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For decades, the rights of museums to house, exhibit, and research human remains, in particular those from Indigenous peoples collected during colonial times, has been questioned in many parts of the world. This debate has also reached the German museum community. In 2013, the German Museums Association (Deutscher Museumsbund, DMB) published the "Recommendations for the Care of Human Remains in Museums and Collections".

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At the end of that year, Larissa Förster and Sarah Fründt convened an interdisciplinary workshop to critically discuss these "recommendations". The results were later published, together with additional statements by international stakeholders.

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# Historisches Forum

21 • 2017

## Human Remains in Museums and Collections

A Critical Engagement with the "Recommendations for the Care of Human Remains in Museums and Collections" of the German Museums Association

Herausgegeben für H-Soz-Kult von  
Larissa Förster und Sarah Fründt



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Beiträge  
**Human Remains in Museums and Collections. A Critical  
Engagement with the „Recommendations“**

*by Redaktion H-Soz-Kult*

Tens of thousands of human remains – from bones to mummies, from modified pieces of hair to bodily organs – are part of museum and scientific collections at German institutions, and Germany is no exception in that respect. These human remains date from early human history to the 20th century. They are stored in the collections, some of them may be displayed publicly, and some are used for research on issues such as the development of civilizations, human migration, the spread of diseases, or human nutrition. The care for these human remains in collections at Berlin's Charité and other institutions spurred a debate surrounding the status of human remains and the respect and dignity they deserve to be treated with.<sup>1</sup> Ethical questions on human remains touch upon the status a society is giving to the remains of the deceased, and norms and values relating to the deceased. The issue is complex, even more so because many of these human remains were acquired as part of the European colonial expansion or under colonial rule, often against the wishes of indigenous societies. Ethics, law and science all play a part in the debate on human remains. Universities, research institutions, museums, municipal and governmental institutions as well as activist groups, representatives of Indigenous communities, and the media have an impact on the treatment of human remains in museums and scientific collections. Calls for the repatriation of human remains to their native societies from governments or NGOs have arisen more frequently in the 21st century, and have been met with very different responses.

In order to provide guidelines for the treatment of human remains and the decision-making on their possible repatriation, the German

Museums Association (Deutscher Museumsbund, DMB) in 2011 installed a working group on human remains. The results of the working group's deliberations, the (non-binding) „Empfehlungen zum Umgang mit menschlichen Überresten in Museen und Sammlungen“ („Recommendations for the Care of Human Remains in Museums and Collections“), were published in early 2013.<sup>2</sup>

The inevitable disparities and limitations of the generalizing „recommendations“ for decisions in individual cases should be analyzed in a broad dialogue in order to gain insight into shortcomings and options for further developments. This is what this discussion series „Human Remains in Museums and Collections. A Critical Engagement with the „Recommendations“ of the German Museums Association (2013)“ aims to do. The editors of H-Soz-Kult believe that this is a relevant discussion for the historical community, the social sciences, and cultural studies. When Larissa Förster (Humboldt University of Berlin) and Sarah Fründt (Freiburg University) contacted us and suggested to publish a series of articles they had convened, we were more than willing to do so. This discussion series is the result of their efforts, and we are thankful to them and to all of the contributors. We very much enjoyed working closely with them on this discussion series.

We commend Larissa Förster and Sarah Fründt for the quality of the contributions and for their truly international outlook. The complexities of the care for human remains become especially apparent in an international perspective: On the one hand, a comparison of the German „recommendations“ to similar documents in other countries can highlight the particularities of the process in Germany; on the other hand, human remains that became part of German collections as a result of colonial rule pose specific ethical problems and raise the question of repatriation. We will publish the thought-provoking articles over the course of the next few weeks and, as always, encourage our readers to comment on the discussion series.

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<sup>1</sup> Reinhart Kössler / Heiko Wegmann, Schädel im Schrank, in: Die Zeit 42 (2011), 13.10.2011, <http://www.zeit.de/2011/42/Schaedelsammlungen> (23.01.2017); Urs Willmann, Das Grab in der Vitrine, in: Die Zeit 19 (2013), <http://www.zeit.de/2013/19/mumien-museen-grab> (23.01.2017).

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<sup>2</sup> German Museums Association / Deutscher Museumsbund, 2013 Recommendations for the Care of Human Remains in Museums and Collections, April 2013. See [http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden\\_und\\_anderes/2013\\_Recommendations\\_for\\_the\\_Care\\_of\\_Human\\_Remains.pdf](http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden_und_anderes/2013_Recommendations_for_the_Care_of_Human_Remains.pdf) (23.01.2017).

## Editorial

by Larissa Förster, Sarah Fründt

Since the 1970s, the right of museums to house, exhibit, and research human remains, in particular those from Indigenous peoples collected during colonial times, has been questioned and fundamentally challenged in many parts of the world. As a result of this, one of the most important international guidelines for museum work, the „Code of Ethics“, initially published by the International Council of Museums in 1986, postulated that human remains and materials of sacred significance must be acquired, researched, displayed or returned „in a manner consistent with professional standards“ that takes „into account the interests and beliefs of the community, ethnic or religious groups from whom the objects originated, where these are known“ (art. 2.5., 3.7. and 4.3.).<sup>1</sup> The code also recommended that museums „should be prepared to initiate dialogues for the return of cultural property to a country or people of origin“ (art. 6.2). In 2005, after a long process of consultations, the UK Department of Culture, Media and Sport published a „Guidance for the Care of Human Remains in Museums“, turning the United Kingdom into the first European nation to profoundly engage with the topic. Two years later, the „United Nations Declaration of the Rights of Indigenous Peoples“ for the first time established the right to the repatriation of Indigenous remains „through fair, transparent and effective mechanisms developed in conjunction with the Indigenous peoples concerned“ on the level of international laws.<sup>2</sup>

<sup>1</sup> International Council of Museums (ICOM), Code of Ethics, 1986 (current version available at [http://icom.museum/fileadmin/user\\_upload/pdf/Codes/code\\_ethics2013\\_eng.pdf](http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf) (12.12.2016)).

<sup>2</sup> UK Department of Culture, Media and Sport, Guidance for the Care of Human Remains in Museums, 2005; United Nations, United Nations Declaration of the Rights of Indigenous Peoples, 2007; Deutscher Museumsbund, Empfehlungen zum Umgang mit menschlichen Überresten in Museen und Sammlungen, 2013, current version online at [http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden\\_und\\_anderes/2013\\_Empfehlungen\\_zum\\_Umgang\\_mit\\_menschl\\_Ueberresten.pdf](http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden_und_anderes/2013_Empfehlungen_zum_Umgang_mit_menschl_Ueberresten.pdf) (in German) and [http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden\\_und\\_anderes/2013\\_Recommendations\\_for\\_the\\_Care\\_of\\_Human\\_Remains.pdf](http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden_und_anderes/2013_Recommendations_for_the_Care_of_Human_Remains.pdf) (in English) (12.12.2016).

The German museum community has been somewhat slow with entering the debate, but it has recently started to catch up with international standards. In particular the heated debate on the return of Namibian human remains from the Charité University Hospital Berlin in 2011, but also repatriation requests from other countries, provided strong incentives for concerted action. In 2013, the German Museums Association (Deutscher Museumsbund, DMB) published the „Recommendations for the Care of Humans Remains in Museums and Collections“. Through this publication, compiled by a selected working group, the debate on the care and return of human remains of Indigenous people or those acquired under colonial circumstances finally reached German museums properly. There had already been a different set of guidelines in 2003, called „Recommendations for the care of specimens made from human tissue in collections, museums and public spaces“ and published by the Working Group on Anatomical Specimens in Collections.<sup>3</sup> However, this was aimed at collections holding human remains from the Nazi era, and mostly overlooked the issue of racist research in colonial times.

This forum publication is the result of a workshop in Cologne in November 2013 aimed at critically discussing the DMB „recommendations“. It was organized to combine the expertise of colleagues from various disciplines such as social and biological anthropology, anatomy, philosophy, history and art, and discuss the „recommendations“ that had been published only a few months earlier. All of the participants had made their own theoretical or practical experiences with the topic in the past, for example during the repatriations of human remains from Germany to Namibia, Australia, New Zealand and Paraguay between 2011 and 2014 or from Austria to South Africa in 2012. It was against this background that discussion proved to be most fertile as these experiences were used by all participants to critically engage with either certain parts of the „recommendations“, or terms and concepts employed in them. Each scholar presented a short impulse on some

<sup>3</sup> Working Group on Anatomical Specimens in Collections, Recommendations for the care of specimens made from human tissue in collections, museums and public spaces, 2003.

point he/she deemed worthy of discussion.<sup>4</sup> Thus, five to ten minutes of talk were followed by sometimes an hour of group discussion, juxtaposing practical, theoretical and empirical work done by participants with the ideas set down by the „recommendations“. Astonished by the potential for critical discussion and exchange this format provided us with, and thrilled by the new perspectives and insights it created, we now want to continue this discussion and at the same time broaden the circle.

In the following we want to present points of contention and ideas that we feel relevant and important for the debate on human remains in museums and institutions. This is an open invitation to scholars working on related topics as well as interested audiences to not only critically follow the „recommendations“ themselves, but also past, present and future provenance research and/or negotiations for the return and care of remains. Most of the processes are not standardized yet, so there is ample opportunity to critically engage with the topic and make sure that outcomes can be supported by all of us. Volker Rodekamp, then president of the DMB, ends his foreword to the „recommendations“ with the following quote: „We view these recommendations not as the end of the debate, but rather as its beginning“ (p. 5). We would like to take him by his word and make sure that the existing controversies do not remain hidden from the public eye, as it currently seems to be the case.<sup>5</sup>

For this very reason we are also very interested in the use of the DMB „recommendations“ as a point of reference for the development of individual guidelines by other institutions. As encouraged by the authors of the „recommendations“ themselves, by now some collections have published their own statements or standards for dealing with human

<sup>4</sup> Participants of the workshop were Margit Berner, Larissa Förster, Sarah Fründt, Brigitta Kuster, Markus Lindner, Ronja Metzger, Dirk Preuss, Eva Raabe, Regina Sarreiter, Dierk Schmidt, Katharina Schramm, Holger Stoecker, Estella Weiss-Krejci and Andreas Winkelmann. We would like to express our gratitude to those members of the group who were not able to contribute to this publication (mainly for timing reasons). Their input during the discussion was very valuable and we hope that their ideas are still reflected in our arguments.

<sup>5</sup> Cf. Wiebke Ahrndt, Introduction, in: *Museumskunde* 81,1 (2016), Positioning Ethnological Museums in the 21st Century, pp. 10-13.

remains in their collections. In our forum, colleagues from the Stiftung Preußischer Kulturbesitz and the Karl-May-Museum in Radebeul report the respective processes in their institutions and present the outcomes. Via the Fachgruppe Restaurierung (committee for conservation and restoration) of the DMB we also see the introduction of some aspects from their area of expertise that have apparently been overlooked in previous debates.<sup>6</sup>

Without anticipating too much of the critical debate to come, there is an additional concern we want to address with this platform, and we think this matters not only to us, but to a much wider audience: the curiously blank spot in the DMB „recommendations“ when it comes to an active dialogue with those countries, peoples, institutions and initiatives that are responsible for return requests. This omission is all the more remarkable because they not only have their own perspectives (which would feel crucial in such a discussion – if only to have another position to argue against), but also because many of them have years of experience with provenance research and restitution and thus might not only bring their perspectives, but also some interesting expertise to the questions at stake. As a first step we thus invited colleagues from South Africa, the USA, Australia and New Zealand to critically engage with the „recommendations“ and evaluate if they were indeed also useful guidelines for the international partners of German institutions and if they had the potential to make German institutions and processes more transparent. Their perspectives on the matter as well as ours are necessarily only a section of those existing globally and we sincerely hope that this forum will merely provide the starting point for a broader dialogue. The floor is open!

Last but not least we would like to mention that the process of finding suitable authors for this endeavor has not always been without difficulties. Several troubles had to be overcome, resulting in a much

<sup>6</sup> It is interesting to note that in the meantime the AG Restitution und Provenienzforschung (working group on restitution and provenance research) of the Fachgruppe Naturkundemuseen (section for natural history museums) of the German Museums Association has also produced a guideline for restitution and provenance research for natural history museums, in which they not only refer to NS-provenance but also colonial origin. Available at: [http://www.museumbund.de/fileadmin/fg\\_natur/DMB\\_Provenienzforschung.pdf](http://www.museumbund.de/fileadmin/fg_natur/DMB_Provenienzforschung.pdf) (12.12.2016).

later publication than originally anticipated. Human remains are a sensitive issue and talking about them can be troublesome or even painful. Additionally, there are often also political or diplomatic reasons to consider: while we write, several processes of repatriation are pending, for many of which the outcomes are far from being certain. Talking about them publicly always includes certain risks. We would thus like to express our honest gratitude to all our authors for their readiness to openly describe problems they see and to express their opinion on difficult matters. By doing so, they have positioned themselves in a potentially vulnerable spot, but we trust that their input will enhance and enrich the debate greatly.

### Postscript

All the essays in this volume were published in early 2017. They have not been edited since then. However, as the editors, we would like to point out that in the meantime some things have changed, and some cases, mentioned herein, have been resolved or at least developed in new directions. We would thus recommend seeing these documents as witnesses to the situation at the end of 2016.

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*Sarah Fründt has been working on sensitive objects in museums and more particular on repatriation and restitution debates since 2010. In 2011 she compiled a study („Die Menschen-Sammler“) asking how to deal with human remains in museums, and has since then pub-*

*lished several articles and chapters on various aspects of the topic. Additionally she edits a blog on „Museums and Responsibility“ [sens-mus.hypotheses.org]. Between 2013 and 2015 she co-conducted a study on „Restitution politics of German-speaking museums of ethnology since the 1970s“ at the Cluster of Excellency „Normative Orders“ in Frankfurt am Main. Her current affiliation is with the Chair of Science and Technology Studies, University College Freiburg, Freiburg University.*



## A Good Starting Point? Critical Perspectives from Various Disciplines

by Larissa Förster, Sarah Fründt, Dirk Preuß, Katharina Schramm, Holger Stoecker, Andreas Winkelmann

### Introduction

When the German Museums Association (Deutscher Museumsbund, DMB) published their „Recommendations for the care of human remains in German museums and collections“<sup>1</sup> in 2013 it was high time for such a document. Firstly, over the last decades, it had become urgently pressing for the German museum community to react to a growing demand for repatriation of Indigenous human remains from several countries. Secondly, there is now an increasing awareness of both museum curators and university scholars within Germany that human remains in museum collections are special objects that pose a number of questions and problems – even when only consisting of archaeological remains from local or regional excavations. Can and should these remains be displayed? Is it adequate to house them in museum storages without distinction from other objects? When looking at Indigenous remains, the issues have even broader implications: Is it possible at all to separate these remains from the colonial and racist circumstances under which they were collected? And what is an adequate reaction not only to the larger and smaller, direct or indirect atrocities committed in the past, but also to the current requests of Indigenous communities to respect their values, actively support them in reconciling the wrong-doings of the past, and above all, give the remains back to the communities where they have come from?

It is important to acknowledge from the beginning that the DMB „recommendations“ try to cover *all* human remains in museum collections. They are not a document specifically dealing with repatriation, but try to address various questions regarding the care and handling of

such remains in museum collections. They thus apply not only to skull collections from colonial times, but also to remains of archaeological origin within Germany, or to human tissue samples in pathological or anatomical collections. However, the most burning questions are the ones raised by international repatriation debates. Hence, this review will likewise be biased and concentrate on issues related to these discussions. This reflects not only the acuteness of respective debates, but also the wide range of diverse scholarly interests and experiences of the authors. In saying this, we would also like to explicitly invite other concerned scholars to look at this document from different perspectives and address other questions.

The „recommendations“ fall in three parts: an introduction addressing key terms and concepts used in the document; a collection of essays presenting background information from the various disciplines their authors come from; and the actual recommendations, comprising the four traditional fields of museum work (collecting, preserving, research, exhibiting) plus an additional sub-chapter on ‘return’.

The following review will concentrate on concepts and contexts detailed in the first two parts in order to investigate the premises on which the „recommendations“ are based and from which the more operational aspects detailed in part three are mainly derived. The „recommendations“ touch upon many significant and valid aspects concerning the handling of human remains. However, we will limit our analysis to the more contentious parts, and point to some general underlying problems of the text and the process of its compilation as well as to some lacunae.

### Genesis of the text – who speaks?

In the introduction, the German „Empfehlungen zum Umgang mit Präparaten aus menschlichem Gewebe in Sammlungen, Museen und öffentlichen Räumen“ (2003) and the UK „Guidelines for the Care of Human Remains“ (2005) are given as the most important reference documents. It is interesting to note that other soft laws or recommendations concerned with the care of human remains (such as the ICOM „Code of Ethics“ or „UNDRIP“) are only mentioned in passing. Recommendations or laws of the countries of origin in case of Indigenous remains,

<sup>1</sup> German Museums Association / Deutscher Museumsbund, 2013 Recommendations for the Care of Human Remains in Museums and Collections, April 2013. See [http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden\\_und\\_anderes/2013\\_\\_Recommendations\\_for\\_the\\_Care\\_of\\_Human\\_Remains.pdf](http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden_und_anderes/2013__Recommendations_for_the_Care_of_Human_Remains.pdf) (12.12.2016).

such as for example the Native American Graves Protection and Repatriation Act (NAGPRA) in the USA, which could equally have provided valuable insights, are missing entirely. It seems that the UK guidelines have been one of the main foundations of the „recommendations“ at least in terms of content and layout.<sup>2</sup>

However, there is a striking difference, not in terms of content, but of procedure. While the UK guidelines were established in a consultation process of several years, with a broad involvement of international experts and stakeholders hailing from different fields and backgrounds, resulting in a combined file of several hundred pages including nearly 50 submissions from external sources and still openly available for everybody interested, the DMB „recommendations“ seem to have been authored without the involvement of experts beyond those already being part of the working group. This is all the more surprising as various German museums have gone through negotiation and consultation processes with claimants of remains and in particular with governments in countries of origin in the years 2011–2014.<sup>3</sup> Not only would precise references to these processes and programmes have aided readers and appliers of the guidelines to situate cases and demands more accurately. It would also have helped to establish a collection of case studies on which further procedures and guidelines could have been developed. Additionally, consultation with stakeholders from countries of origin, be it government representatives or Indigenous people concerned, would not only have served to familiarize German museum staff with respective concepts, but would also have aided in establishing a scientific and personal network that could have been relied on during actual cases.

