his daughters. On the horizon
a terrible conflagration blazes
devouring a large city.
Smoke ascends from the site,
the flames rise to the sky and
in the blood-red reflection
one sees the blackened
façades of houses.

[...]

When for the first time I saw
this picture the year before last,
I had the strange feeling
of having seen all of it
before, and a little later,
crossing to Floridsdorf
on the Bridge of Peace,
I nearly went out of my mind¹⁴.

These are two unique experiences – the first sight of destroyed Munich, the association between the burning city in Altdorfer's painting and the circumstances of Sebald's own conception. Regarding this episode of the bombing of Nuremberg on Rosa Sebald's return journey, Carole Angier states that this story was told several times by Rosa herself to her children¹⁵.

¹⁴ Sebald (2003), pp. 86-87. Floridsdorf is a district of Vienna (the city where the bridge of peace is also located). Altdorfer's painting, which belongs to the collection of the Kunsthistorisches Museum, can be seen at <https://www.khm.at/en/objectdb/detail/53/?lv=detail> (accessed 23.10.2022).

¹⁵ Angier (2021), p. 8.

3. *Ruins, Urban Palimpsests, and the Politics of Memory*

This image of a city in ruins can be an interesting starting point for reading Sebald's prose. Ruins, first of all, are signs of temporality. This concept of ruin can comprise a search for explanation. As Svetlana Boym says, the contemporary attraction to ruins is not only a symptom, but also indicates a locus for new explorations and sense-making¹⁶. As Huyssen states, we can see ruins as a critical point, which allows an understanding of «the ravages of time and the potential of the future, the destructiveness of domination and the tragic shortcomings of the present»¹⁷.

For the purposes of this paper, it will be useful to note the centrality of urban ruins in Sebald's experience and explore another trope directly connected to the presence of ruins in the present time: the notion of palimpsest.

The idea of a constantly rewritten book, in which new inscriptions overwrite old ones without entirely erasing them, has been linked to the way memory works. In Jorge Luis Borges' last short story, we find the following excerpt:

De Quincey says that man's brain is a palimpsest. Every new text covers the previous one, and is in turn covered by the text that follows – but all-powerful Memory is able to exhume any impression, no matter how momentary it might have been, if given sufficient stimulus¹⁸.

This palimpsest image can be an interesting key to understanding the history of cities. Urban areas, results of intense human activity, are piles of overlapping signs. They bear inscriptions that contradict, complement, and intertwine with each other. This idea of urban palimpsest, already developed in the work of Andreas Huyssen, is particularly appropriate for the reading of Sebald's oeuvre. Cities like Manchester, Sonthofen, Vi-

¹⁶ See Boym (2017), p. 45.

¹⁷ Huyssen (2006), p. 9.

¹⁸ Borges (1998), p. 7.

enna, Antwerp, Paris, Norwich, Ithaca, Colmar, Prague, and others are clearly central to Sebald's work.

And in these urban landscapes, visible through the image of the palimpsest, ruins are always present. As we know, there are several types of ruins – those resulting from events of nature, with different times (they can be produced by a catastrophe of great proportions, such as an earthquake, or can arise after a slow and gradual transformation, as in erosion) and those produced by man, also with variable durations (just think of the demolition of buildings for supervening construction, something that can occur in a matter of hours or days, or the ruins resulting from the neglect of urban landscapes, such as a house, a garden, a street, a neighborhood).

A city's history encompasses the history of its own ruins. In the series of constructions, neglects, reconstructions, and recreations of the urban landscape we can glimpse the decisions made throughout time by those agents responsible for the cities themselves – namely, political decisions, which affect significant portions of the population and have an impact on the legal world, as they relate directly to memory, that is, to the ways in which urban communities face and rework their past. In the case of the catastrophes of the 20th century, the main subject of Sebald's literary prose, these components of memory are tied to traumas, human rights violations, and repression used by totalitarian or authoritarian regimes.