<sup>2</sup> International Council of Museums (ICOM), Code of Ethics, 1986, current version available at [http://icom.museum/fileadmin/user\\_upload/pdf/Codes/code\\_ethics2013\\_eng.pdf](http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf) (12.12.2016); UK Department of Culture, Media and Sport, Guidance for the Care of Human Remains in Museums, 2005, see <https://www.britishmuseum.org/pdf/DCMS%20Guide.pdf> (12.12.2016); United Nations, United Nations Declaration of the Rights of Indigenous Peoples, 2007, see [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (12.12.2016); Native American Graves Protection and Repatriation Act, see <https://www.nps.gov/nagpra/MANDATES/INDEX.HTM> (12.12.2016).

<sup>3</sup> Holger Stoecker / Thomas Schnalke / Andreas Winkelmann (Eds.), *Sammeln, Erforschen, Zurückgeben? Menschliche Gebeine aus der Kolonialzeit in akademischen und musealen Sammlungen*, Berlin 2013.

As it is, a great part of the „recommendations“ present themselves more as an outline of theoretical ideas than an applicable and practical guide for real-world scenarios.

Even within the DMB working group, the actual consultation processes seem to have fallen short. While there are several discipline-specific background essays, no real attempt is made to actually combine and reconcile the individual points made. With the mere juxtaposition of these chapters, conflicting views and interests of the disciplines involved – for example physical anthropology and cultural/social anthropology – are neither addressed nor explained, but rather circumvented. A particularly striking example is the concept of „provenance“, which could have been addressed differently by several disciplines. Not only is the term never really defined, but the „recommendations“ also seem to limit their understanding of „provenance research“ primarily to methods based on the natural sciences. However, as we know e.g. from the Charité Human Remains Project, historical provenance research can be much more time-consuming, but also more effective in terms of identifying named individuals than bio-anthropological provenance research. An ethnological perspective on provenance research might include concepts such as oral history, or the use of fieldwork to learn more about opinions in respective communities of origin. For most museums involved in repatriation processes so far, a major problem has been to reconcile three sets of evidence which sometimes have no clear overlap or even contradict each other: findings based on anthropological research (anthropometry, isotope analysis etc.), evidence gained from historical written records, and evidence brought about by Indigenous claimants often based on oral tradition or other forms of knowing. A chapter on diverse methods for provenance research, their advantages and disadvantages, but also their purposeful combination, would thus have been very helpful. This could also have drawn on experiences made during Nazi-era provenance research and should certainly have addressed in more detail how the individual identification, regional/ethnic identification or difficulties to establish any provenance at all, affect museum work and any return cases. Obviously, the disciplinary composition of the working group led to a rather selective provision of background information. Therefore, it neither acknowledges the importance of his-

torical research and expertise, nor of interdisciplinary and international research projects. However, such an acknowledgement would certainly be a prerequisite for convincing governing and funding bodies of museums to invest in time-consuming historical provenance research, even more so when done proactively as called for implicitly on p. 49.

### **“Ethnological Relevance” (Chapter 3.3)**

The oftentimes vague and generalising statements made in the background chapters are revealed in particular when looking at the shortcomings of the essay on „The Ethnological relevance of human remains“. Firstly, the chapter’s tone is irritatingly universalising, e.g. when the European Enlightenment is deemed a „system of world knowledge, which although developed from a European perspective, is universally valid“ (p. 29). Secondly, it sets Western/European cultures against non-Western/non-European cultures – an ahistorical, dichotomising view abandoned in contemporary museological literature as well as in recent literature on the history of globalisation and colonisation. While a lot of insights can be gained from the variety of social and cultural practices detailed in this chapter, no reference is given to precise cases and/or case studies, in particular such published after 2003 (!) or such referring to the current debates and negotiations on the care and the return of human remains from European museums to their countries of origin (although especially on the respective programmes of New Zealand, Australia, and the USA an extensive selection of literature has been published). Neither have „emic views“ been included in the lengthy description of „ethnological relevance“, nor are genuinely ethnographic methods relevant for provenance research, e.g. oral history research, introduced here. We have tried to address both shortcomings by our selection of authors for this volume, all of which are familiar with precise cases or case studies, but also with the relevant discussions in the respective national contexts.

### **Definition of Human Remains**

The „recommendations“ concentrate on human remains, which are defined on a purely material basis to include everything made of human „material“, be it bones, hair, nails, skin, etc. While this might make sense at first sight, especially in light of the title of the „recommendations“,

it creates several problems in practice. To name but a few: hair, nails or bone can be included in material objects, as for example in the case of bone daggers, without carrying any specific significance. In some cases, these inclusions do create something more than just a profane object, but the difference and thus any judgement cannot be made with a profound knowledge on the specific context. On the other hand, objects not made of human material can receive the same cultural treatment as actual human remains, as for example in case of over-modelled heads from New Guinea, which usually, but not always have a real bone inside. Likewise, a wig might be similar to a scalp when looking at the material, but their meanings are very different. And it becomes even more complicated when looking at other so-called sensitive objects, such as anthropometric photos, casts, or audio-visual recordings, which although not actually being made from human „material“, often carry the same or at least a very similar meaning to descendants. They were usually collected or recorded in much the same conditions as e.g. skulls, and thus refer to contexts, in which people could not object against the data being taken. They were also used for the same type of racial and typological research. Additionally, images, casts, or recordings seem to carry the personality of the individual much better and much more immediate, than a bare bone. Yet, they are deliberately excluded (p. 9). The same holds true for grave and burial goods although from many perspectives, they belong to the remains they were interred with and are often covered by the same regulations (as for example in case of the US-American NAGPRA).

There are certainly good and understandable reasons for a strict limitation to „testable material“ (instead of opening the field to meaning, symbolism, or cultural interpretation). But why do the „recommendations“ not give an outline of their decision-making process, thus explaining and reflecting their restraints? Without widening the scope of the „recommendations“, this would have served to introduce users and readers of the document to the complicated and much wider field of sensitive objects, which they might be confronted with during a real-life repatriation case, when – as the examples above indicate – the boundaries start to blur.

### “Context of Injustice”

„Context of injustice“ is one, if not the most central term both in the „recommendations“ as well as for their application. If objects in collections, which are partly or fully comprised of human remains, are derived from a „context of injustice“, their use in research and training, their presentation in museums, and their transfer from other collections will be rejected (p. 24, 50, 58f). A „context of injustice“ is likewise pivotal for their restitution (p. 60f., 66). The „recommendations“ thus establish the existence of a „context of injustice“ as the main criterion for deciding how to deal with the actual objects in the future.

However, what does „context of injustice“ even mean? At first sight the term appears succinct and morally unequivocal. It promises sensitivity for past wrongs and invites spontaneous approval in everyday politics. Nevertheless, the way it is used in the „recommendations“ actually produces significant problems:

1. „Contexts of injustice“ are understood as incidents in which either an injustice was committed against the person „from whom the human remains originate“ (p. 10) or during the acquisition of the objects in question. The production of injustice by using human remains in problematic (i.e. racist) research, not only conducted against the wishes of the deceased, but also to their great disadvantage when used to „scientifically prove“ their „inferiority“, is not included. Explanatory examples only illustrate *ex negativo* which cases cannot be considered a „context of injustice“. In consequence, the term remains diffuse and does not provide the reader with any orientation in actual and often very ambiguous cases. The use of the comparative „clear contexts of injustice“ (p. 56), shows that the working group was aware of the term’s fuzziness, however, this term is likewise lacking definition as regards content.

2. If „contexts of injustice“ are postulated, logic requires the parallel existence of just contexts of acquisition for human remains. The question whose legal systems or concepts could or should be used to evaluate individual cases of acquisition during colonial times (i.e. past European/national, colonial, Indigenous, current, international) is raised (p. 10 f.), but it is not followed by any recommendation for a specific action.

3. Via its semantic and contextual connections the term „context of injustice“ suggests legal and ethical relevance. However, according to the „recommendations“, it is „not a legal term or an established ethical concept“ (p. 10). If the term can neither be understood legally nor ethically – what else does it refer to? It is even completely obscure on what legal/systematic, ethical or practical level the working group locates the „context of injustice“.

4. According to the „recommendations“ it is the owners’ duty to check their collections for potential „contexts of injustice“ (p. 10). They are thus simultaneously assigned the role of both „defendant“ and „judge“. In practice, this concept is prone to produce problems in controversial cases rather than to solve them.

The term „context of injustice“ as it is used by the „recommendations“, appears to be a formulaic compromise between tendencies in museum politics represented in the working group. It lacks binding character and in practice leaves significant room for those in charge of collections to both legitimize a restitution as well as to avoid it. For the analysis and evaluation of specific historical contexts of acquisition in cases of repatriation requests or provenance research, it is only marginally useful. At most it can serve as an appellative reminder for those in charge of collections that a myriad of problematic acquisition contexts existed during colonial times, and legitimate restitution against criticism by museums’ and collectors’ circles. For „requesting parties“ from outside the collections, as for example in the case of Namibia, colonial rule is considered a context of injustice anyway.

Related to the „context of injustice“, the concept of the 125 years as a form of threshold for repatriation could also be discussed. However, as this is mentioned by several of the international authors in this volume, we deliberately refrain from addressing this problem here.

### Ethical Principles (Chapter 3.5)

This chapter joins the „recommendations“ view not to function „as the end of the debate, but rather as its beginning“ (p. 5). Consequently, the authors say in advance that their „considerations do not represent a final commentary on the issue described, but are rather a snapshot of the ethical debate on the handling of human remains“ (p. 42). This is a le-

gitimate limitation. Unfortunately, the reader is not given the promised snapshot. The wide range, the depth and the complexity of the current moral philosophical debate on the handling of human remains are not recognizably included, even though in the German-language context, an intensive discussion on exhibition and examination of mummies exists since the 1990s and the find from the Hauslabjoch ('Ötzi').<sup>4</sup> In the Anglo-American literature the ethical debate is more extensive and long-standing.<sup>5</sup> Both are neither described by the chapter's content nor by the selected sources and further reading.

Instead, the chapter aims to combine ethical and legal considerations and looks for an approach within the „sphere of (legal) ethics“ (p. 42). This seems surprising, since the previous chapter has pointed out that law „does not provide any clear answers“ (p. 30) to the upcoming questions. Furthermore, the reference to the German law and court ruling is not helpful to the solution of ethical (and often transnational) cases – the question of ethical „legitimacy“ cannot be solved by looking at issues of „legality“ only, in particular in a transnational context. Additionally, the chosen starting point of argumentation from the philosophy of law is controversial – it can seriously be called into question that the reference to human dignity and the dichotomy between subject and object shows the way how we can settle the moral status and resolve the handling of human remains adequately.<sup>6</sup>

In fact, the „pluralism of values“ (p. 45) is the truly challenging ethical question. From ancient times, the different handling of corpses serves as a prime example of (supposed) relativism. A real moral philosophical concept how to treat this pluralism is not offered by these considerations.

<sup>4</sup> Cf. as a starting point Frank Höpfl / W. Platzer / K. Spindler, *Der Mann im Eis*. Bd. 1, Innsbruck 1992.

<sup>5</sup> See for example the on-going discussion on posthumous rights of and our obligation to the dead in the *Journal of Applied Philosophy* since the 1980s.

<sup>6</sup> Cf. for example Hans-Konrat Wellmer / Gisela Bockenheimer-Lucius (Eds.), *Zum Umgang mit der Leiche in der Medizin*, Lübeck 2000; or the journal edition *Deutsche Zeitschrift für Philosophie* 56,1 (2008).

## Conclusion

The „recommendations“ of the DMB are an important document for the German museum community. They have set the stage for fundamental changes in how museums perceive their collections of human remains, and hopefully also, for how they deal with repatriation requests. They emphasize pro-active provenance research, acknowledge the importance of up-to-date inventories, openly address all museums and collections, and at least verbally encourage museum and collection staff to consider repatriation. We have listed some of their shortcomings, which we think will have to be addressed in future editions of these „recommendations“. Nevertheless, we do concede that while there are countries with more progressive developments in this field, Germany does by no means trail behind in global terms. The coming years will show if the „recommendations“ can unfold their potential. This set of essays certainly gives enough stimuli for constructive discussion.

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ised several restitutions of human remains to Indigenous communities. His current affiliation is with the Institut für Anatomie, Medizinische Hochschule Brandenburg – Theodor Fontane, Neuruppin.

## A Helping Hand? Comments on the „Recommendations“

by Michael Pickering

### Introduction

This essay comments on the „Recommendations for the Care of Human Remains in Museums and Collections“ by the German Museums Association (Deutscher Museumsbund, DMB; in the following, „recommendations“)<sup>1</sup> from an Australian perspective and with a very specific focus on the repatriation of indigenous human remains. It is argued that Australian experiences, in a wide range of Aboriginal and Torres Strait Islander heritage issues, provide formal precedents that would inform, support, and fast track the repatriation of remains by overseas institutions.

The rights of Indigenous Australians have been subject to considerable scrutiny over many years, resulting in significant legal outcomes, in particular in the area of Land Rights and Native Title rights. The complex processes through which Indigenous people must pass to gain acknowledgement of legal rights also results in a testing of cultural rights. While many would legitimately argue that Indigenous belief systems should not be subject to testing through ‘foreign’ legal and anthropological processes, nonetheless, for agencies unfamiliar with the complexities of foreign Indigenous cultures, a starting point of reference may be tested legal and governmental processes that have resulted in the formal recognition of claims of identity and associated cultural mechanisms by the ‘nation/state’.

When dealing with requests from Australian Aboriginal and Torres Strait Islander people (and, no doubt, other Indigenous people,) ‘foreign’ agencies and researchers, that is those that are not Australian, invariably draw upon their own experiences. Sometimes these are codified as state laws, and as such are inviolable. Sometimes however, they are simple museums industry, professional, or individual policy or opinions, and

as such should be flexible to change in the face of new information. I have written previously<sup>2</sup> on the problem when professions or agencies draw their advice from a closed circle. For example, the ethics of Australian anthropologists are primarily developed by Australian academically-based anthropologists who have worked under, and been informed by, Australian Government laws or policies. Their particular codes of ethics are thus suited to the Australian Indigenous, and often political and judicial, context, but perhaps not so much to an international context. Similarly, Australian Archaeologists will develop an ethical code developed from Australian experiences. Both Australian archaeologists and anthropologists deal with heritage in the context of cultural site protection and legal processes such as native title claims. The two disciplines do not, however, come together to reconcile their codes of ethics and conduct. Other disciplines, and institutions, are no different, preferring to go-it-alone, but sometimes it is useful to draw on advice and experience from outside one’s own conventional social, cultural, and professional domains, including experiences from professionals and agencies in other countries. This opinion is reflected in the „recommendations“ own observation that “[v]ery different branches of science are concerned with human remains, and in many cases little information is exchanged between them” (p. 7). Indeed, sometimes very little information is exchanged *within* them. For example, few consulting bioanthropologists, engaged in provenancing work, will share their data with other bioanthropologists.

Following some general comments about the „recommendations“, this essay will argue that the Australian experience can inform the „recommendations“ in the area of pragmatics and practice and in the way the „recommendations“ are implemented, particularly in the area of recognition of claimant groups, the expansion of criteria of affiliation, and the ‘context of injustice’ (There are a number of other themes that I would enjoy commenting on; however, given a word limit, I have chosen those I see to be most problematic).

<sup>1</sup> German Museums Association / Deutscher Museumsbund, 2013 Recommendations for the Care of Human Remains in Museums and Collections, April 2013. See [http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden\\_und\\_anderes/2013\\_Recommendations\\_for\\_the\\_Care\\_of\\_Human\\_Remains.pdf](http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden_und_anderes/2013_Recommendations_for_the_Care_of_Human_Remains.pdf) (12.12.2016).

<sup>2</sup> Michael Pickering, Dance through the minefield. The development of practical ethics for repatriation, in: Janet Marstine (Ed.), Routledge Companion to Museum Ethics, London 2011, pp. 256-274.

As the „recommendations“ foreword states, „We view these recommendations as not the end of the debate, but rather as its beginning.“ (p. 5) The real test of the „recommendations“ will, of course, be in their implementation and practice, and if and how they evolve through being informed not only by German experiences but also by the experiences of other Indigenous groups, people, and agencies.

### General Comments

By way of a general consideration of the „recommendations“, I commend them. They clearly demonstrate and promote respect for the dead and sympathy for the relatives and cultural affiliates of the deceased. Of course, sympathy does not mean automatically conceding to the requests of the affiliates. It does, however, recognise the right of respect for their beliefs. This sympathy and respect is also written in a conciliatory voice, and not hidden behind cold corporate ‘policy-speak’. All the contributors are to be thanked for the sympathetic ‘voice’ in their contributions.

The „recommendations“ are very readable – important when the readership is likely to be broad and from a variety of fields. The „recommendations“ also address pertinent issues in contemporary museum philosophy and practice applicable beyond the primary aim of managing human remains. They acknowledge changes in the way museums view and make collections, in public attitudes, and in the nature of cultures and their right to a contemporary voice. This is achieved through providing excellent appraisals of the historical, cultural, legal, ethical, and practical aspects of remains management. Indeed, if I were teaching museum studies in any part of the world, I would eagerly seize upon this document as a study resource, with a focus on comparing it with other policies and protocols on the management of human remains. I believe it would be a leader in the field. I encourage its use as a resource.

That said, I have quite specific issues I wish to address, probably best described as ‘criteria’. These criteria are not ‘wrong’, but they are characterised by being narrow interpretations. I hope to expand on them through reference, not just to my professional opinion, but also to externally tested interpretations.

I must note that I am not formally trained in either Australian or German law, and my broad interpretations are my own. Further, I will ignore conventions of full reference to the „recommendations“ in the belief that readers will be aware of them and in order to reduce the length of this essay.

### The Background

The starting point for any further discussion must be the acknowledgement of the rights of Indigenous people to be recognised as independent cultures, with their own suite of laws and values. Their legal sublimation under the grater nation/state does not extinguish their internal cultural systems. As noted earlier, there is a (what I believe) legitimate opinion that the beliefs of Indigenous peoples should not have to be ratified by the laws of the ‘nation/state’ by which they are governed in order to be accepted. Ideally, the first point of call, and the ultimate authorities over applicable cultural phenomena and beliefs, should be the claimant group itself. It has been the Australian experience that meeting and talking with repatriation claimants on their own country and with an attitude of mutual respect has greatly facilitated repatriation.

Nonetheless, it must be acknowledged that not all, indeed very few, agencies – especially those from outside of Australia – will be comfortable with dealing directly with Australian Aboriginal and Torres Strait Islander people without some form of Australian/state government mediation or assistance, either by physical presence or by legal/legislative framework. Indeed, the „recommendations“ (p. 65) refer to a preference for working with claimants who are recognised under international law, that is, by the state. The reasons are valid, and probably simply summarised as fear of making a mistake.

In Australia, western legal processes have been applied to see if Indigenous beliefs have any validity in western law. They are not necessarily tested to see if they have any validity under Indigenous law, nor are the final decisions based upon this value. There are some exceptions, though more in the interpretation by the judiciary than by a legal clause in the legislation. The „Northern Territory Land Rights Act“



(1976)<sup>3</sup>, for example, recognises sacred beliefs as a basis for claims to land, while the „Native Title Act“ (1993)<sup>4</sup> will allow evidence of cultural practices as an aspect of claims to land.

Legal determinations of applicable cultural values and rights are based upon rigorous testing of cultural evidence presented to a commission or court. In the context of repatriation research, the ultimate determination itself – typically whether the claimants are entitled to the land claimed under western property laws – is not as important as the cultural phenomena that will be tested and acknowledged during the course of the judicial process. In claims to land based on cultural phenomena, a group could be solidly identified as having traditional affiliation to the land, but their rights to that land, as property, could be found to have been extinguished by western laws of property tenure. It is entirely feasible that a claimant group will be unsuccessful in their claims for the return of traditional lands, yet their identity tested and acknowledged by the inquiry. These outcomes of process are relevant to repatriation. The judicial findings provide the foundation for the establishment of Indigenous representative bodies, such as land councils, land trusts, ‘Prescribed Body Corporates’ and others, that will have formal responsibility for ownership of lands and management of social and cultural heritage.

### The Repatriation Movement

A passing point perhaps, but a significant one, is the „recommendations“ statement that, „Since the year 2000, various ethnic groups have been increasingly calling for the return of the human remains of their ancestors...“ (p. 17). This statement may be seen as having the implicit message that calls for the return of remains have emerged as a recent political rights-based agenda, rather than as a heartfelt call for the return of remains of cultural ancestors and family. In Australia, at least, this call has been going on for much longer. The initial removal of remains

<sup>3</sup> Australian Government 1976 Northern Territory Aboriginal Land Rights Act (1976), see [http://www.austlii.edu.au/au/legis/cth/consol\\_act/alrta1976444/](http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/) (12.12.2016).

<sup>4</sup> Australian Government 1993 Native Title Act (1993), see [http://www.austlii.edu.au/au/legis/cth/consol\\_act/nta1993147/](http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/) (12.12.2016).

was often strongly opposed<sup>5</sup>, but it was only in the 1980s that it came to the notice of the wider public both through media and a more visible Indigenous activism. The call for the return of remains is thus neither a new thing, nor is it only political.

### The Recognition of Claimant Groups and the Criteria of Affiliation

In identifying the criteria for eligibility of claimants for the repatriation of remains, the „recommendations“ focus heavily on the concept of biological descent (e.g. pp. 39, 51, 64). The demonstration of a direct genetic link is a common (though not exclusive) requirement of agencies unfamiliar with some Indigenous systems of affiliation (for example the British Museum<sup>6</sup> and the British Museum of Natural History<sup>7</sup>), and with some governments’ official acknowledgement of those mechanisms of affiliation. However, the focus on genealogical affiliation is a purely western criteria and one that does not reflect an Indigenous reality. Indeed, it is a belief amongst some repatriation advocates, that the demand for genetic evidence is a strategy to deliberately avoid repatriation, or to surreptitiously acquire DNA samples under the guise of assisting in repatriation.

In Australia, the importance of other non-genetic criteria as providing affiliation to lands and associated heritage, such as sacred sites, archaeological sites, animal and plant resources, and, inherently, responsibilities for the dead associated with those lands (a grave site is a sacred site!), has been repeatedly recognised and modified through Australian judicial processes. For example, the „Aboriginal Land Rights (Northern Territory) Act“ legislation introduced by the Australian Government in

<sup>5</sup> Paul Turnbull, Indigenous Australian People, their defence of the dead and native title, in: Cressida Fforde / Jane Hubert / Paul Turnbull (Eds.), *The Dead and Their Possessions: repatriation in principle, policy and practice*, London 2010, pp. 63-86; Paul Turnbull, Anthropological Collecting and colonial violence in Colonial Queensland: a response to ‘The Blood and the Bone’, in: *Journal of Australian Colonial History* 15 (2015), pp. 133-158, <http://search.informit.com.au/fullText;dn=430109005968762;res=IELIND> (12.12.2016).

<sup>6</sup> British Museum, 2013 British Museum Policy: Human Remains in the Collection, see <https://www.britishmuseum.org/pdf/Human%20Remains%20policy%20July%202013%20FINAL.pdf> (12.12.2016).

<sup>7</sup> British Natural History Museum 2010 Policy on Human remains, see [http://www.nhm.ac.uk/resources-rx/files/110523nhm\\_human-remains-policy-2010-update-final-98153.pdf](http://www.nhm.ac.uk/resources-rx/files/110523nhm_human-remains-policy-2010-update-final-98153.pdf) (12.12.2016).

1976, originally defined traditional Aboriginal owners as: “in relation to land, means a local descent group of Aboriginals who:

- (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and
- (b) are entitled by Aboriginal tradition to forage as of right over that land” (Schedule 1, Part 1 Section 3. ALRANT 1976).

The ‘local descent group’ originally meant descent through the patriline, in other words, genetic descent. However, through the repeated testing of forms of affiliation through the *Land Rights Commission* process – a process less rigid than formal court proceedings but still judicial – it was proven repeatedly that other legitimate forms of affiliation existed. As Neate noted: „The definition, and each component of it, has been examined, tested, discussed and debated. As land claims have been dealt with, the limits of its scope have been explored. Notions of anthropological orthodoxy have been put to one side in order to apply the words of the Act to particular sets of circumstances. The definition has been shown to have an unexpected flexibility.”<sup>8</sup>

Various proceedings have identified other mechanisms for affiliation, including: patrilineal descent, matrilineal descent, adoption, ‘acknowledged’ descent, conception, birth, long-term residence, marriage, ritual knowledge, use of lands and resources, religious knowledge, burials of family members, historical knowledge, fulfilment of social obligations and responsibilities, participation in territorial defence, protection of significant religious and historical sites and places, migration, and community acknowledged rights of succession, amongst many others.<sup>9</sup>. As a general principle, the more criteria a person can satisfy, the stronger their claims to lands.

<sup>8</sup> Graeme Neate, *Aboriginal Land Rights Law in the Northern Territory* Volume 1, Chippendale NSW 1989, pp. 82-87, p. 89.

<sup>9</sup> Neate, *Aboriginal Land Rights Law in the Northern Territory*; Nicholas Peterson / Ian Keen / Basil Sansom, *Succession to land: primary and secondary rights to Aboriginal estates*, in: Official Hansard report of the Joint Select Committee on Aboriginal Land Rights in the Northern Territory, Canberra 19 April 1977. Government Printer: 1002-1014; Nicholas Peterson, *Australian Territorial Organization*. Oceania Monograph 30, Sydney 1986, pp. 145-147; Justice Olney, *Garawa/Mugularrangu (Robinson River) Land Claim*. Australian Government Publishing Service, Canberra 1991.

This widening of definitions has influenced later legislation at the internal state and territory levels, which have also acknowledged the broader mechanisms for affiliation and rights. For example, the „Northern Territory Aboriginal Sacred Sites Act“ (2013)<sup>10</sup>, Northern Territory Legislation that must articulate with the ALRANT, identifies (Aboriginal) Custodians as: “**custodian**, in relation to a sacred site, means an Aboriginal who, by Aboriginal tradition, has responsibility for that site and, in Part II, includes a custodian of any sacred site“ (1.3).

The significant statement is that the defining criteria of a custodian is determined “by Aboriginal tradition“. Aboriginal tradition is defined by the ALRANT Act 1976, which states: „Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.“ (ALRANT, Schedule 1 Section 3)

The Australian Government’s „Native Title Act“ (NTA) from 1993, continues this recognition of traditional rights, guiding the judicial body to take into consideration the following „Criteria for Making Arbitral Body Determinations“:

“(1) In making its determination, the arbitral body must take into account the following:

- (a) the effect of the act on:
  - (i) the enjoyment by the native title parties of their registered native title rights and interests; and
  - (ii) the way of life, culture and traditions of any of those parties; and
  - (iii) the development of the social, cultural and economic structures of any of those parties; and
  - (iv) the freedom of access by any of those parties to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions; and
  - (v) any area or site, on the land or waters concerned, of particular sig-

<sup>10</sup> Northern Territory Government, 2013 Northern Territory Aboriginal Sites Act 2013, see [http://www.austlii.edu.au/au/legis/nt/consol\\_act/ntassa453/](http://www.austlii.edu.au/au/legis/nt/consol_act/ntassa453/) (12.12.2016).

nificance to the native title parties in accordance with their traditions". (NTA Division P, Section 39)

The fact that most judicial determinations in the ALRANT Act 1976 and the later NTA Act 1993 (plus others in between) are in relation to property rights in land is irrelevant. What is relevant is that the determinations have clearly acknowledged more complex mechanisms of affiliation to cultural rights other than just genetic descent. The Australian recognition of cultural phenomena as bestowing certain rights legally recognisable by an Australian court and, by default, by Australian institutions such as museums, is significant.

The message with regard to the „recommendations“ is hopefully clear. The Australian Government recognises that cultural phenomena, other than just genetic descent, bestows recognisable rights. So too should the „recommendations“. As noted earlier, there is a sympathy to the recognition of such rights throughout the „recommendations“. However, in practice overly cautious researchers will typically adhere to the stricter parameters of the „recommendations“. Flexibility in interpretation, drawing from the formal experiences and positions of the state of origin of the remains, should be encouraged, if not through the „recommendations“ themselves as they currently stand, then in any subsequent ‘practice directions’ that might be developed.

### „Context of Injustice“

The next major area of interest is in the concept of a ‘context of injustice’. There is no argument against this criterion, rather the aim here is, again, to advocate for an expansion of the definition. Inherent in the „recommendations“ narratives is that these are the remains of people who have died by acts of violence. This also impacts on the suggestion of a ‘cut off’ period of 125 years (e.g. pp. 11, 48, 54, 63) after which an emotional affiliation to a deceased ancestor fades. I suggest that a ‘context of injustice’ can have a wider definition, to include any remains collected under a colonial regime in which explicit inequities in the balance of power between Indigenous peoples and colonisers existed.

Under such a definition, a ‘context of injustice’, would begin from first occupation by a colonial power. The situation in Australia was that the collection of remains, without permission of the Indigenous habits

and directly in violation of traditions, began immediately with first settlement in 1788. Throughout Australia’s colonial history, remains were taken from gravesites, from massacres sites, from hospitals, asylums and prisons. The history of unauthorised, and illegal, collection is well documented.

A number of authors also recount having purchased remains. To the unfamiliar reader this would convey the idea of free trade, occurring with free and informed consent of seller and buyer, and therefore a legitimate transaction in which title is acceptably transferred. However, close examination of the historical contexts of such transactions invariably reveals them to be fraught with complications. For example: the seller was impoverished and starving, and the need for food and commodities encouraged a violation of tradition, or the buyer was a holder of some position of authority over the seller, and refusal to sell could result in sanctions. For example, Hermann Klaatsch, a collector of remains that wound up in German institutions, writes of collecting the remains of a mummified individual where „The negotiations with the relatives for the possession were difficult but successful“. <sup>11</sup> Klaatsch had purchased the remains through providing food and clothing, but the distressed female relatives still wanted the remains back, and cried and pleaded for their return, to no avail.

There are also cultural phenomena that would allow for the undesired selling or gifting of remains. The concept of ‘demand sharing’ is common in Australian Aboriginal and Torres Strait Islander societies. This is a process by which a person is obliged to concede to the demands of kin. <sup>12</sup> The practice of bestowal of a kinship classification on outsiders (to allow interaction with them) also imposes those cultural protocols. A European could thus demand an item, including remains, from a

<sup>11</sup> Hermann Klaatsch, Some Notes on Scientific Travel Amongst the Black Populace of Tropical Australia in 1904, 1905, 1906, Report of the Eleventh meeting of the Australasian Association for the Advancement of Science, Vol. 2 (1907), p. 578. Cited in: Paul Turnbull, Anthropological Collecting and colonial violence in Colonial Queensland: a response to ‘The Blood and the Bone’. Journal of Australian Colonial History Vol 15 2015Pp 133-158. <http://search.informit.com.au/fullText;dn=430109005968762;res=IELIND> (12.12.2016)

<sup>12</sup> Nicolas Peterson, Demand Sharing: reciprocity and the pressure for generosity amongst foragers, in: American Anthropologist New Series 95/4 (Dec., 1993), pp. 860-874.

person with whom they had a classificatory kinship relationship. For example, Alfred Haddon had a very close relationship with Maino, a senior Torres Strait Islander. Haddon reports:

„Although pretty against the grain Maino gave me the headdress his father King [Kebisu] used to (sic) when on the warpath and a boars tusk ornament (!) he used to stick in his mouth to render his appearance yet more terrible. Like a true gentleman Maino did not let me know of his reluctance to part with these mementos of his famous father until the next day ...“.<sup>13</sup>

In certain areas, such as the Torres Straits, remains could be traded in a cycle of ritual exchange. Nonetheless, such trade was within a closed network, and it was always known where the remains would be. The advent of Europeans trading remains for commodities was thus in keeping with a local tradition. The permanent removal of the remains to an invisible destination was not.

The removal of remains against the wishes of Indigenous people, plus their protests at the removal of remains, is well-documented through the colonial period and well into the 20th century, as is the violence perpetrated against them throughout these years.<sup>14</sup> It was only in the late 1960's that Aboriginal people began to be empowered in a way that permitted them to pursue the return of remains. The Australian colonial period itself, from 1788 until at least 1967<sup>15</sup>, thus stands as a potential 'context of injustice' with regard to the collection of remains.

## 125 Years

The historical period of collecting also impacts upon the notion of a 125 year period for memory of remains. Admittedly, this is proposed

<sup>13</sup> Alfred Cort Haddon, Torres Strait fieldwork journal, unpublished, Cambridge University Library HP papers, 1888, p. 66.

<sup>14</sup> Cressida Fforde, *Collecting the Dead: Archaeology and the Reburial Issue*, London 2004; Paul Turnbull, *Indigenous Australian People, their defence of the dead and native title*; British Museum, 2013 British Museum Policy: Human Remains in the Collection; Michael Pickering, *Where are the Stories?*, in: *The Public Historian* 32/1 (2010), pp 79-95.

<sup>15</sup> From 1788 to 1901, Australia was a group of British colonies. In 1900, Australia federated into the current nation. It was not until 1967 that Aboriginal and Torres Strait Islanders gained equal rights in the eyes of the Australian Government.

by the „recommendations“ only as a suggested time frame. However, as noted above, it does not take much for such guiding principles to become inflexible and established as dogma (e.g. the British Museum Policy<sup>16</sup>, Section 4.1, 4.4, 5.12, 5.16, 5.17).

Aboriginal people do have memories of injustices that occurred over 200 years. They do remember such individuals as Pemulwuy<sup>17</sup>, who was killed and his skull sent to England in 1802, Carnambaygal, killed in 1816<sup>18</sup>, and Poltpalingada, Wunamachoo, and Bokalie, whose remains were stolen after their deaths at the turn of the 19th century and sent to Edinburgh University<sup>19</sup>; Natcha<sup>20</sup>, Jandamarra<sup>21</sup>, and Truganini<sup>22</sup>, amongst many others, named and unnamed, with and without living descendants. These people remain important to Aboriginal and Torres Strait Islander peoples.

People also remember the grave-robbing, which was the major source of Indigenous remains in museum collections. Even when the name of the individual is unknown, the entitlements for the dignified and continued rest of the individual remain as cultural values.

Further, since first colonisation, names and genealogies have been collected. These documents have been crucial to land claims and native

<sup>16</sup> British Museum, 2013 British Museum Policy: Human Remains in the Collection.

<sup>17</sup> Daily Mail, *Elders seek prince's help with finding ancestor Pemulwuy*, January 15 2010, see <http://www.dailytelegraph.com.au/news/national/elders-seek-princes-help-with-finding-ancestor-pemulwuy/story-e6freuzr-1225819689145> (12.12.2016).

<sup>18</sup> Vera Bertola, *Ancestors to rest in peace in their homeland of Appin*, in: *Macarthur Chronicle Campbelltown*, February 2 2015, see <http://www.dailytelegraph.com.au/newslocal/macarthur/ancestors-to-rest-in-peace-in-their-homeland-of-appin/story-fngr8h70-1227205142590> (12.12.2016).

<sup>19</sup> Fforde, *Collecting the Dead*.

<sup>20</sup> Turnbull, *Anthropological Collecting and Colonial Violence*; Sandra Pannell with contributions from Ngadjon-Jii Traditional Owners, 2006 Report No. 43 *Yamani Country: A Spatial History of the Atherton Tableland, North Queensland*, Research Report, Cooperative Research Centre for Tropical Rainforest Ecology and Management [http://www.rainforest-rc.jcu.edu.au/publications/yamani\\_country.htm](http://www.rainforest-rc.jcu.edu.au/publications/yamani_country.htm) (12.12.2016).

<sup>21</sup> June Oscar, *Bunuba Elder Personal Communication*, Interview with Michael Pickering, 2013. See also Howard Pedersen / *Banjo Worrundmurra, Jandamarra and the Bunuba Resistance*, Broome, Western Australia 1995; *Teachers Notes, Jandamarra and the Bunuba Resistance*, Magabala Books, [https://www.magabala.com/media/wysiwyg/pdf/Jandamarra\\_and\\_the\\_Bunuba\\_Resistance.pdf](https://www.magabala.com/media/wysiwyg/pdf/Jandamarra_and_the_Bunuba_Resistance.pdf) (12.12.2016).

<sup>22</sup> Carol Raabus, *Truganini: Ambassador, guerrilla fighter and survivor*, ABC Hobart. February 10 2011, see <http://www.abc.net.au/local/audio/2011/02/10/3135481.htm> (12.12.2016).

title claims, and to people finding long-lost family members following the 'Stolen Generations' events, with the forced removal of children from their families and cultures.<sup>23</sup> This extensive documentation, ranging from the notebooks of anthropologists and missionaries through to the 'Register of Wards 1957'<sup>24</sup>, ensures the persistence of histories of people long past 125 years, and will only grow as time passes. By an accident of record keeping, some people's names persist while others do not, nonetheless they do not constitute two classes of citizen. The unknown, as yet unaffiliated, individual over 125 years old must have the same post mortem rights of return as the named individual of 100 years ago. The activities of colonialism, of which anthropology was a tool for a long time, have themselves collected such extensive documentation, through 'Aboriginal Census', registers of state wards, ethnographic and anthropological research, and other 'management' lists, as to overwhelm the concept of a definable limiting period for the recognition of connections to ancestral remains.