In this sense, urban palimpsests are a very vivid – and significant – indicator of the politico-legal transformations that are a major feature of contemporary societies. And this is evident in Sebald's work – his characters often travel through urban landscapes oversaturated in their pasts. Just think of the harsh representation of Manchester in the 1960s that we find in one of the main stories of *The Emigrants*, or the disturbing conclusions demonstrated by Jacques Austerlitz in his research on buildings in Antwerp or Paris¹⁹.

¹⁹ See Sebald (1997) and (2011).

In the postscript composed after the Zurich Conferences, which was inserted in *On Natural History of Destruction*, Sebald depicts the buildings in Sonthofen that were hit by air bombings. In contrast to nearby Wertach (which, as we saw, was not targeted by air raids in the war), the town of Sonthofen, where Sebald lived from the age of eight to nineteen, experienced some bombings (on the Austrian border, it was a site for military facilities)²⁰.

Bombings, as we know, produce ruins, which pose a challenge to the cities that are to be rebuilt after the end of war. One theme that arises from Sebald's discussion concerns a delineation of the urban palimpsest: what to do with the ruins of war? What kind of transformation do we perceive in the usages of the bombed buildings? What do these changes unveil about the political choices carried out in the post-war period?

An episode narrated by Sebald can be an interesting one to shed light about political choices taken in periods of restoration of democratic order. Sebald is part of the 'second generation' of postwar writers. Not having witnessed the hostilities and the destruction inflicted during wartime, that generation had to deal with the many layers of memory generated by the war, with all its ramifications, especially for German and European history²¹. Although *On Natural History of Destruction* focuses on the attitude of German literature towards the bombings, one emerging theme found in Sebaldian criticism is relevant to a crucial field of contemporary law: the politics of memory and its effects.

What is implied in the political choices taken by Germany (especially the former Federal Republic of Germany, Sebald's formative place from

²⁰ In Sebald's description: «On February 22 and April 29, 1945, bombs had been dropped on the totally insignificant little marked town of Sonthofen, probably because the place contained two large barracks for the mountain troops and the artillery, as well as an establishment known as the Ordensburg, one of three training colleges set up for the formation of the new Fascist elite directly after the Nazis came to power». Cf. Sebald (2004a), p. 74.

²¹ For an important analysis of the German literary context, especially the second generation, see Huyssen (2003), pp. 138-157. For a discussion focused on the European continent, see Crusat (2020).

elementary school to college) concerning the rebuilding of the country? To what extent do such options connect with the silence about the bombings?

One indication is present in *On Natural History of Destruction*, in the 1999 postscript. Only if we reproduce it in full, would it be possible to understand this properly. Therefore, we will transcribe the respective excerpt below, with a small highlight in italics:

Of the buildings destroyed in Sonthofen and not rebuilt until the early 1960s, I remember two in particular.

[...]

The other ruin still present in my mind was the building known as the Herz-Schloss close to the Protestant church, a villa built at the turn of the century. Nothing was left of it now but its cast-iron garden railings and the cellars. By the 1950s the plot of land, where a few handsome trees had survived the catastrophe, was entirely overgrown, and as children we often spent whole afternoons in this wilderness created in the middle of town by the war. I remember that I never felt at ease going down the steps to the cellars. They smelled of damp and decay, and I always feared I might bump into the body of an animal or a human corpse. A few years later, a self-service shop opened on the site of the Herz-Schloss, an ugly, windowless single-story building, and the once beautiful garden of the villa finally disappeared under the tarmac of a car park. *That, reduced to its lowest common denominator, is the main theme of the history of postwar Germany.* When I first came back from England to Sonthofen at the end of the 1960s I shuddered at the sight of the fresco showing foodstuffs on the exterior wall of the self-service shop (for advertising purposes, apparently). It measured about six by two meters, and depicted an enormous platter of sliced cold meats, as served on every self-respecting supper table at the time, in colors from blood red to rose pink²².