### The State?

Though the first point of call for advice on cultural values should be the Indigenous communities themselves, this essay accepts that some agencies will be conservative and cautious. On this basis, the essay has advocated drawing upon proven judicial precedents of the states of origin when engaging with issues of rights of identity, affiliation, and culture. It also advocates dealing with Indigenous and non-Indigenous cultural and heritage agencies, governments and the judiciary. This recommendation is at odds with the position of the „recommendations“ that specifically refuses to recognise transfer of rights of representation to state political bodies, wherein, “the peoples of origin are not to be regarded as identical to the higher-level state agencies which represent them” (p. 11). Will this include Indigenous run land trusts, local land councils, Prescribed Body Corporates, which are legally recognised by

<sup>23</sup> Australian Government, Sorry Day and the Stolen Generations, 2015, see <http://www.australia.gov.au/about-australia/australian-story/sorry-day-stolen-generations> (12.12.2016).

<sup>24</sup> National Archives of Australia, Welfare Ordinance of 1953 and the Register of Wards, 2015, see <http://guides.naa.gov.au/records-about-northern-territory/part2/chapter8/8.5.aspx> (12.12.2016).

the state and, under usual terms of incorporation, required to discharge services in a way transparent to the state? Similarly a number of state heritage agencies act with the endorsement of local Indigenous groups.

However, not all nations/states have such precedents worthy of acceptance. Persecution of minorities continues and the decisions of the state cannot always be acceded to. Perhaps the simplest approach is to assess whether the judicial decisions bestows benefits to the minority. If so, the decisions can inform practice, if not then the decision can be rejected. Indeed, this approach could also be applied in Australia where, while many decisions have recognised Indigenous rights, others have detracted from them, or have imposed conditions unacceptable to the Indigenous groups affected. Australia is not perfect.

### Conclusion

The overall message in this essay is the need for flexibility in the interpretation and application of the „recommendations“. The „recommendations“ do not explicitly prohibit flexibility and expansion of defining criteria for claims. Indeed, they acknowledge throughout that variations do exist and the need for appreciation that Indigenous criteria may not correspond to industry criteria. However, in practice the „recommendations“ would benefit from explicit encouragement of flexibility in the light of informed advice. Researchers should thus be encouraged to seek advice from Indigenous representative bodies, heritage agencies, museums, and other agencies that have an advocacy role for the responsibility to mediate between Indigenous groups and government and non-government agencies.

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## Practical Aspects of the Care of Human Remains in Ethnographic Collections. Using the „Recommendations“

by Diana Gabler, Katharina Kepplinger

### Introduction

The transfer of an anthropological and osteological collection from the Centre for Anatomy of the Charité Berlin to the Berlin Museum of Prehistory and Early History in 2011 – which included over 8,000 skeletons, skulls, and other materials – generated renewed media attention regarding human remains in German museums. Already in 2011, the repatriation of Namibian skulls from the Charité collection had triggered a large echo in the news. As a result of the mostly negative press in the years to follow, the Prussian Cultural Heritage Foundation stated in a press release<sup>1</sup> that the Museum of Prehistory and Early History had taken the collection into custody to guarantee its preservation, because the Charité itself could not ensure the preventive conservation and a dignified accommodation. Furthermore, it was argued that this acquisition has to be seen as a temporary measure only, since dealing with human remains from a colonial context was a „matter of national responsibility“.

Resulting debates were exacerbated by the substantive discussions around the currently developing Humboldt Forum. Close to Berlin's Museum Island site, the non-European collections of the Ethnological Museum (likewise part of the Berlin National Museums) will be exhibited in the rebuilt Berlin Palace. Up until early 2016, when parts of the museum's permanent exhibition in Berlin Dahlem were closed, human remains from the South Seas had been on public display. Discussion on new ways to exhibit the ethnological collections also revolved around the presentation of human remains. An example is the exhibition series Humboldt Lab Dahlem – Probebühne 4, [Open] Secrets, displaying se-

<sup>1</sup> See, <https://www.preussischer-kulturbesitz.de/pressemitteilung/news/2014/03/21/zur-voruebergehenden-betreuung-der-ehemaligen-charite-sammlung-menschlicher-gebeine-im-museum-fuer-vor-und-fruehgeschichte-der-staatlichen-museen-zu-berlin-preussischer-kulturbesitz.html> (01.11.2016).

cret knowledge.<sup>2</sup> This, in turn, fostered a thorough reappraisal of terms regarding their appropriate care.

Accordingly, the importance of addressing human remains in museum collections was pointed out by the recently published „position statement“<sup>3</sup> by the Prussian Cultural Heritage Foundation. In this statement, which is fundamental for the Berlin National Museums, it is declared that human remains are an important part of the collections; they need to be preserved and treated with sensibility and the highest respect. The statement represents the attitude of the Foundation towards human remains. Even though partly based on the „Recommendations for the Care of Human Remains in Museums and Collections“ by the German Museums Association (Deutscher Museumsbund, DMB)<sup>4</sup>, there is also an emphasis on perceiving human remains as part of the Berlin collections instead of a matter of future repatriation efforts questioning their ownership. Associated museums in Berlin carefully discussed the on-going procedures and started to develop individual measures in order to improve the care of human remains in their collections. In light of the probability of future repatriation processes<sup>5</sup>, the development and implementation of respective protocols and procedures clearly needed to move forward.

These events also began to influence the practical consideration of collections within the Berlin Ethnological Museum: How should the content of both the position statement and the DBM „recommendations“ be translated into action for everyday work with non-European collections – given the realities of storage conditions, conservation issues, and related ethical considerations?

<sup>2</sup> <http://www.humboldt-forum.de/en/humboldt-lab-dahlem/projects-probeuehnen/open-secrets/> (01.11.2016).

<sup>3</sup> [https://www.preussischer-kulturbesitz.de/fileadmin/user\\_upload/documents/mediathek/schwerpunkte/provenienz\\_eigentum/rp/150326\\_Grundhaltung\\_Human-Remains\\_dt.pdf](https://www.preussischer-kulturbesitz.de/fileadmin/user_upload/documents/mediathek/schwerpunkte/provenienz_eigentum/rp/150326_Grundhaltung_Human-Remains_dt.pdf) (01.11.2016).

<sup>4</sup> Deutscher Museumsbund (DMB) / German Museums Association, Recommendations for the Care of Human Remains in Museums and Collections, [http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden\\_und\\_anderes/2013\\_Recommendations\\_for\\_the\\_Care\\_of\\_Human\\_Remains.pdf](http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden_und_anderes/2013_Recommendations_for_the_Care_of_Human_Remains.pdf) (01.11.2016).

<sup>5</sup> A comprehensive presentation of repatriation issues was deliberately excluded. Emphasis was instead given to introductory steps for the care of human remains, including accessibility of the collection and its preservation.

In this paper we present the results of this 'translation process' based on a case study undertaken in the collection of the American Ethnology. They reflect on the experiences gained by applying the DMB „recommendations“ to the re-housing and preventive conservation measures carried out for human remains from South America, since this very specific case study offers important observations transferable to other cases of the collection.

Two chapters in the DMB „recommendations“ were particularly important for this course of action and thus formed the base for our engagement. Since preventive and active conservation is an important aspect of preservation, practical approaches to the care of human remains in museum collections were expected in chapter 4.2 „preserving“ (DMB 2013 p. 51-54). That chapter covers basic principles on inventory, documentation systems, storage, and access to the collection, and includes notes on loans, and advice on public relations. The other one was chapter 3.3 on the ethnological perspective by Claus Deimel and Markus Schindelbeck.

### Conservation Issues Regarding Human Remains

Adequate care of human remains in museum collections raises a number of complex questions which can best be addressed by forming an interdisciplinary working group with a broad range of expertise. Experts, such as anthropologists, archaeologists, medical historians, cultural and natural scientists, lawyers as well as ethicists should be involved to develop a decision making module for public institutions. On the other hand, the involvement of Indigenous communities – as for example established by the „United Nations Declaration on the Rights of Indigenous Peoples“<sup>6</sup> from 2007 stating that: „States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with Indigenous peoples concerned“ – is vital for a diverse and multi-perspective discussion.

<sup>6</sup> General Assembly resolution 61/295, United Nations Declaration on the Rights of Indigenous Peoples (13 September 2007), available from [http://www.un.org/esa/socdev/unpfi/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf) (01.11.2016).

Taking this idea of diversity seriously and additionally considering the „recommendations“ authors remark on the importance of inter-disciplinarity (DMB 2013, p. 6), the question of why they not only missed the involvement of Indigenous communities, but also of conservators in chapter 4.2 (DMB 2013, p. 51-54) becomes all the more crucial. This lack of relevant expertise is captured in the „recommendations“, as the brief paragraph describing approaches for preservation and conservation is highly fragmented. The authors place great emphasis on basic documentation techniques, but disregard a necessary introduction to preventive conservation. The preventive conservation recommendations in regard to storage conditions appear in a desultory selection, which largely ignores the complexity of conservation issues and lacks both scientific references and specific examples and context to the given claims. For instance: „In order to prevent damage caused by acids, human remains should only be stored in wood-free boxes/containers.“ (DMB 2013, p. 52). There is no explanation to support this statement, although it would be useful for caretakers from different departments (e.g. conservation, collection management, curatorial staff) to understand why certain measures are needed and if these apply to all types of human remains in the same way. In this particular example, explanations about the emission of volatile organic compounds from wood (formic and acetic acids) and the usage of different age resistant and acid free packing materials for storage should have been included. Best practice examples regarding different materials (e.g. hair, bone, and skin) would contribute to a deeper understanding of occurring conservation issues. To name but one easily accessible source: the Canadian Conservation Institute provides, inter alia, guidelines and information on preventive conservation measures and agents of deterioration.<sup>7</sup>

Additionally, when discussing conservation approaches (DMB 2013, p. 52), human remains are equated with other collection items and ethical considerations regarding their conservation are omitted. For instance, discussions about the integrity of human remains, important in many religions and belief systems, should be a crucial part of any preservation approach. Also, discussions about different approaches in

<sup>7</sup> <https://www.cci-icc.gc.ca/resources-ressources/agentsofdeterioration-agentsdedeterioration/index-eng.aspx> (01.11.2016).

relation to the remains' origin (Indigenous, non-European, European) should introduce the reader to the complex debates surrounding any decision-making procedure. This would require at least questioning one's own moral standards by considering Indigenous views, if not consequently handing over sovereignty to affiliated Indigenous representatives. There is no one-fits-all answer, and approaches for the preservation and conservation of human remains should always include differentiated ethical considerations and be specific to the object and material in question.<sup>8</sup>

At some institutions, ethical measures for conservation treatments might only reflect a natural science perspective. However, even when using the newest methods, these standards are not necessarily adequate for the treatment of Indigenous and non-European human remains. No matter how well-meaning these conservation treatments are, all active measures might interfere with the integrity of the human remains. To give an example: At the Smithsonian's National Museum of the American Indian, all human remains are meant to be given back to the respective communities. They are stored separately and only a few staff members have access to that particular area. No active conservation treatments are carried out. This is crucial to understand the different approach within the Berlin case, because the SPK declared human remains as an important part of their collections. Therefore, caretakers will need to develop a conservation approach that serves this understanding – while addressing Indigenous concerns at the same time.

The „recommendations“ note that: „The descriptive documentation of human remains and associated research using other sources are, in principle, no cause for concern“ (DMB 2013, p. 52). Thereby neither the condition of the human remains documented was considered, nor were specific ideas from Indigenous cultures for handling (e.g., male handling only, community use only), documentation, and further research taken

<sup>8</sup> The following sources provide an overview on necessary reconsideration regarding human remains: Miriam Clavir, *Preserving what is valued – Museums, Conservation, and First Nations*, Vancouver 2002; Lawrence Eugene Sullivan / Alison Edwards, *Stewards of the Sacred*. American Association of Museums, Washington, DC 2004; Robyn Sloggett, *Expanding the Conservation Canon – Assessing cross-cultural and interdisciplinary collaborations in conservation*, in: *Studies in Conservation* 54 (2009), p. 170-183.

into account. Even basic descriptive documentations (e.g. condition reports) need a thorough inspection of the object to begin with, which can only be conducted by handling the remains. However, in some cases, handling is already limited by an advanced degradation state and thus accessibility for any documentation is limited. Recommendations therefore should include solutions for object handling in these cases and material-specific introductions to possible damages.

The „recommendations“ mention consultation processes when they state: „Since documentation of this kind (= virtual and media formats, e.g., X-rays, CT scans, MRI and 3D scanning) may raise concerns in a small number of peoples of origin, it should, where appropriate, be agreed with the appropriate representatives of those communities in advance“ (DMB 2013, p. 52). However, it is not only when choosing a documentation system that specific views of Indigenous representatives should be considered. And while the „recommendations“ state that societies of origin should be involved in the working process, they do not give specific advice on how this could be done or what measures will be taken in the future. Given that the „recommendations“ focus on *ethnological* museums and collections this is unfortunate, to say the least.<sup>9</sup>

The „recommendations“ are an important development for the German-speaking museum community, as they are the only German document specifically addressing the preservation of human remains in ethnographic museum collections. Other publications usually focus on archaeological materials.<sup>10</sup> However, they fall short of their actual

<sup>9</sup> „These recommendations are primarily intended for museums and universities in Germany with collections of human remains, irrespective of their geographical origin and age (both European and non-European), in particular for ethnological museums/collections...“ (DMB 2013, p. 9).

<sup>10</sup> The following publications are examples of more recent editions on the topic of archaeological human remains: Bigna Ludwig, *Mumien in Museen: Ethisch korrekter Umgang bei Konservierung/Restaurierung, Lagerung und Ausstellung*, Saarbrücken 2008; Vicki Cassman / Nancy Odegaard / Joseph Powell (eds.), *Human Remains. Guide for Museums and Academic Institutions*, Lanham 2007; Nicholas Márquez-Grant / Linda Fibiger (eds.), *The Routledge Handbook of Archaeological Human Remains and Legislation. An international guide to laws and practice in the excavation and treatment of archaeological human remains*, London 2011; Barra O'Donnabhain / María Cecilia Lozda (eds.), *Archaeological Human Remains. Global Perspectives*, Heidelberg 2014.



potential to provide practical guidelines. Contrary to their listed goal<sup>11</sup>, little attention is given to a thoughtful and solution-oriented process for the care, preservation, and conservation of human remains. The omission of conservators within the working group responsible for the „recommendations“ – together with the fact that the working group Conservation / Restoration of the German Museums Association was only founded in early 2015 (after the publication of the guidelines) – sadly illustrates that the expertise of conservators as museum professionals in Germany is often underutilized.

In the future, the „recommendations“ should be adapted to include conservation insights in all relevant sections. The following suggestions might be of assistance for such an improvement.

A description of preventive conservation measures on human remains could help different collections to get their working process started. A practical approach should begin with a general introduction and a definition of terms important to the understanding of proper care and include both material *and* ethical concepts. It should then collect material specific case studies, which reflect the specific needs of human remains and also include Indigenous voices and cultural objections towards certain conservation approaches. The working group Conservation / Restoration of the DMB<sup>12</sup> explicitly addresses the introduction of ethical knowledge, especially to manuals and publications of the German Museums Association, as one of its future activities. Suffice to say, a rewriting of the chapter on preservation and conservation issues will be well received by the conservation community.

### „The Shrunken Head Display Case“: A Practical Approach

The „recommendation“'s chapter on the ethnological perspective is full of generalizations. By using terms like „worldwide“, „every culture“ or „all communities around the globe“ the authors in fact negate one of the

<sup>11</sup> „These recommendations are intended for the individuals directly responsible for collections and the funding bodies of the establishments concerned both as guidance for the day-to-day handling of human remains, including those originating from outside Europe, and to address questions relating to claims for return“ (DMB 2013 p. 6).

<sup>12</sup> [http://www.museumbund.de/de/fachgruppen\\_arbeitskreise/konservierung\\_restaurierung\\_ak/](http://www.museumbund.de/de/fachgruppen_arbeitskreise/konservierung_restaurierung_ak/) (01.11.2016).

most important ethnological principles, which is to understand world cultures as both diverse and distinct. Instead, they repeatedly give examples of ‘global’ phenomena without supporting their claims with any case studies (see DMB 2013, p. 26). A similarly vague manner of describing complex phenomena appears when the authors speak about an aestheticization of human remains in present days (DMB 2013, p. 27f.). By including the example of a diamond-studded skull, Deimel and Schindlbeck clearly refer to Damian Hirst’s artwork „For the Love of God“, without addressing that the skull itself is made of platinum and incorporates human teeth. The connection between these elaborations and a practical approach for the care of human remains in museum collections is widely missing.

However, any culture-specific work with the remains can only take place if a basic protocol for a general background check, a basic documentation and preventive conservation measures is intact. Using a specific example, we will now elaborate how this could be achieved.

Since the storage rooms of the American Ethnology collection at the Berlin Ethnological Museum were conceived as an open storage area for display, the objects in the cabinets are visible through glass panes. A prominently exposed historic display case housed shrunken heads and *Mundurucú* skulls. Due to its position opposite the main entrance (fig. 1), it always drew attention of researchers and visitors from guided tours. This made the exoticization of *Jívaro* speaking groups (*Shuar*, *Achuar*, *Aguaruna* and *Huambiza*), from which the shrunken heads originated, inevitable. Therefore, this display case was chosen as a suitable starting point to develop more ‘sensitive’ approaches for the care of human remains.

The main objective was to rehouse the shrunken heads and to reconsider their previously open presentation. This initiative started without any kind of caretaking protocol for human remains in place and thus also served as a guiding example through which experience could be gained and on which grounds an outline for further work on other human remains could be developed.

As a first step in reviewing the collection of shrunken heads, a basic recording and a material identification process were accomplished, the



Figure 1: Shrunken head display case in collections. As described above, the display case was positioned opposite to the collection's entrance – immediately visible for visitors entering, and also part of guided tours in collections. (All photographs/figures by Diana Gabler. The authors decided to avoid close up pictures of the display case and the shrunken heads in this publication. Photographs were made exclusively for internal documentation. Any use of documentation material of this project will be part of future discussions and consultations.)

latter relevant as shrunken head forgeries for trade were also made from different animal skins. In this case the material differentiation was done by the authors, using the following characteristics: on heads of animal origin, nose, eyes and/or mouth are not closed and the seam holes are uniform. Additionally, hide from animal origin is covered with fur, even in shaved areas of the modeled face.

During these processes, the display case was covered up with Tyvek® (fig. 2) to prevent viewing.<sup>13</sup> Data recording then included

<sup>13</sup> Tyvek® is a registered trademark for a spun bound, durable paper made from 100 percent high density fine white polyethylene fibers as continuous filaments bonded by heat and pressure with no binders or fillers. Manufacturer: Du Pont™, supplier:

the development of a more defined terminology for shrunken heads from the collection management system *MuseumPlus*. The previous terminology differentiated only between original shrunken heads and „false“ shrunken heads. A more defined terminology now differs between shrunken heads made from human skin, animal hide, or sloth heads). Shrunken heads within all three categories could have been made for trade and we cannot tell by visual inspection if they were used in a ritual context.

Preventive conservation measures included the removal of old wooden mounts on which most of the shrunken heads were presented. The previous conservation records stated former insect infestations on some of the skulls.



Figure 2: Covered up case using Tyvek®, as part of first measures.

After the condition check, it was decided to use the in-house nitrogen chamber for preventive disinfestation, following the „Integrated Pest

Deffner & Johann, <http://www.deffner-johann.de/tyvek-soft-pe-vlies-1622-41-g-m2-rolle-152-4-cm-x-50-m.html> (01.11.2016).

Management“ (IPM) protocol for moving objects. Archival boxes<sup>14</sup> from aging-resistant, acid-free card board were prepared for each individual item. Due to limited space, in some cases two individuals were packed in one box, but were separated with an *Ethafoam*® barrier. A mount prototype was developed in order to allow handling of the remains without touching them. Rare earth magnets<sup>15</sup> and paper tape<sup>16</sup> were used to model a customized mount, which can easily be removed from the box (fig. 3).



Figure 3: Prototype of mount system.

Finally, the relocation of the remains to a separate storage area was prepared. Due to limited space, a room next to the main collection area at the American Ethnology was chosen for this purpose. A separate

<sup>14</sup> Supplier: KLUG Conservation, <http://www.klug-conservation.com/Products/Boxes/Two-piece-boxes/KS-16> (01.11.2016).

<sup>15</sup> Strong high-quality neodymium-iron-boron (NdFeB) magnets available in different sizes.

<sup>16</sup> The paper tape adhesive was made on the basis of potato starch. The tape was manufactured without the usage of softeners or plasticizers and is free of acidic substances, supplier: KLUG Conservation, <http://www.klug-conservation.com/Products/Glues-Tapes/Tape/Paper-tape> (01.11.2016).

cabinet unit was carefully labelled with the note that the cabinets should only be opened after instruction (fig. 4). In the future, such instruction will be offered by both curators and conservators of the collection. Telephone numbers of responsible staff members were added in case of questions or need of access. Two reasons can be given for regulating access: Employees need special instructions before handling and working with human remains, both from an ethical and from a conservator's viewpoint. Secondly, employees and in particular guests should be protected from any unprepared confrontation.

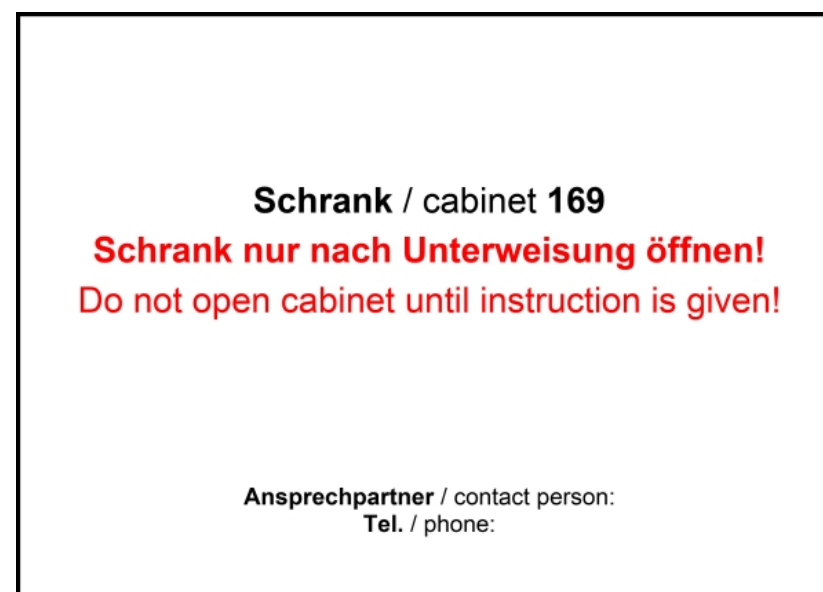


Figure 4: Label for cabinets.

Consultations with Indigenous representatives on human remains issues have hitherto not taken place at the Berlin Ethnological Museum. A lack of basic inventory measures, staff shortages and missing financial support are some of the main reasons for this. To name but one example, existing IT services and the collection management system in use, impede rather than help everyday work and should be complemented

by up-to-date communication media. However, establishing the relevant infrastructure needs to be done on a national level and should not remain an institutional responsibility.

### Practical Aspects for the Care of Human Remains

Based on the experience of this project, basic steps were defined on how to develop a more systematic approach for the rest of the collection. They will provide the basis for customized protocols regarding the care of human remains in the collection of the American Ethnology. Considering that future protocols must include strategies for consultation processes with Indigenous representatives – which might lead to repatriation requests – the focus of the general steps presented below is first and foremost on the accessibility of the collection and its preservation. While some of these might seem obvious at first, they are in fact elementary: without them, no further developments are possible. Before consensus-oriented research on human remains can take place, certain steps and protocols have to be created and implemented, and such steps should apply to human remains as well as to related sacred and ritual objects. Throughout every step it is strongly recommended to consult corresponding experts. In the practical implementation of any protocol, not only the curatorial staff involved, but also the conservators need to be consulted for all actions regarding preventive and active conservation measures.

### 1. Reviewing Collections

Maintaining a complete inventory list of all objects, artefacts, and human remains in a museum's collection appears to be a rudimentary task. Yet it is still a major challenge, especially for museums with large collections containing hundreds of thousands of individual pieces. However, in order to develop a truly holistic concept for the care of human remains, it is essential to know the potential material within the collections. This includes material from different Indigenous groups known for their use of human remains and related materials from thus far unknown sources, which could be either of human or animal origin. In case materials have to be identified (e.g. animal origin versus human hair and bones), apart from conservators, anthropologists and material scientists – for example specialized in fibre analysis – might have to be consulted as well. Any

uncertainties regarding the material should lead to a separation of the object from the main collection area until the origin can be clarified.

### 2. Recording the Collection

Without going into too much detail – mentioned in the DMB „recommendations“ and exhaustively addressed in the DMB „Guidelines for the documentation of museum objects“<sup>17</sup> – a basic documentation should be a standard procedure in every collection. In order to guarantee full access, the data capture of each human remain in a collection is useful, especially if a full inventory has preceded those recordings. Most importantly, a documentation of human remains should include the following basic information: location within collections, physical characteristics like dimensions, weights, materials, photo documentation, and condition reports.

However, specific views of respective representatives of originating societies need to be considered, since they do not (and will not) consistently align with general research standards at German institutions (e.g. chosen documentary techniques). Future research and consultations with Indigenous representatives should thus include discussions about the documentation system itself: How should human remains be recorded in the collection management system? How should access to the documentation and the human remains itself be regulated? For example limited access for certain staff members, departments, institutions and reduced information for other users (i.e. only short information but no details or images). Also, it should be kept in mind that during a repatriation process, the museum might be asked to hand over the documentation files because the respective community might not want the museum to keep specific records (such as images of the remains).

### 3. Conserving

Preventive conservation is the mitigation of deterioration and damage by controlling environmental conditions and implementing policies for, inter alia, maintenance, handling, and integrated pest management, whereas the term active conservations measures refers to actual treatments on objects.

<sup>17</sup> [http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden\\_und\\_anderes/LeitfadenDokumentation.pdf](http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden_und_anderes/LeitfadenDokumentation.pdf) (01.11.2016).

Active conservation treatments should only be carried out – if at all – as part of corresponding conservation consultations with respective Indigenous representatives. First of all, the focus should be on preventive conservation measures, including appropriate storage conditions, climate, light and implementing Integrated Pest Management. The storage of individuals into single boxes represents an ‘ideal’ situation, considering a ‘European perspective’ of a ‘dignified’ storage, preventing the subjective appearance of a ‘mass grave’. For this purpose, individual unassigned remains should also be stored in separate units. Unfortunately, collections might struggle with low storage capacities and need to adapt their storage solutions.

#### 4. Separating Human Remains from the Collection Area

Categorizing human remains based on the state of processing is widespread and usually culminates in 1) unprocessed, 2) processed human remains and 3) objects to which human remains are attached. Human remains of all these categories should be separated from the main collection area to regulate access and to guarantee a purposive research on the material for further analysis and investigation. Accompanying dialogues with respective Indigenous representatives could, amongst other topics, revolve around an incorporation of human remains of the third category (e.g., processed human remains of unrecognizable individuals) into the main collection. This could be conceivable for spears tipped with human bones or clothing decorated with human hair.

In the past, consultations with Indigenous representatives have irregularly taken place at the Berlin Ethnological Museum, but not in a setting of equal responsibility and ownership. Establishing an infrastructure for this important part of the process should not remain an institutional responsibility but needs to be shared on a national level instead.

#### 5. Provenance Research / Consultations with Active Conservation Measures

After the aforementioned steps, background research including provenance research can begin. The future of the human remains should be agreed on consensually with Indigenous communities. This might

also include discussions on active conservation treatments and their implications, if appropriate.

#### Conclusions

The DMB „recommendations“ certainly lay the foundation for a more comprehensive decision making process on the care of human remains of international origin in Germany. Yet, while addressing human remains in museum collections, they do not describe practical aspects in sufficient detail. In particular when it comes to conservation issues and the inclusion of Indigenous voices, they lack structured step-by-step instructions and specific case studies, on which a basic practical approach could have (and should have) been developed.

For the purpose of a contemporary museology, general recommendations concerning the care for human remains and other material with cultural significance in museum collections certainly need to include basic documentation guidelines and an introduction to preventive conservation. Scientifically speaking, this also means considering human remains as a variety of organic materials with specific requirements. Case studies on conservation issues could, inter alia, introduce the reader to acid-induced damages on bone material, issues relating to rigidity of unprocessed skin, or handling instructions for fragile hair assemblies.

Elaborations on the care of human remains should also leave the attentive reader with an awareness of current ethical discussions related to *specific* Indigenous groups internationally. Long-term relationships with Indigenous communities associated to the respective collections built on mutual trust are necessary to discuss further proceedings. Museum professionals in Germany need to move forward by developing holistic concepts for the care of human remains. Experienced institutions could support the process and provide examples and protocols from previous cases, based on international standards.

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## **A View from Aotearoa New Zealand**

*by Te Herekiele Herewini*

In May 2015 I was invited to provide a review of the document with the title in English „Recommendations for the Care of Human remains in Museums and Collections“. This document is designed as a set of guidelines for museums in Germany that have collections of human remains.

My interest in this set of guidelines is in a professional capacity as the repatriation manager at the Museum of New Zealand Te Papa Tongarewa (Te Papa), and therefore my particular interest is as means of understanding the policy guidelines as a process of seeking and negotiating the physical return of the Māori and Moriori ancestral remains from institutions in Germany.<sup>1</sup>

In reference to Germany, Te Papa has repatriated from the Übersee-Museum Bremen in 2006, as well as from the Frankfurt Museum of World Cultures and the Senckenberg Museum of World Cultures in 2011. Te Papa's present research indicates there are approximately another 50 kōiwi tangata (Māori skeletal remains), kōimi tangata (Moriori skeletal remains) and Toi moko (tattooed, preserved heads of Māori or Moriori origin) still awaiting repatriation from Germany.

From the outset full support is offered to the words of Dr. Volker Rodekamp provided in the document's foreword on page five who said, „We view these recommendations not as the end of the debate, but rather as the beginning“. I would like to add that I hope my commentary encourages further discussion, which is of benefit to enhancing the „recommendations“.

The document in question is separated into the following sections including a: Foreword; (1) Introduction; (2) Addressees and Terms; (3) Background Information; (4) Recommendations for the Care of Human Remains; and the members of the „Human Remains Working Group“ are identified.

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<sup>1</sup> The Māori words used in this paper will have the tohutō or macron placed over the long vowels, as this is the preferred writing system by contemporary Māori language speakers and writers.



## Definitions

In respect to the foreword, introduction, target group and definitions of the terms used, such as: Human Remains; Context of Injustice; and People of Origin, these are very useful as they clarify the intent and purpose of the document, who it relates to, and the meanings of these terms in the German context.

## Human Remains

The definition of human remains presented on page 9, in a broad sense is very similar to the definition by the New Zealand government (for repatriation purposes only) of *kōiwi tangata* Māori/Māori skeletal remains. The point of difference, however, is that Te Papa's programme can only seek the return of *unmodified remains*, and not those remains which are modified post mortem.

Examples of these items in the Māori cultural context include fish hooks and traditional musical instruments such as *kōauau* (Māori flute) where they are made of human bone, and where the bone has been deliberately refashioned and carved into a different item belonging to the material culture.

Toi moko on the other hand, have not been carved, or refashioned into something that resembles another object. The mummification process merely allows for the integrity of the original human features of the *tupuna* (ancestor), to be maintained and recognised, so the *tupuna* could be revered or despised in our traditional culture. This would now equate to the embalming process for Māori, where departed loved ones upon death are embalmed, and mourned by their families and communities.

## Context of Injustice

On page 10 of the document the term „context of injustice“ is highlighted and defined, followed by some examples of where an exception may exist.

In respect to Māori and Moriori remains that were traded overseas it is important to note that both Māori and Europeans traded in our ancestral remains, and there are many examples of ancestral remains

being stolen, and the heads of fallen Māori warriors traded by the victor of the battle.<sup>2</sup>

In saying that, it must still be highlighted that the victims of the theft and the families of the fallen warriors did not agree for their loved-ones to be taken or traded overseas. Therefore, it is important to note that Te Papa's primary aim is to return ancestral remains to their *iwi* (tribe), communities of origin, or their place of provenance. It would be incredibly erroneous to rationalise that because some Māori participated in the trade of remains, this permits museums to continue to house, collect and exhibit our ancestral remains.

## Fading of memories after 125 years?

Highlighted on page 11 of the document is the notion that after approximately four or five generations, which may equate to 125 years, the memory of the deceased person fades and therefore it will be difficult to genealogical map or connect to people living today. Overwhelmingly, the repatriation work of Māori communities in the 1980s and 1990s as well as Te Papa's repatriation programme tell quite a different story in respect to the Māori and Moriori context.

One example concerns the *rangatira* (chief) Hohepa Te Umuroa of the Whanganui region who was incarcerated by the newly established New Zealand government in the 1840s, and sent to prison in Tasmania where he died and was buried. In the 1980s this *tupuna* was repatriated from Australia and returned to his people, and buried alongside the majestic Whanganui river in Koroniti. The time span the *tupuna* (ancestor) spent in Australia is well past the 125 years mentioned above, yet he was fondly received by his *iwi* (tribal group).<sup>3</sup> Another example is that of the *ariki* (high ranking chief) Tūpāhau who is said to have lived in the 1700s in the Waikato and Tainui regions. The theft of this mummified

<sup>2</sup> Ngahua Te Awakotuku / Linda Waimarie Nikora, *Mau moko. The World of Māori Tattoo*, Auckland 2007, p. 48; Nicola Smith / Amber Aranui, *For Evolution's Sake: The collection and exchange of kōiwi tangata from Te Waipounamu*, in: *Archaeology in New Zealand* 53,3 (2010), pp. 185-194; Maui Solomon / Susan Forbes, *Indigenous Archaeology: A Moriori Case Study*, in: Caroline Phillips / Harry Allen (eds.), *Bridging the Divide: Indigenous Communities and Archaeology into the 21st Century*, Walnut Creek, CA 2010, pp. 213- 232.

<sup>3</sup> More information can be found at: <http://www.teara.govt.nz/en/biographies/1t80/te-umuroa-hohepa> (12.12.2016).

tupuna (ancestor) by the collector Andreas Reischek in the 1880s is well documented. Tūpāhau was taken to Austria and placed in the Imperial Natural History Museum in Vienna. In 1985 this tupuna was returned and buried on Mount Taupiri, the sacred mountain of the Tainui people.<sup>4</sup> The memory of Tūpāhau, like many Māori ancestors was well preserved although he lived in the 1700s. His memory has been captured in kōrero (oral histories) and whakapapa (genealogies) that have been passed down generation after generation by his descendants. These same narratives and the stories have been written down in many circumstances, and now provide evidence of an iwi connection to tribal land and resources.<sup>5</sup>

More recently the „Karanga Aotearoa Repatriation Programme“ on 27 January 2016 returned three tūpuna (ancestors) to the Whanganui region, which was identified as their place of provenance. We do not know the names of these ancestors or how old they are, however, we were able to achieve repatriation through the whakaaro rangatira (ultimate respect) the iwi (tribes) of the region have for the ancestral remains.<sup>6</sup> These ancestors were buried along with 70 other Māori and non-Māori ancestral remains that were housed at the Whanganui Regional Museum.

In summary all three examples above provide evidence that time is irrelevant to the connection Māori and Moriori maintain with the tūpuna (ancestors), and this may very well hold true for other Indigenous peoples as well.

<sup>4</sup> Ray G. Prebble, 'Reischek, Andreas', from the Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand, updated 30-Oct-2012, see <http://www.teara.govt.nz/en/biographies/2r14/reischek-andreas> (12.12.2016).

<sup>5</sup> More information can be found at: <http://nzetc.victoria.ac.nz/tm/scholarly/tei-Pom02Lege-t1-body-d1-d9.html> (12.12.2016). For more information about Andreas Reischek and stolen Māori remains see: <http://www.teara.govt.nz/en/biographies/2r14/reischek-andreas> (12.12.2016).

<sup>6</sup> Amber Aranui / Te Herekiele Herewini, Kōiwi Tangata Report. Kōiwi tangata provenanced to the Whanganui Rohe (2016), pp. 1-42, see [https://www.tepapa.govt.nz/sites/default/files/whanganui\\_kt\\_report\\_date\\_25\\_jan\\_2016\\_v2.pdf](https://www.tepapa.govt.nz/sites/default/files/whanganui_kt_report_date_25_jan_2016_v2.pdf) (12.12.2016); Ruth Wilkie, 'Te Umuroa, Hohepa', from the Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand, updated 30-Oct-2012, URL: <http://www.teara.govt.nz/en/biographies/1t80/te-umuroa-hohepa> (12.12.2016).

### Section 3. Background Information

In section three, the detailed and well-researched background information is presented about the collection and trade of human remains in Germany, with both European and non-European examples of collections provided. Detailed coverage of issues related to methods of scientific analysis, as well as those perspectives pertaining to human remains from western ethnographic, sociological, religious, and scientific-academic viewpoints are highlighted. To add, the issues covering legal ownership according to German law, and ethical concerns are intricately and delicately considered from many perspectives.

From Te Papa's perspective any research undertaken on the kōiwi tangata, kōimi tangata and Toi moko is to acquire and confirm their regional provenance within Aotearoa New Zealand. This is done by following threads of information pertaining to the collectors, traders, ships, auction houses and the accession information in overseas institutions.

Te Papa does not undertake invasive research or testing on Māori or Moriori ancestral remains, as we find there is little value in conducting DNA testing, isotope testing or carbon dating as accession information already indicates the remains are Māori or Moriori, and these same groups in general have had continuous tenure in their respective territories until the period of the signing of the „Treaty of Waitangi“ in 1840. Although much has been promised with isotopic testing and how it can be used to identify provenance by matching minerals in bones, teeth and hair with regional locations in Aotearoa New Zealand, to date, little detail about isotopic reference locations covering the whole country has been placed within the public domain.