Sebald's narrative strikes at a point already seen in works such as *The Rings of Saturn* and *Austerlitz*: the connection between architecture and capitalism. In his account of the Sonthofen store, an additional component emerges. It is possible that the silence concerning the Allied bombing of German cities also relates to the circumstances of Germany's re-

²² Sebald (2004a), pp. 76-77.

construction. As stated by Andreas Huyssen, «Historians have described how the urban populations of postwar Germany reacted with numbness and apathy to the experience of loss and destruction only to throw themselves into the frenetic activity of reconstruction and to embrace consumerism as a way to forget»²³.

Within the context of post-war Europe, Cristian Crusat points out a similar phenomenon: «it seems clear that the European Union has long since joined the general trend of establishing interpretive areas as commercial zones»²⁴. One example, drawn from the South American reality, may illustrate this point.

In her original and creative book, Susana Draper identifies a similar trend in the so-called ‘transitions to democracy’ that took place in the 1980s in several South American countries. Considering the Uruguayan experience, Draper mentions the tendency to use buildings that were formerly repression centers as commercial buildings. The most striking example is the former Punta Carretas prison in Montevideo, which served as a place of detention and torture of political opponents during the Uruguayan dictatorship, and became, after the return to democracy, a shopping center with luxury brands²⁵.

The issue at stake is the extent of war-induced trauma. Thus, avoidance strategies that conceal this trauma arise. The conspiracy of silence is

²³ Huyssen (2003), p. 151.

²⁴ Crusat (2020), p. 18.

²⁵ Draper connects the opening of the mall to the failure to recall the crimes of the Uruguayan military regime. She explains that, after the restoration of democracy in Uruguay, the 1986 *Ley de Caducidad de la Pretensión Punitiva del Estado* granted amnesty for crimes committed during the dictatorship, including by agents of the regime itself. The law was submitted to a referendum, followed by a plebiscite, in March 1989, with the majority of voters voting in favor. According to Draper, the conversion of the prison into a shopping mall must be understood within this broader historical process, which involved a new vision of the future and a «metaphor for a peculiar form of transition from the carceral past to the consumerist present». This became clear, according to the author: «after the decision voted in the plebiscite, the new prison-mall became both the paradoxical monument to forgetting and the prized example of the new regime’s discourse, transactions, and measures». See Draper (2012), p. 23.

the most obvious expression of these strategies. In the depths of this silence, we find these future-oriented options that seek to cover up the trauma. That is closely connected to the Sebaldian perception of the urban palimpsest as a heap of ruins. As asserted by J.M. Coetzee, we can glimpse a kind of historical consciousness in Sebald's prose, in which «the cities and landscapes through which his people move are ghost-ridden, layered with signs of the past»²⁶.

It becomes therefore clear that the identification of the traumatic past – and, in many cases, the refusal to deal with its effects – is at the core of Sebald's literature. Based on his major prose texts, his poetic work, and his critical production, we can infer that Sebald's literary project has an ethical dimension, which involves, above all, a duty to remember, a refusal to forget. This aspect is visible in his narratives, as noted by J.M. Coetzee when referring to the protagonist of Sebald's last prose book:

Austerlitz is haunted by the knowledge that each day a quantum of the past, including his own past, vanishes as people die and memories are extinguished. Here he echoes the anxiety expressed by Rainer Maria Rilke in his letters about the duty of the artist as bearer of cultural memory²⁷.

Thus, we can grasp the relevance of Sebald's text about the bombings suffered by German cities during the war. Never does Sebald compare the horrors of the bombings to the extreme violations perpetrated by Nazism during the war; he emphatically points out the silence of German literature on the subject. And he calls this duty of memory into the domain of narrative. As Huyssen points out, «Sebald is not an *Aufrechner*, is not tallying moral equity, and cannot be read according to this old paradigm»²⁸.

In this way, we can see the significance of the idea of reparation that emerges from Sebald's literary project. Still according to Coetzee, a certain 'labor of reparation' seems to pervade all Sebald's prose works,

²⁶ Coetzee (2007), p. 134.

²⁷ Coetzee (2007), p. 134.

²⁸ Huyssen (2003), p. 145.

which is particularly evident in the Jewish characters in *The Emigrants*, *The Rings of Saturn*, and *Austerlitz*²⁹. Most significantly, one of the last pieces Sebald wrote in his lifetime took the title *An Attempt at Restitution*, and it engages this rapport with memory, trauma, and the role of literature. There he mentions several war crimes perpetrated by Germany during the world war which ended in 1945³⁰.

4. *Stranded in Time: War, Trauma, and the ‘Unthinkable’*

A major characteristic of Sebald’s work is the centrality of time in the narrative. We saw how the ruined cities function as an indicative of temporality in the making and repression of the post-war trauma. As we noted above, there is an ethical-literary project in Sebald. In some of his essayistic texts, the author resorts to expressions such as ‘restitution’, ‘irreversible’, and, in an inspired piece on Jean Améry, ‘resentment’³¹. These are terms obviously linked to the passage of time, to its marks, its signs. Still, they are expressions close to the legal lexicon, which is natural, considering that one of the main themes of contemporary law, especially at international level, concerns violations perpetrated in contexts of war and authoritarian regimes, resulting in demands for compensation, reparation, and conviction of people responsible for crimes against humanity³².

Among the most difficult challenges facing the protection of human rights (internationally and domestically) is the issue of identifying the traumas caused by atrocities committed during armed conflicts and, outside the war context, by authoritarian regimes. At the heart of this task lies the question of time.

²⁹ Coetzee (2007), p. 139.

³⁰ Sebald (2004b).

³¹ Cf. Sebald (2004a), pp. 143-167.

³² For a refined account of the connection between Sebaldian literature and reparation issues, see the article from Massimo Meccarelli in this issue of *LawArt*.

Temporality is an essential feature of law – rules and decisions carry historicity, societal relations hold the imprint of transformations over time, contemporary claims require operations of reconstruction of the past, to name just a few examples of this complex relationship between time and law³³. There is an additional component in the international human rights law arena: the long-term effects of armed conflicts and political repression. As we know – and Sebald’s work illustrates this conclusion – wars and authoritarian or totalitarian regimes generate traumas whose impact, visibility and utterance can be repressed for years or decades.

Law, however, has time constraints. Instruments such as statutes of limitations pose, in many of these cases, barriers to the possibility of judicial review. Such a danger is particularly evident in the 20th century’s catastrophes, with its two world wars and countless local conflicts. Certainly, the destruction scale of World War II included a new dimension; in addition to serious war crimes, additional forms of annihilation came into play (genocide, extermination camps, mass executions, extensive use of medical and scientific techniques to murder vast numbers of people, persecutions based on ideas of race, creed, and origin).

As pointed out by Monique Chemillier-Gendreau, these crimes are in the order of the ‘unthinkable’, something that was not foreseen in existing statutes and legal codes³⁴. The potential trauma of these violations is magnified – and this requires an innovative treatment of temporal issues. Thus, a new institute emerges in international human rights law. Under

³³ One fitting demonstration of the infinite potential of this connection appears in the following excerpt of Martens (2000): «Finally, the law appears to be polychronic, even heterochronic. At times, it is accomplished slowly. It is not without virtue: it allows the de-dramatization, it obliges the hatreds and the vindictiveness to decelerate. The procedure imposes, by its delays, the postponing of the desire, and by its foreclosures, it sends back outside the law whatever pretended to settle there. Instead of human time, it substitutes bureaucratic time» (free translation, p. 750). For further developments on the interplay between time and law, see Paixão (2002), especially pp. 239-307.