### Who has control of human remains?

The guidelines delicately touch upon the issue of ownership of human remains in Germany. From my experience of negotiating the return of Māori and Moriori ancestral remains both past and present from Germany, the reality is that the control of the ancestral remains usually rests with the state government who has control of the institutions where the ancestors are housed. It is these same state governments which decide on whether our request to repatriate is approved or declined,



and therefore the museums manage the remains on behalf of their state government.

For Te Papa, when ancestral remains are returned, Te Papa only becomes the custodian for the tūpuna (ancestors), until they are returned to the whānau (family), hapū (subtribe), iwi (tribe) and or their hau kāinga (homeland).

#### Section 4. Recommendations for the Care of Human Remains

After reviewing the set of recommendations I can appreciate that it concerns both Indigenous remains and non-Indigenous remains, and covers the five areas: 4.1 Collecting; 4.2 Preserving; 4.3 Research; 4.4 Exhibiting; and 4.5 Return.

As for section 4.1 „Collecting“, given the context of injustice of how Indigenous ancestral remains were acquired, collected and traded in the past, it would be best to dis-continue this practice. Overwhelmingly the evidence indicates Indigenous remains were removed from their homelands or burial sites without the permission, approval or consent of the individuals concerned, or their families. I would suggest the focus should be on returning these remains to their communities of origin. This requires an institution to rewrite its internal human remains policy, from that of collecting and displaying Indigenous human remains to that of repatriation of the same remains.

Next is section 4.2 „Preserving“. As a museum Te Papa supports the work undertaken to conserve and preserve Indigenous remains. An important element of Te Papa’s work is to care for the tūpuna (Māori ancestors) and karapuna (Moriāori ancestors) in a Wāhi Tapu (Sacred Repository). This is a dedicated space, where the tūpuna/karapuna are housed according to sound museum conservation practice and tikanga Māori (Māori philosophical and customary practice). The two elements of conservation and tikanga are combined in the following way. In the past a Wāhi Tapu was a secluded and hidden place that could be in a cave, on an island, on a hill top or mountain that had restricted access due to the topography of the natural environment. In the modern context, Te Papa’s Wāhi Tapu is managed by policy that restricts access to those that care for the human remains. To add, to maintain the high level of tapu (sacredness) in the Wāhi Tapu, certain items are

not permitted to enter the space, including food, water, and cigarettes. Many of these practices are also supported by strict conservation procedures including placing the tūpuna (ancestors) in a room that is climate controlled, handling the ancestors with latex gloves, and placing all the ancestors in acid free conservation boxes. Finally, when the kaimanaaki (caregivers) for the ancestors enter and exit the Wāhi Tapu, this is strictly done according to Māori tradition and culture by acknowledging the ancestors with karakia (traditional chants) and waiata tangi (laments).

An additional 31 international human remains are cared for in the Wāhi Tapu. These remains are provenanced to North and South America, the Pacific Islands, Asia and Europe. As an initial step to return these ancestors, we actively contacted North American Indian tribes, and provided them with detailed reports about their ancestral remains housed at Te Papa. It is our intention to do this for all the international ancestral remains.<sup>7</sup>

Comments on section 4.3 „Research“ were already given in the paragraphs on section 3. Section 4.4 is devoted to the „Exhibition of Māori and Moriāori human remains“. Similar to what has been said above, and given the situation of how Indigenous remains have been collected and traded in the past, I would think there is no substantive rationale available for these same remains to be exhibited. It is important to note that Te Papa has a policy not to exhibit Māori or Moriāori, and that this has been the museum’s practice well before I started in October 2007.

Section 4.5 concerns the „Return“. As indicated above, Māori and Moriāori remains were stolen from burial places, or traded against the wishes of the family of origin. That is the basis of our repatriation claim, combined with the notion that each Māori or Moriāori ancestor has the birth right to return to the spiritual home of origin, for burial and to rest amongst their kith and kin.

To help us understand the repatriation process in Germany, it would be useful for each museum to have a full list of Indigenous remains housed at their institution, which would be available to the communities of origin, as well as their nation’s representatives in Germany.

<sup>7</sup> More information about the care of ancestral remains housed at Te Papa can be found at: <https://www.tepapa.govt.nz/about/repatriation> (12.12.2016).

In addition to this, it would be very useful to have a comprehensive repatriation policy available as well. This policy could possibly have the following components, including:

- a) Identifying who is able to make a repatriation request;
- b) Identifying and explaining the rationale for considering a repatriation request;
- c) Explaining the process of considering the request, including period of time required; and
- d) Identifying the group, board, or state council that would consider the repatriation request, the decision making process, and the framework used to determine the final decision.

### Research and Partnerships

While the repatriation request is being considered it would be extremely useful to appreciate the perspective of the Indigenous community in seeking repatriation. This can be done through a number of mechanisms, such as inviting the leaders of the community to meet, present and articulate their repatriation request, or alternatively, meeting with the community in their homeland.

Through Te Papa's initial international inventory research from 2003, the repatriation programme was able to access the details and create a list of where most Māori and Moriori ancestors are housed in institutions around the world. The majority of these ancestral remains are in Europe and North America, and therefore we have focussed on actively meeting with institutions in the United Kingdom, Ireland, Sweden, France, Austria, Canada and the USA to inform each institution about our programme, including its goals, aims and objectives. Te Papa has also been open to receiving a number of international interns and expert exchanges from these respective countries who have undertaken important research about the trade of Indigenous human remains. I believe the experience of international people coming to work alongside Te Papa's repatriation programme has provided them with an increased awareness across a range of intersecting areas including repatriation, museology, human rights, Indigenous rights, science, ethics, values

and culture. Many of these interns are now undertaking PhD research, and/or work in the museum sector.

### Handover ceremony

From Te Papa's experience, when a repatriation request is approved, it has been most beneficial to host a formal handover ceremony, which allows a small delegation from the community of origin to uplift their ancestors in a way that is culturally respectful and meaningful. Plus it will allow the institution to return the remains with dignity and respect. The arrangements for the ceremony would be agreed upon well in advance, and could include (i) the names of official speakers and representatives, (ii) cultural elements, (iii) signing of transfer documentation, and (iv) the agreement related to the media component and how to manage this element.<sup>8</sup>

### Repatriation Fund

The Karanga Aotearoa Repatriation Programme is resourced and funded by the New Zealand Government with the full support of Māori and Moriori tribal groups. My observation internationally is that many other Indigenous communities receive little support from their governments to achieve repatriation. In light of this, and in consideration of how Indigenous human remains entered museums in Europe, it would be appropriate for European institutions to create a repatriation fund that would enable active engagement with communities seeking repatriation. The fund would be specific to repatriation, and help these same communities actively engage in the repatriation process such as, meetings, research, knowledge exchange, as well as funding the handover ceremonies, and freighting of the ancestors to their homelands.

### Summary

To provide a summary of my review I consider the document in its fullness to be thoughtful in its approach, well balanced in its views, very well researched, and delicately and sympathetically approaching

<sup>8</sup> June Jones / Te Herekiele Herewini, Repatriation of Māori ancestors: a partnership approach (2015), pp 1-10, see <http://www.fihrm.org/conference/documents/FIHRM2015JonesandTHHerewiniedit.pdf> (12.12.2016). Video footage of the handover ceremony at Birmingham University is available at webpage: <https://www.youtube.com/watch?v=ZIANNmGdZ8> (12.12.2016).

a range of very sensitive issues. In saying that, there are a number of issues that I would highlight as a means of generating further discussion in the hope of enhancing the document in the future.

a) There is sufficient evidence available that highlights the context of injustice of how indigenous remains have been collected, traded and received into collections in museums across the world. In light of this I would argue that the document could have examples of how museums have been proactive in returning Indigenous remains, and how this has been beneficial for the museum and the Indigenous community concerned.

b) The view taken that it is difficult to identify the community of origin for ancestral remains that are older than 125 years, seems rather subjective, and does not seem to be informed by numerous examples of Indigenous peoples actively seeking the return of their ancestors well passed this time span.

c) Given the above, it is quite reasonable to suggest that museums refrain from collecting additional Indigenous remains, but to focus on conservation of the remains they house, and undertake quality historical research that is beneficial in helping to achieve provenance for the tūpuna (ancestors).

d) I would suggest that it is beneficial to actively engage with communities of origin for these ancestral remains, in particular providing them with key information and repatriation policy, so they may consider their approach with the museum.

e) In addition it is important for museums across the world to acknowledge that Indigenous communities may not have access to the required resources to actively engage in the repatriation process, and that this is considered by the museum's board, regional council or state government. It is most likely the lack of resources available that is preventing these groups from initialising contact with museums in Germany, and not a lack of interest or loss of connection with the tūpuna (ancestors).

In closing I would like to end with a whakataukī or traditional Māori saying: „Nāku te rourou nāu te rourou ka ora ai te iwi – With my food basket and your food basket our people will be nourished“. It is an acknowledgement to people working cooperatively, highlighting

the benefits to the community of combining resources and efforts. I would like to suggest to those German museums that are interested in proactively repatriating the Indigenous remains they house to their communities of origin, that you form a group, or an alliance to work together, so that you can support each other as the work progresses. As the repatriation manager at Te Papa I am happy to work with such a group with the aim of supporting Te Papa efforts in repatriating all the Māori and Moriori ancestral remains housed in Germany. Kia ora koutou katoa! Since the Karanga Aotearoa Repatriation Programme (KARP)<sup>9</sup> was established in 2003, it has repatriated over 350 Māori and Moriori ancestral remains from international institutions.

### Glossary

- Aotearoa is one of the original Māori names for New Zealand. It is now common to use this word by both Māori or Pākehā living in Aotearoa New Zealand.
- Hapū is sub-tribe.
- Iwi is the tribe, tribal groups or tribes.
- Karapuna is the Moriori word for ancestor/s.
- Kōimi tangata is the Moriori word for their skeletal remains.
- Kōiwi tangata is the Māori word for their skeletal remains.
- Māori are the Indigenous Polynesian people of Aotearoa New Zealand.
- Moriori are the Indigenous Polynesian people of Rēkohu Chatham Islands.
- Pākehā is the Māori word for foreigner, and can also be used in reference to White or European New Zealanders.
- Rangatira is a chief of a hapū or an iwi.

<sup>9</sup> More information about the Karanga Aotearoa Repatriation Programme can be found at: <https://www.tepapa.govt.nz/about/repatriation> (12.12.2016).

- Rēkohu is the Moriori word for their Island home, commonly known as the Chatham Islands in English, and Wharekauri in Māori.
- Tikanga has many meanings including deep seated philosophy, strategy, customary practice, set of rules and guidelines, and doing the right thing.
- Toi moko is the word used by Maui Pomare to describe a preserved tattooed head. This is a modern word, and has no derogatory connotations associated with it.
- Tupuna is ancestor (singular).
- Tūpuna is ancestors (plural).
- Whānau is the family grouping.
- Wāhi Tapu is a sacred repository.

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## **German Museums, Human Remains and the Challenges of Colonial Legacies**

*by Ciraj Rassool*

The „Recommendations for the care of human remains in German museums and collections“, produced by a „Human Remains Working Group“ on behalf of the German Museums Association (DMB), and published by the Association in 2013, seek to address the need for „clear regulations and guidance“ by museums for their daily work, especially in „problematic cases“ and „claims for return“. They are a response to international developments in this contentious field and are also intended as the basis for „every establishment“ in Germany to „develop its own guidelines“ on how it would „handle such remains in the future“ (p. 4).<sup>1</sup>

Instead of pointing to any national, coherent and systematic approach that may require proactive provenance and ethical work by German museums within a national policy system, the DMB seems to envisage an ad hoc, case-by-case, dispersed approach in which individual museums address claimants (seen as descendants), and not seek a „state-to-state“ framework. Yet, the notion of „context of injustice“ that the DMB raises presents an opportunity to place any national guidelines or policy on a more ethical footing.

In showing the variety of types and categories of human remains in German museums that form the basis for the recommendations, the DMB has listed cases ranging from „shrunk“ and „tattooed“ heads, hair and bones incorporated into ritual objects, to archaeological collections of skeletons and bog bodies. In wishing to show this diversity of cases of human remains in museums, the DMB has chosen perhaps to remove attention from skulls and human remains whose presence in museum collections is a result of colonial violence and even genocide,

<sup>1</sup> German Museums Association / Deutscher Museumsbund, 2013 Recommendations for the Care of Human Remains in Museums and Collections, April 2013. See [http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden\\_und\\_anderes/2013\\_Recommendations\\_for\\_the\\_Care\\_of\\_Human\\_Remains.pdf](http://www.museumsbund.de/fileadmin/geschaefts/dokumente/Leitfaeden_und_anderes/2013_Recommendations_for_the_Care_of_Human_Remains.pdf) (12.12.2016).

such as highly contentious skulls from Namibia, some of which have recently been returned by the Charité in Berlin.

It is also perhaps regrettable that in the effort to ensure that the interdisciplinary working group consisted of all relevant disciplines, no space was found for expertise in German colonial history, especially on those dimensions that are difficult and contentious and still subject to international claims. It is also a pity that there seems to be little awareness about how the categories, boundaries and divisions that underlie the „recommendations“, such as „non-European“ and „our Western European mindset“, and disciplinary spaces such as „Ethnology“ are colonial in their origins and character. Colonialism refers to more than just the formal political experience of colonialism as coloniser or colonised and to more than a specific experience of violent conquest. There needs to be a deeper appreciation of how categories, institutions and disciplinary formations may be marked by coloniality, even long after colonialism's end.

In seeking to delineate what is included and excluded in the category of human remains, it is interesting that the „recommendations“ have expressly excluded „mouldings of human bodies or body parts“ and „death masks“ (p. 9). In addition, artefacts previously associated with human remains, as part of burial goods, have also been omitted. This seems to go against some international experience whereby records and representations associated with remains have been deemed to be inseparable from those remains. The South African experience has also shown how closely life casts made from bodies retain such a close association with those bodies in the transfer of surface skin and hair that they have been deemed to fall inside the category of human remains. Yet South African experience has also seen grave goods separated from returned remains, such as the well-known golden artefacts from Mapungubwe which were not returned with the remains that were reinterred at the site. On the state's insistence, human remains were returned from university collections to this Iron Age archaeological site, now a declared world heritage site. However, the archaeological artefacts made of gold, also removed from the same graves, remain in museum collections as prestige objects of the nation.

The DMB raised the significant issue of the „context of injustice“, which calls attention to the „circumstances of the death“ as well as the „acquisition of the remains“. While cases of human remains originating from a person who was „a victim of injustice“ were cause for „greater sensitivity“ and „special treatment“, as these were „particularly problematic“ (p. 9), the DMB was also careful to state that „context of injustice“ was „not a legal term or an established ethical concept“ (p. 10). It was important for museums or collections to establish whether „in a particular case a context of injustice can be assumed“. However there was no problem in cases where killing and using the physical remains therefrom were „socially accepted acts“ in certain cultures as with „fashioned trophies from the heads of ... killed enemies“ which originated in acts of „honouring“ victims as „worthy opponents“ (p. 10). Another „context of injustice“ was when human remains were added to a collection pursuant to „physical violence, coercion, theft, grave robbery or deception“ (p. 11), in other words, against the will of those with the right to dispose. What seems missing, however, is a recommendation that museums be proactive in enquiring into their human remains collections for any evidence of such „contexts of injustice“.

In arguing for a „careful balance“ to be struck, and for a „case-by-case“ approach (p. 10), the DMB also recommended that exceptions to the „context of injustice“ be recognised, such as when it was „no longer possible to identify direct descendants for whom the injustice could continue to have an effect“. The general guideline, it was suggested, for such „genealogical mapping“ was 125 years, but was possibly longer when perpetrated injustices and cases of persecution were so acute that the experiences endured in memory. Another exception was when the violent, coercive or deceptive acquisition or the act of theft or grave robbery took place „so long ago in the past that it no longer continues to have an effect in the present day“. It was argued that the „values“ in the „states of origin“ might have „changed“ and that „such events“ in the „distant past“ might now be „viewed differently“ (p. 11). These exceptions also have the potential to blunt any operation of the notion of „context of injustice“.

It is quite telling that the presumption underlying these recommendations is that the competence for engaging in negotiations would

lie with individual German museums in accordance with their own individual museum policies perhaps developed in relation to these recommendations. And it is also presumed that the people with whom they would negotiate directly would be the „people of origin“, that is „the ethnic and indigenous communities which are direct descendants of those peoples from which the human remains originated“. While they might have „transferred the representation of their interests“ to the states into which they’ve been „incorporated“, people of origin „are not to be regarded as identical to the higher-level state agencies which represent them“ (p. 11).

This preference for dialogue and negotiation with „ethnic groups“ points to a fundamental flaw with the DMB’s recommendations. They fail to recognise that these are matters that need to be escalated to the level of national law and policy, and even to the operation of international policy, such as through a possible „UNESCO International Convention on the Reassessment and Return of Human Remains“. Ideas about source communities and „peoples of origin“ need to be taken out of an ethnological frame, with presumptions of continuity and purity, and also need to take account of modern political identities and structures that such people have been incorporated into. This includes new forms of citizenship and nationality that have been achieved or are still contested in an age of international relations that seeks to find ways out of the deep legacies of colonialism.

The world’s most prominent cases of contestation over human remains involve Indigenous groups in Australia and New Zealand, in which national governments have remained involved in return processes, even when these may have been led by representatives of those groups, with assistance perhaps from national museums. The preoccupation with direct, „ethnic“ descendants represents a strange attempt to address these problems through a depoliticised approach that prioritises older social forms instead of the early 21st century world of international relations and the need to rethink what museums are in a postcolonial age. It is not appropriate that German museums become the determiners and verifiers of the *bona fides* of claimants. This is a matter that belongs to the complexities of relationships between local communities and national governments, even when the continuities

of local and national identities have been complicated by disruptions of colonisation and recolonisation, shifts in borders and changes in national authorities.

In its consideration of the „history and context“ of human remains collections in Germany and in Europe more generally, the range of cases presented is indeed wide. It includes relics from the 4th to the 13th centuries and early anatomical specimens incorporated into chambers of curiosities and later, specialist anatomical theatres and museums of medicine, collections of physical anthropology interested in human evolution and the physical attributes of „primitive races“ as distinct from „civilised peoples“ (p. 14), tattooed heads from New Zealand and shrunken heads from Ecuador, as well as mummies and bog bodies. The DMB acknowledges that some of these collecting histories involved frameworks of race and „primitive peoples“, especially „purebred“ specimens of „nearly extinct tribes“ (p. 14) from direct colonial relations or from expeditions to Oceania, Asia and Africa, as well as a trade in such materials, in addition to theft and grave robbery having occurred amid histories of bartering, gifting and purchasing.