³⁴ See Chemillier-Gendreau (2000), pp. 281-299.

this formula, serious human rights violations – disappearance, forced execution, torture – have no statute of limitations. There are no time constraints for them to generate responsibility (of States or individuals, depending on each case).

Such a concept is included in the text of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the United Nations in 1968 and in force since 1970³⁵. By the end of October 2022, 57 countries ratified the Convention³⁶.

Chemillier-Gendreau mentions some emblematic proceedings in which it was possible to overcome the issue of statutory limitations, such as the trial of Maurice Papon in France in 1998³⁷, or the case brought against Augusto Pinochet in the United Kingdom, also in 1998, from a ruling issued in Spain³⁸.

Here we can trace an intersection with Sebald's own background. In one of the interviews gathered in the book edited by Lynne Schwartz, Sebald comments on the Paul Bereyter episode (one of the prose narratives in *The Emigrants*³⁹). The character (who existed for real, since he was Sebald's teacher at the elementary school in Sonthofen and whose

³⁵ See the Convention text at https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.27_convention%20statutory%20limitations%20warcrimes.pdf (accessed 30.10.2022).

³⁶ See the list of those countries in https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-6&chapter=4&clang=_en (accessed 30.10.2022).

³⁷ Maurice Papon held several positions during the Vichy regime in Nazi-occupied France. He served as police and security officer during the Algerian war of independence, as a Gaullist congressman, and finally as budget minister in Valéry Giscard d'Estaing's government. In the 1980s, papers proving his direct involvement in the deportation of Jews from France to Auschwitz came to light. After a protracted trial, in which much of French public opinion was engaged, Papon was convicted of committing a crime against humanity for his actions during the Vichy government. Cf. the historical discussion carried out by Rousso (2016), pp. 102-142, and the overview provided by Wood (1999), pp. 41-76.

³⁸ Chemillier-Gendreau (2000), pp. 296-297.

³⁹ Sebald (1997), pp. 25-63.

name was Armin Müller) was only «three-quarter Aryan» with a Jewish ancestral, so he qualified as a Jew under the racial laws of Nazi Germany. In the interview with Eleanor Wachtel, alluding to the Bereyter/Müller case, Sebald recalls that he emigrated to France in the 1930s, but even there he suffered discrimination because of his Jewish status. Sebald goes on to conclude:

Ironically, all these things have come very much into the foreground over the last few weeks and months. Today in *The New York Times* you have a report about the Maurice Papon trial in Bordeaux. And this is all, as it were, connected with this particular tale⁴⁰.

Sebald integrates into the same reply facts separated by a large amount of time – Bereyter/Müller’s experiences with antisemitism in France date from the 1930s, Papon’s trial was under preparation at the time of the interview, i.e. 1997. For Sebald, this disjunction itself does not come across as a problem. This is because time, for him, has very peculiar qualities. Coetzee discusses this theme with reference to one of the protagonists of Sebald’s work, Jacques Austerlitz:

Time has no real existence [...] Instead of the continuous medium of time, says Austerlitz, there exist interconnected pockets of space-time whose topology we may never understand, but between which the so-called living and the so-called dead can travel and thus meet one another⁴¹.

Carole Angier also highlights this issue in *Austerlitz*. In fact, Angier and Coetzee observe the same common point in Sebald’s work: they both emphasize that the discontinuity of time, which even allows the living to communicate with the dead, has a destabilizing role. It is not unusual for Sebald’s characters, when faced with the rediscovery of a trauma con-

⁴⁰ Wachtel (2010), p. 45. The interview was recorded on October 16, 1997.

⁴¹ The quote then goes on to add a central element in Sebald’s narrative (the use of photographs that punctuate the story): «A snapshot, he goes on, is a kind of eye or node of linkage between past and present, enabling the living to see the dead and the dead to see the living, the survivors» – Coetzee (2007), p. 134.

cealed for decades, to feel bewildered and disturbed. We saw above how Sebald himself reported such an experience when he came across a painting in Vienna. Angier then adds: «This vision of a world where time and space are different, or don't exist at all, returns in *Austerlitz*. There is deeply longed for, because it is inhabited by the lost dead; but again it is dangerous, and can drive you mad»⁴².

There is, therefore, a common element among some characters in Sebaldian prose: they have a trauma that remains submerged for some decades, until a certain event triggers a memory, a mnemonic impulse, that will be irreversible in their lives. Time, besides being discontinuous, can also be suspended. Referring to *Vertigo*, Sebald's first prose narrative, Angier points out:

What happens next? The narrator goes to the Engelwirt and takes a room where his family's living room used to be, and has his most vertiginous moment, in which remembered time and present time meet nowhere but in himself, and strand him someone between them, 'blurred as if he was in a fog'⁴³.

François Hartog, in his stimulating approach to Sebald's work, recalls a central episode in *Austerlitz*: that moment when the protagonist leaves Prague (to which he had gone to investigate the circumstances of his birth and childhood, in a journey full of difficult memories, connected to the tragedies of World War II) and gets on a train to Germany. It is a slow process of becoming aware of his own history⁴⁴.

Normally, says Hartog, trains, railroads, and stations are linked to the flow of time, or even to its acceleration. *Austerlitz* is different. The character, on his journey, reflects:

As the train rolled very slowly out of the station, through a passage between the backs of blocks of flats and into the dark tunnel running under

⁴² Angier (2021), p. 72.

⁴³ Angier (2021), p. 59.

⁴⁴ See Hartog (2013), pp. 200-208.

the New Town, and then I crossed the Vltava with a regular beat, it really seemed to me, said Austerlitz, as if time had stood still since the day when I first left Prague⁴⁵.

This disjointed aspect of time and the necessity to scrutinize decades of history so that the trauma of a past that is silently present comes to the surface illustrates, in retrospective prose, the drama of the catastrophes of the 20th century. In Hartog's words:

With W.G. Sebald, we find ourselves from the outset in a present that lasts or that does not pass, a halted time, resulting from a catastrophe that has taken place, but that he has not directly experienced, even if it is becoming increasingly clear to him that this is where he comes from⁴⁶.

The juridical consequence of perceiving a trauma that extends over time is to increase the capacity to hold states and individuals involved in extreme human rights violations accountable – as, for example, in cases of genocide. Only if the time of law is also 'suspended' is it possible to deal legally with such conducts. This is the underlying rationale of non-applicability of statutory limitations.

Sebald is an author of the 'second generation' of writers who deal with the war experience: even not living it directly, he was indelibly affected by the conflict, which, as we saw above from Angier's biography, generated a trauma. Sebald, recalling the circumstances in which his parents met, married, and started a family, connects these events to the career of his father, who was an officer in the Nazi army, and to the tragedy of the war, with its deportations, persecutions, and death rides.

The author then remarks: «At the end of the war I was just one year old, so I can hardly have any impressions of that period of destruction based on personal experience»⁴⁷. While Sebald was born in a small town in Bavaria, in a context protected from the atrocities of war, the conflict

⁴⁵ Sebald (2001), pp. 155-156.

⁴⁶ Hartog (2013), p. 200 (free translation).

⁴⁷ Sebald (2004a), p. 71.

claimed its victims. And there was the beginning of a long journey for the young Winfried Georg, facing the conspiracy of silence, to become aware of the experiences of that period in history. Reading books about the cities in which he lived and grew up, confronting photographs from that time, coming across old objects, the layers of historicity slowly emerge. Until finally the experience can be fully understood in its depth: «Such is the dark backward and abysm of time. Everything lies all jumbled up in it, and when you look down you feel dizzy and afraid»⁴⁸.

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⁴⁸ Sebald (2004a), p. 74.

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