However, the DMB has failed to show an appreciation of how these histories of typology, making race and inventing evolutionary scales were key elements of colonialism. Here colonialism certainly refers to the violence of war, conquest and genocide, as in the case of Germany’s history in early 20th century Namibia. Importantly, it also refers to the epistemic violence of the entry of human remains and artefacts into a classificatory order of collections, museums and knowledge. This failure is most powerfully reflected in the DMB’s characterisation of how some remains were acquired under colonial conditions, which is couched in very restrained terms:

„From time to time, situations caused by war in the colonies (such as barracking in concentration camps or direct acts of war) were also exploited to acquire bodily ‘materials’ on a larger scale and to ship those ‘materials’ back to the collecting institutions in far-off Europe. This procurement practice, immoral also by the ethical standards of the colonial powers, was justified by a significance for the world of science on which greater value was placed or simply hushed up“. (p. 15)

In considering the potential usefulness of human remains for scientific research, the DMB has recognised the shift that occurred in the past decades from „the typological view“ to a „genetic concept of populations“, in which it is possible to understand how „human beings react to their environment and how use is made of their biological capacity“ (p. 23). For the DMB, skeletal collections can be seen as „genuine research laboratories“ (p. 23). With „known biographical data“ they offer the possibility of „validat[ing] different osteological or palaeodemographic methods“ and constitute a „realistic, three-dimensional textbook of palaeopathology“ (pp. 23). Significantly, for the DMB, this scientific value is only possible if human remains were not acquired in a „context of injustice“.

While the DMB also considered the ethical aspects of the collections management of human remains, such as the care that needed to be taken about any proven or suspected „context of injustice“, and the appropriate, respectful storage of remains, with due attention to cultural sensitivities of source societies (named irritatingly by a colonial shorthand, „non-European“), it also noted the ambiguity of the legal position of such remains. They were „equivalent to objects to the extent that they cannot hold rights“, but they were nevertheless protected „under the concept of human dignity“ and thus not to be „treated like other objects“ (p. 44).

Any project of research on human remains would need to ensure that there was „an overriding scientific interest“, that the „provenance“ has been established, and that the „historical context“ of their acquisition was „no cause for concern“ (p. 55). It is recommended that research be prohibited where there was „clear proof“ (p. 57) that human remains originated from any context of injustice, and, importantly, where a context of injustice was suspected, until clear provenance was investigated and established. This matter of a lack of documentation and an inability to establish a clear provenance without a „context of injustice“ constitutes a significant „grey area“ around which it is necessary for the DMB and German museums more generally to find consensus. The immediate signs are that while human biologists look forward to ethical authorisation to conduct research on as wide and diverse a layer of human remains as possible, those who lead German museums at this

time of its renewal and restructuring (as in Berlin) insist on a clear and unambiguous provenance for this research. For them any possibility of doubt should exclude such remains from the purview of the researchers.

What is at stake for these recommendations is precisely how far the idea of „context of injustice“ should be taken. In South Africa, the „Human Remains Policy of Iziko Museums“, one of the country’s national museums, has made it clear that any remains stolen or acquired for racial research should be regarded as having been unethically collected. It is indeed a pity that the full force of the category of „context of injustice“ which the DMB has so boldly inaugurated may not be allowed to be realised.<sup>2</sup> Contexts of „injustice“ should not merely refer to theft, illegal disinterment, or documented cases of illegal acquisition. This category should be extended to address not only those collections acquired under formal colonial conditions, but also those that were inserted into discursively colonial classificatory systems and processes of knowledge production, including racial research.

German museums should embrace the challenges of return and „repatriation“ of human remains more seriously on a proactive basis in their policies and practice. This needs to be seen as part of an approach that offers new opportunities to develop reconnections with societies and communities around the world from which collections hail. This is also part of the process of re-establishing the authority that museums have over their collections more generally, of rethinking what museums are beyond their collections, and as residing in the „museum frictions“ of these negotiations and reconnections. Such an approach will also ensure that the process of remaking German museums will also address the challenge that they become postcolonial.

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<sup>2</sup> Iziko Museums of Capetown, Policy On The Management Of Human Remains In Iziko Collections, 2005, in: [http://iziko.org.za/PDF/05\\_Iziko\\_SA%20Human%20Remains%20Policy.pdf](http://iziko.org.za/PDF/05_Iziko_SA%20Human%20Remains%20Policy.pdf) (14.12.2016).

*on the history of human remains collecting in southern Africa has informed emerging museum policies in South Africa and also led to the return of the remains of Klaas and Trooi Pienaar from Austria to South Africa in 2012.*

### **The „Recommendations“ in Practice: Case Study of the Karl May Museum Radebeul**

*by Robin Leipold*

When a claim for the return of a scalp reached the Karl May Museum Radebeul in March 2014, it had been the first time that the small, private museum which is dedicated to the famous German writer Karl May (1842-1912), became aware of actually having sensitive items in its collection. It was accused of displaying human remains, namely scalps, in a disrespectful way and was asked to return one of them in particular. The museum took this request very seriously and tried to approach the issue in a way that respected the different stakeholders.

In Germany, there is no regulation of such issues by law in contrast to, for example, the Native American Graves Protection and Repatriation Act (NAGPRA) in the United States. Regarding human remains from Indigenous societies, there are no official guidelines or restrictions that museums and collections are legally bound to. Thus, it was very important to rely on the „recommendations“ by the German Museums Association (2013).<sup>1</sup> They served as a common ground for dealing with the case as will be discussed in this article. The recommendations are available online and open access, published in German and English, which made them very comfortable to work with.

In order to review the recommendations and the role they played in this case, it is necessary to first take a look at the background of the Karl May Museum institution that keeps human remains from North America and other parts of the world in its collections. Subsequently, the repatriation request by the Sault Ste. Marie Tribe of Chippewa Indians will be introduced, followed by an account of how the museum has dealt with it so far.

The Karl May Museum was founded in the city of Radebeul in 1928. On behalf of the Karl May Foundation (Karl-May-Stiftung), which exists

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<sup>1</sup> German Museums Association, Recommendations for the Care of Human Remains in Museums and Collections, [http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden\\_und\\_anderes/2013\\_Recommendations\\_for\\_the\\_Care\\_of\\_Human\\_Remains.pdf](http://www.museumsbund.de/fileadmin/geschaefte/dokumente/Leitfaeden_und_anderes/2013_Recommendations_for_the_Care_of_Human_Remains.pdf) (13.11.2016).



since 1913, it takes care of Karl May's inheritance. Besides the private goods of the Saxonian writer, the museum holds an ethnographic collection with objects from Europe, Africa, Asia, Oceania and the Americas. The collection contains a few sensitive items such as human remains and sacred artifacts, mainly from North America.<sup>2</sup>

Since the museum has been founded, a main focus is the permanent exhibition about Native North America (the other emphasis is put on Karl May himself as both a person and a writer). Most of the items on display have been collected by Karl May himself, his wife Klara (1864-1944) and the performance artist Patty Frank (civil name Ernst Tobis, 1876-1959) from Vienna. By giving his private collection to the Karl May Foundation in 1926, Patty Frank gained the right to live at the „Villa Bärenfett“, a log cabin which had been built just for him behind the original writer's villa on the premises. His collection was put on display in the cabin, and he was responsible for it for the rest of his life.

Patty Frank's collection, which consists of about 500 pieces, contains several human scalps. Forcibly removed and dried, scalps were once considered war trophies taken by both white settlers and Indigenous tribes during combats. Some tribes considered scalping a killed enemy a special ritual act, related to a concept which located the human soul inside the head and hair.<sup>3</sup>

Research on the scalp's provenance as well as on many other pieces of the collection is anything but complete. Most often, it is not known how and under which circumstances Patty Frank got to purchase items for his collection. Until 2014, many of the scalps Patty Frank had collected were on public display within the exhibition „Indianer

<sup>2</sup> In total, the collection of the Karl May Museum counts 3,600 ethnological objects, including 2,000 items from North America. A preliminary inventory check has been done for the museum's section of North America with a result of about 50 items partly consisting of human remains (including objects being decorated with human remains, for example hair locks attached to men's shirts, hair extensions or strands of hair as decoration for children's dolls). It is understood that there is still a huge lack of widespread documentation of human remains in many ethnological museums in Germany, especially in smaller private collections; See also: Martin Schultz/ Andreas Schlothauer, *Das Karl-May-Museum in Radebeul, ein Skalp der Sioux, eine Rückgabeforderung, die Chippewa – und wie viele weitere Skalps in deutschen Museen?*, in *Kunst und Kontext*, 9 (2015), p. 60.

<sup>3</sup> Christian F. Feest, *Art. „Skalp“*, in: Walter Hirschberg (ed.), *Wörterbuch der Völkerkunde*, Berlin 1999, p. 342.

Nordamerikas“ at the Karl May Museum. They had been displayed for more than 80 years illustrating the history of taking scalps, including the fact of paying bounties on Native American scalps by white men as an extraordinary brutal method of the decimation of Indigenous people.

In early 2014, a US-American journalist who had visited the museum privately drew the attention of the Sault Ste. Marie Tribe of Chippewa Indians from Michigan to the scalp.<sup>4</sup> In March 2014, the Tribe's Cultural Repatriation Specialist Cecil Pavlat Sr. demanded the return of the scalp on the basis of it being ancestral remains of his people and pointed out that putting the remains on display was unacceptable and disrespectful. This is the first repatriation claim of a scalp in Germany that has been made public.

The claim relied on published information about the purchase of the particular scalp, which was first published in the story „Wie ich meinen ersten Skalp erwarb“ („How I obtained my first scalp“) by Patty Frank in the Karl May Yearbook (*Karl-May-Jahrbuch*) in 1929.

According to this story, Patty Frank got to purchase the scalp in question during a tour with the circus company Barnum & Bailey in 1904. In a writing style that is a mixture of reality and fantasy, Patty Franks tells the story of how he acquired his first scalp from a descendant of a Sioux chief named Swift Hawk in exchange for one hundred dollars and three bottles of alcohol. Not the story itself, but a caption of a photograph of the scalp, attached to the story, contains information on the human remain being of Ojibwe origin. It has not been established who wrote this caption and added it to the story. Moreover, it also could not be verified so far to which extent details of Patty Frank's stories about his collected items are true.<sup>5</sup>

In May 2014, representatives of the Sault Ste. Marie Tribe of Chippewa Indians, of the Karl May Foundation and of the Karl May Museum

<sup>4</sup> The Chippewa, also called Ojibwe or Ojibwe in Canada, belong to the Indigenous group of the Anishinaabe speaking people who live in a huge area in the northeastern part of North America. The Sault Ste. Marie Tribe of Chippewa Indians is located in Michigan, USA.

<sup>5</sup> For further details on the purchase: Patty Frank, *Wie ich meinen ersten Skalp erwarb*, in Euchar A. Schmid/ Ludwig Gurlitt (eds.), *Karl-May-Jahrbuch 12* (1929), pp. 133-138; also: Robin Leipold, *Über die Rückforderung eines Skalps aus der Sammlung des Karl-May-Museums in Radebeul*, in *Amerindian Research*, 33 (2014), pp. 157-161.

met during the annual Karl May Festival (Karl-May-Festtage) to talk about the case face-to-face. As a result of this meeting, all parties signed a „Letter of Understanding“ to seal the future cooperation and to express the common objective to find out more about the scalp’s provenance. Later, a research schedule was developed. Its first step was to compile an interim report with first research results by the end of 2015, which could then be used to plan further proceedings.

One aspect that had been discussed by representatives of both parties was the ‘context of injustice’ (German: Unrechtskontext) which is being described in chapter 2.3 of the „recommendations“ (p. 9-11). According to the „recommendations“, the term ‘context of injustice’ is neither defined by law nor from an ethical point of view which causes difficulties due to the possibilities of individual interpretation (p. 10). Since scalps used to be war trophies in their original context, defining a context of injustice is quite complicated. The „recommendations“ describe human remains which derive from „victim[s] of an act of violence“ as an indicator of a context of injustice (p. 10). The act of scalping is definitely violent but on the other hand it is also a historical cultural practice. The „recommendations“, therefore, continue with exceptions to cover war trophies made of human remains: „Killing one’s enemy and making use of his physical remains were socially accepted acts in those cultures.“ (p. 10).

Thus, the scalp is more than just a human remain. It contains many layers of cultural, spiritual and historical meanings and views. Being an original war trophy, its looting and safe-keeping points to the specific meaning of the enemy’s human head as the place where individual power of life was located. Moreover, it was used to present the victor’s achievement.<sup>6</sup>

Chapter 3 of the „recommendations“ deals with background information about the history and context of purchasing human remains in Germany and Europe (p. 12-19). This chapter was very helpful in terms

<sup>6</sup> Find background information on the cultural practice of taking scalps in: Martin Schultz/ Nikolaus Stolle, *Skalps und dienstbare Geister*, in Alfried Wiczorek/ Wilfried Rosendahl (eds.), *Schädelkult, Kopf und Schädel in der Kulturgeschichte des Menschen*, Mannheim 2011, p. 197-201, here: 199); also: Feest, Art. „Kopftrophäen“, in: Hirschberg (ed.), *Wörterbuch der Völkerkunde*, p. 215.

of putting the scalp and its purchase in a historical context. The problem of incomplete information on the item’s provenance and missing documents caused by confusion after the Second World War, are of special importance here. Many institutions and their archive materials are affected by destruction and loss of documents during and after the Second World War, which makes provenance research often difficult (see p. 16). The Karl May Museum is likewise being confronted with the problem of incomplete or lost archive material on its collections. There exists only little information about the items purchased by private collectors Patty Frank, Karl May and Klara May. It is assumed that documents which proof purchases as well as relevant mail correspondence have been lost after Patty Frank died in 1959. Therefore, it will be especially important to research the museum’s history and activities during the time of the GDR in the future.

As recommended at the end of chapter 3, both parties committed to research the provenance of the scalp to examine its origin (see p. 18). When preparing the individual research steps, both parties suggested consulting external experts who should give independent reports on the scalp’s style and historical background. Furthermore, several additional ways of analyzing the item were discussed, referring to chapter 3.2 of the „recommendations“ (see p. 19-25). Both parties agreed not to use invasive methods on the scalp, including DNA analysis, which would cause damage to the object. The „recommendations“ question the use of invasive methods in terms of their actual benefit and it always has to be considered whether invasive methods are really able to deliver results making it worth to cause damage to the object (see p. 21).

To verify that the requested scalp originates from a human being, hair morphological examination was conducted, in agreement with the Sault Ste. Marie Tribe of Chippewa Indians. This microscopic analysis confirmed that the scalp is very probably human.

Chapter 4 of the „recommendations“ deals with handling human remains in particular and can be seen as the main chapter (pp. 48-67). Especially chapter 4.5, which looks at repatriation requests, could be used as a guideline concerning further proceedings such as research of the scalp’s provenance and adequate handling of the request in general (see pp. 60-67). Chapter 4.5 contains single steps and questions that

the museum could follow and implement: The determination of the scalp's age, origin, purchase, legal status within the collection, scientific, educational and historical value as well as similar cases to compare it to (pp. 65 f.)

The age determination of the scalp caused some problems, mainly because of the lack of available documentation. The „recommendations“ point out that when an object (human remain) is more than 125 years old it becomes often impossible to establish a link to a living descendant as the memories are said to fade after this time period (pp. 48/63). According to the acquirer Patty Frank, the purchase of the scalp took place in 1904. However, the date of purchase is not the same as the actual age of the object.

The caption of the photography in Patty Frank's story describes that the scalp was taken during a fight between a Dakota and an Ojibwe. It is therefore important to find out more about this incident. The Sault Ste. Marie Tribe asked in this context to take oral history into consideration as well, a suggestion that can only be supported.

Thus, taking oral traditions and oral history into account it was relevant to find out more about the person who is said to have taken the scalp, the Dakota Swift Hawk. Historical records and oral tradition were able to report fights between Dakota and Ojibwe until 1870, but no definite connection to a person of that name could be made. A genealogical determination of the scalp is very difficult, if not impossible, should it actually origin from a fight between Dakota and Ojibwe. Additionally, in the case of scalp objects, it is difficult to determine whose property the scalp is: The one who lost the scalp or the one who took the scalp. According to the scalp in question, until now there has no repatriation claim been made by any tribe of Dakota people as the alleged victory party.

Considering the impossibility of determining origin, identity and actual age of the scalp, going along with the difficulty to determine legitimate claimants, the „recommendations“ advise that the museum or the responsible institution should seek alternative solutions to a return (p. 66).

Until now, a final decision about the claim on the scalp has not been made and the research on the provenance of the human remain is

still in progress. As long as there is no verified information about the scalp's provenance, the object in question is still kept separately in the museum's collection.<sup>7</sup>

In order to foster scientific exchange about the question of dealing with human remains in museums' collections and repatriation requests, the Karl May Foundation held a symposium on this topic in February 2015.<sup>8</sup> As a result, the Karl May Foundation composed its own guidelines for handling human remains in its collection, taking the „recommendations“ by the German Museums Association and the „Code of Ethics“ by the International Council of Museums (ICOM) as examples. The guidelines are available online since 2015.<sup>9</sup>

Besides a respectful and responsible handling of the sensitive objects, essential aspects of the museum's guidelines are scientific documentation and ongoing research on the collection's provenance. The Karl May Foundation's main objective is to meet its obligation to preserve the cultural possessions. This always needs to be considered when it comes to the decision about what happens to an object. Concerning this matter, all ethical aspects also play a major role in this process.

Formulating their own guidelines, the Karl May Foundation and the Karl May Museum hope to create a basis for future repatriation requests and for the handling of human remains in the collection more generally. Hereby, the museum follows the German Museums Association's advice that every museum institution in Germany should acknowledge the need for finding adequate ways of dealing with human remains in their collections and, as a first step, establish its own guidelines (see preface by Dr. Volker Rodekamp, p. 5).

<sup>7</sup> For a report of the Karl May Foundation's Symposium in 2015 see: Anja Mede-Schelenz, Symposium „Ruhe sanft (in der Vitrine)!? Vom Umgang mit menschlichen Überresten in Museen und Sammlungen“, 28. Februar 2015, Karl-May-Museum Radebeul, in: *Volkskunde in Sachsen* 27 (2015), pp. 225-228; also Robin Leipold, *Ruhe sanft (in der Vitrine)!?, Vom Umgang mit menschlichen Überresten in Museen und Sammlungen*, in: *Der Beobachter an der Elbe* 24 (2015), pp. 36-41.

<sup>8</sup> An interim report about the research on the scalp has been published in: Robin Leipold, *Zum Forschungsstand der Skalp-Rückforderung*, in: *Der Beobachter an der Elbe* 26 (2016), pp. 25-33.

<sup>9</sup> Guidelines of the Karl May Foundation for handling human remains: [http://www.karl-may-museum.de/data/cms/pdf/Handlungsrichtlinien/2015-07-05\\_handlungsrichtlinien\\_stiftung.pdf](http://www.karl-may-museum.de/data/cms/pdf/Handlungsrichtlinien/2015-07-05_handlungsrichtlinien_stiftung.pdf) (13.11.2016).

The German Museums Association's „recommendations“ have been central for dealing with the repatriation request the Karl May Museum received from the Sault Ste. Marie Tribe of Chippewa Indians. They highlight many aspects on which the museum would like to continue working. However, practice has shown that it will be necessary in the future to develop and complete the „recommendations“ by integrating experiences from actual cases. Furthermore, a closer connection between museums and institutions that keep human remains would be preferable to exchange experience and discuss the adequate handling of human remains.

The Karl May Museum would like to express its gratitude and respect to the Sault Ste. Marie Tribe of Chippewa Indians. It was their request that helped the museum to see its collection from a different point of view and develop awareness for sensitive objects.

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## Injustice, Human Rights, and Intellectual Savagery. A Review

*by Edward Halealoha Ayau, Honor Keeler*

International repatriation is both a cultural duty and a human right that arises from the historic progression of injustices perpetrated against Indigenous people. The 2013 „Recommendations for the Care of Human Remains in Museums and Collections“ („Empfehlungen zum Umgang mit menschlichen Überresten in Museen und Sammlungen“; hereinafter, „recommendations“) promulgated by scholars and German museum administrators are problematic in several fundamental ways. Significantly, they fail to include Indigenous Peoples perspectives, to provide a clear process for repatriation, to cite well-researched scholarship on repatriation practices and to reference repatriation procedures already established in Australia, New Zealand, and the United States. These significant omissions leave the document incomplete. This article will address key concepts of international repatriation to increase the awareness of German museums and institutions of repatriation practices by Indigenous Peoples in the United States and will provide a review of specific challenges posed by the „recommendations“ that should be reconsidered in order for a more equitable and meaningful process to emerge.

We start with an ongoing effort to repatriate *iwi kūpuna* (ancestral skeletal remains) and *moepū* (funerary possessions) from a museum in Dresden, and share Native Hawaiian (‘Ōiwi) perspectives on this more than two decades long ordeal. These perspectives establish that Indigenous Peoples have the primary duty to decide what happens to their ancestors, funerary objects, sacred objects, and cultural patrimony; that the burden of proof to retain possessory control of Indigenous cultural items is the exclusive responsibility of the repository; that the context of injustice required in the „recommendations“ should be presumed; and that once ethnicity is established, the question of repatriation must only pivot upon whether the institution obtained free, prior, and informed consent (FPIC) from Indigenous Peoples to collect or acquire the ancestral remains and cultural items.

### Duty of Care

Hawaiians express who we are as human beings in essential ways, including the relationships among the living and deceased and the resulting *kuleana* (duty, responsibility, privilege) to provide care for the ancestors in their physical and spiritual forms. In the post-contact period, this duty of care expanded to include the responsibility to repatriate as a result of the removal of *iwi kūpuna* and *moepū* by foreigners without the knowledge of living descendants. Hawaiian values clearly establish that the treatment of the deceased including their skeletal remains is a family matter.

The spiritual relationship is considered interdependent whereby the living and the ancestors have the duty to provide and the privilege to receive, care and protection from the other. For many there is a sacred duty to maintain connections to the deceased to care for their *‘uhane* (spirit) and *mana* (spiritual essence/power) in a manner that benefits the living family. In recent years, such traditional spiritual practices have strengthened as Hawaiians continue to return to who we are.<sup>1</sup>

A critical requirement in the care of the spiritual form of our ancestors is for their bones to be where they were placed and for the living families to know that the *iwi kūpuna* have not been disturbed. Where *iwi kūpuna* were removed, the spiritual relationship suffers, manifesting itself in physical, spiritual and psychological harm to the living from the realization that the ancestors were desecrated.

### Dresden Museum (1991-Present)

In 1991, *Hui Mālama I Nā Kūpuna O Hawai‘i Nei* (Group Caring for the Ancestors of Hawai‘i)<sup>2</sup> initiated an effort to repatriate four *iwi kūpuna* (ancestral skeletal remains) in the collections of the *Staatliches Museum*

<sup>1</sup> Hawaiians have also worked to restore and advance our native language; improved our understanding and practice of other forms of traditional spirituality; restored and advanced traditional arts; restored long distance sailing through celestial navigation resulting in the journey by the sailing canoe *Hōkūle‘a* to traverse the oceans of the planet as part of a global message of conservation and sustainability; increased efforts to care for *wahi pana* (cultural sites); restored traditional forms of learning called *hālau* for *hula* (traditional dance), *‘oli* (chant) and other forms of education; and sought deeper understandings of our history and place in Polynesia while undertaking efforts to restore our *‘ea* (sovereignty). Taken together, these expressions help characterize Hawaiian humanity.

<sup>2</sup> The organization voluntarily dissolved itself on January 23, 2015.

*für Völkerkunde Dresden*. The organization was responsible for over 100 repatriation efforts from institutions in Hawai‘i, the United States, Australia, Canada, England, Scotland, Switzerland, and Sweden involving over 6,000 *iwi kūpuna* and *moepū*. During efforts to repatriate the bones of four ancestral Hawaiians, *Hui Mālama I Nā Kūpuna O Hawai‘i Nei* was directly opposed by the *Dresden Museum, German Ministry of Science*, and the *Cultural Section of the Germany Embassy* in Washington, D.C. The resulting discourse with German officials was highly disturbing. An inventory was provided in a letter from Ingrid Wustmann, Head of the *Department of Anthropology* of the *Staatliches Museum für Völkerkunde Dresden*.<sup>3</sup>

Written requests by *Hui Mālama I Nā Kūpuna O Hawai‘i Nei* for copies of archival records and documents describing the manner of collection was not responded to by the museum. Documentation explicitly demonstrating requisite consent from family members for the collection of „3002 Calvarium“, „3688 Cranium“, „3913 Calvarium“, and „3914 Mandibula“ was never provided. In our organization’s 26 years of repatriation experience<sup>4</sup>, no entity in possession of ancestral Hawaiian skeletal remains has ever provided any proof of family consent. Such evidence is the only acceptable justification for the removal and collection of *iwi kūpuna* and *moepū*. The museum effectively ignored this requirement.

By letter dated April 15, 1992, Director Heinz Israel of the *Staatliches Museum für Völkerkunde Dresden* stated to our organization:

„I wish to inform you that the State Museum for Ethnology, Dresden, cannot consent to the return to Hawaii of the requested parts of the anthropological collection. *These parts came to Dresden and have since been state property*. We as safekeepers of the free state of Saxonia, Fed-

<sup>3</sup> The four ancestral Hawaiian remains included two calvarium, a cranium and a mandible. Dr. Wustmann’s letter is dated March 27, 1991. She was responding to a formal inquiry by the State of Hawai‘i Historic Preservation Officer. The inventory information was provided to *Hui Mālama I Nā Kūpuna O Hawai‘i Nei*.

<sup>4</sup> A list of repatriations between 1990 to 2015 is available upon request to halealohahapai64@gmail.com.

eral Republic of Germany, are bound to protect the right of ownership regarding the museum sector.”<sup>5</sup> (Emphasis added.)

In July 1993, a member of the German *Ministry of Science* wrote to a member of the *Embassy of the Federal Republic of Germany* in Washington, D.C., in reference to Hawaiian skeletal remains at the *Staatliches Museum für Völkerkunde Dresden* that are being requested for repatriation, and stated:

“[t]he relics of Hawaiian origin in the anthropology collection were received by the Museum of Ethnology between 1896 and 1904. *It is impossible that the acquisition was illegal, Arthur Baessler, the collector was a respected co-worker at the Museum and was known for his good and friendly contacts with the Natives.* . . . There is no reason to believe that the above mentioned human remains in the anthropology collection of the Museum of Ethnology was not accorded „proper treatment“.”<sup>6</sup> (Emphasis added.)

Efforts to seek repatriation from the Dresden museum proved unsuccessful. In January, 2015, *Hui Mālama I Nā Kūpuna O Hawai‘i Nei* formally dissolved itself. Before doing so, it collaborated with the *Office of Hawaiian Affairs* (OHA)<sup>7</sup> to submit a letter pursuant to the 2013 „recommendations“ requesting to re-set the claim for repatriation with the *Staatliches Museum für Völkerkunde Dresden* which was transferred to OHA.<sup>8</sup>

<sup>5</sup> Copies of this letter, which was provided in the German language and translated into English by a German-speaking resident of Hawai‘i, is on file with the authors.

<sup>6</sup> The July 29, 1993, letter in the German language and its English translation is on file with the authors.

<sup>7</sup> The Office of Hawaiian Affairs (OHA) was established in 1978 through amendments to the Hawai‘i Constitution to achieve self-governance for aboriginal Native Hawaiian people to take action to better the conditions of Native Hawaiians, and to advocated for the lawful interests of Native Hawaiians through the leadership of an elected Board of Trustees and hiring of professional staff. See, Constitution State of Hawai‘i Article 12, Sec 5-6 (1959) and Hawai‘i Revised Statutes Sec 10.3 (1979).

<sup>8</sup> A copy of the letter dated January 2, 2015, and addressed to Director General Hartwig Fischer, Besucherservice der Staatlichen Kunstsammlungen Dresden, is on file with author Edward Halealoha Ayau.

## Review of the „Recommendations“

The following provides suggestions for the „recommendations“, pointing out several important points regarding repatriation. Not only will this assist in revisions for the „recommendations“, but it will also use the example above to point out the obvious failings in the responses from the *Staatliches Museum für Völkerkunde Dresden*: to not provide any historical documentation to demonstrate family consent for the removal of the collected human remains, the lack of proof of authorization from the government of Hawai‘i to export human remains from the jurisdiction, and the failure to substantiate the assertions regarding the manner of collection by Mr. Baessler.

### 1. Free, Prior, and Informed Consent (FPIC)

The repatriation of Indigenous ancestors and cultural items is a human right, centered around the pivotal question of whether free, prior, and informed consent (FPIC) from Indigenous Peoples has been obtained in order for a museum to legitimately maintain possessory control. Generally, free, prior and informed consent requires: an absence of coercion, manipulation, threat, or duress when consent is sought; sufficient time for review of the implications; that it is limited in scope; and a broad opportunity for education on the matter to make an informed decision, as well as consultation and participation in the process. FPIC is universally acknowledged as a fundamental requirement for collection. In the absence of FPIC, collection is considered illicit giving way to the ability and right to repatriate which is well-recognized by the „U.N. Declaration on the Rights of Indigenous Peoples“<sup>9</sup>, by the *U.N. General*

<sup>9</sup> Article 12 of the U.N. Declaration on the Rights of Indigenous Peoples states: „1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. 2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.“ U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (12.12.2016).

*Assembly*<sup>10</sup>, and within national and Indigenous policies and procedures developed in the United States<sup>11</sup>, Australia, and New Zealand where Indigenous Peoples have been conducting repatriations for over 25 years.

FPIC and the human right of repatriation is also a significant part of legislation in the United States, including several Intertribal Resolutions, such as the „National Congress of the American Indian Act“, the „Intertribal Council of the Five Civilized Tribes Act“, the „All Pueblo Council of Governors“, and the „United South and Eastern Tribes“.<sup>12</sup> According to Native Hawaiians, only a living Hawaiian can commit his or her bones to be collected and stored permanently in an institution thereby effectively foregoing interment.<sup>13</sup> For those Hawaiians who were buried, collection without consent violates the clear intent of the family to commit the bones to the care and protection of *Papahānaumoku* (the Earth Mother). Following burial, only a recognized family member would

<sup>10</sup> Operative paragraph 27 of the Outcome Document of the 2014 High Level Plenary Meeting of the U.N. General Assembly, known as the World Conference on Indigenous Peoples states, „We affirm and recognize the importance of indigenous peoples’ religious and cultural sites and of providing access to and repatriation of their ceremonial objects and human remains in accordance with the ends of the United Nations Declaration on the Rights of Indigenous Peoples. We commit ourselves to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels.“ UN General Assembly, Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, 22 September 2014, A/RES/69/2, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/69/2](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/2) (12.12.2016).

<sup>11</sup> National repatriation laws within the United States include: the National Museum of the American Indian Act, Pub.L. No. 101-185, 103 Stat. 185 (1989), amended by Pub. L. No. 104-278, 110 Stat. 3355 (1996); the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq.; the Archaeological Resources Protection Act, 16 U.S.C. § 470aa et seq. Supporting legislation includes the American Indian Religious Freedom Act, 42 U.S.C. § 1996.

<sup>12</sup> Support for International Repatriation, NCAI Resolution SAC-12-008 (2012). A Resolution on International Repatriation of the Five Civilized Tribes, Intertribal Council of the Five Civilized Tribes Res. No. 12-07 (Oct. 12, 2012).

<sup>13</sup> M. K. Pukui, E.W. Haertig, C. Lee, *Nānā I Ke Kumu* (Look to the Source) Vol. I, 108-109 (1972), „If the bones were desecrated, the spirit was insulted. Even the living descendants of the profaned dead were shamed and humiliated,” p. 109; see, S.M. Kamakau / Ka Po’e Kahiko, *The People of Old*, Honolulu 1987 (1st ed. 1964), pp. 33-35, 38-44; see also, David Malo, *Hawaiian Antiquities* (Mo’olelo Hawai’i), Honolulu 1978 (1st es. 1903), pp. 96-99.

be authorized to consent to the removal of *iwi kūpuna*. In the Dresden repatriation claim, the assertion that “[i]t is impossible that the acquisition was illegal“ in the absence of any documentation establishing the actual manner of collection and any indicia of FPIC by the family is irresponsible and self-serving.

Absent FPIC, removal is considered a violation of the family honor and the inherited *kuleana* (duty, responsibility, privilege) to care for the ancestors both physically and spiritually. Furthermore, it represents denial of the ability of the living to be cared for by the ancestors. FPIC is absolute. The significance of family values and sensitivities are such that consent can never be presumed – it must be clearly and overtly demonstrated. Therefore, the burden of proof is not with Indigenous Peoples, but exclusively with the repositories to prove that they FPIC was obtained prior to collection in order to justify continued possession.

## 2. Funerary Objects Must Not Be Excluded

Section 2.2 of the „recommendations“ addresses human remains only. However, funerary objects must not be excluded. The common law also provides that funerary objects are not considered abandoned property, but belong to those with whom the items were placed. In addition, in Hawaiian culture placing an item with the deceased creates a permanent bond between both whereby the item is forever the possession of the deceased.<sup>14</sup> As with human remains, FPIC also applies to funerary objects. In the absence of FPIC, the acquisition of funerary objects is deemed illicit and must be allowed to be returned. There are no exceptions nor dates of expiration, as these relationships are without exception.

## 3. Context of Injustice Should be Presumed

Section 2.3 of the „recommendations“ appears to pivot repatriation on proof of a context of injustice and not on FPIC, thereby placing a substantial burden on already harmed Indigenous Peoples. Indigenous international repatriation is a human rights issue that arises from a progression of injustice perpetrated against Indigenous Peoples. These con-

<sup>14</sup> For more discussion of the importance of *moepū* (funerary possessions) in Hawaiian culture, see, Edward Halealoha Ayau, Honour thy ancestor’s possessions, in: *Public Archaeology* 4 (2005), p. 193-197.

texts of injustice surrounding the robbing of Indigenous graves, taking of Indigenous Peoples from massacre sites, and stealing of Indigenous sacred objects and cultural patrimony in best practice is presumed and reflected in national legislation, such as the „National Museum of the American Indian Act“ and the „Native American Graves Protection and Repatriation Act“ in the United States. Repatriation is the proper remedy to this injustice whereby claims for return involve connecting past acts to present action. A context of injustice exists whenever family consent was not obtained.

In addition, this section dismisses „the legal concepts and values of the people of origin“ when it should be the case that these legal concepts and values should be controlling. This section omits Indigenous Peoples and fails to provide a well-founded analysis of repatriation practices, which would have included meaningful consultation with Indigenous Peoples that not only allows for a mutually respectful exchange, but the consideration of Indigenous legal concepts and values.

#### 4. Injustice Does Not Expire

One cannot impart a timestamp on injustice, and expect a self-proclaimed exoneration from responsibility. Time restrictions, such as the 125 years listed in section 2.3 of the „recommendations“ are fundamentally flawed, as they do not take into account Indigenous knowledge and beliefs, but rather impose the perspectives of institutions and repositories responsible for the illicit acquisition of these cultural items. It is especially troubling for the „recommendations“ authors to assert that over time, injustice is cured whereby even the killing of a person has a limitations period which terminates its impact upon the present day. Such an assertion is extremely harmful upon the mindset of humanity. Does this mean that the massacre of innocent victims during the Holocaust will no longer be an atrocity once sufficient time passes? Such an assertion is wholly without merit because injustice does not have an expiration date.

The burden of proof to maintain the continued possession of Indigenous Ancestors and cultural items belong completely to the museum or repository, as purveyors of ongoing injustice. Failure to notify, consult, and repatriate to Indigenous Peoples, inflicts further harm and contin-

ues the progression of injustice and human rights violation originally perpetrated when Indigenous ancestors and cultural items were taken from their communities of origin without consent.

#### 5. Indigenous Relationships and Values Must be Considered

In Section 2.4 of the „recommendations“, the requirement for claimants to demonstrate direct descent is problematic for several reasons. First, it shifts the burden of proof to victims, rather than the museums or collectors to establish consensual acquisition. Secondly, it does not take into full consideration Indigenous community, family, and relationship values which may not reflect Western concepts of family and direct lineal descent inheritance rights. For instance, Hawaiian cultural values of *ohana* (family) and *lāhui* (nation) promote the care of all Hawaiians, living and deceased. During the original collection of ancestral human remains, only the person in question or his/her family would have had the standing to consent to the removal.

The duty, responsibility, and privilege to help ancestral Hawaiians return home apply to all Hawaiians and are based upon the belief that Hawaiians descend from a common ancestor named *Hāloa*. The duty to return ancestral remains which were illicitly acquired does not require the person to be a direct family member, but the willingness to act on behalf of a deceased ancestor whose grave was desecrated and robbed. Also, the individual identities of the pillaged Hawaiian skeletal remains are now unknown, and the duty to retrieve, repatriate and re-inter becomes a profound responsibility of living Hawaiians, some of whom are descendants of these stolen ancestors. This phenomenon is itself created by the horrific act of theft of ancestral remains and the lack of FPIC.

#### 6. Scientific Analysis Limited to Identifying Ethnicity Requires FPIC

Section 3.2 of the „recommendations“ focuses upon scientific analysis of Indigenous skeletal remains and, therefore, promotes the continued possession without exception. This is fundamentally problematic because it does not first establish that FPIC was obtained to legitimately collect the remains in the first instance. In the absence of FPIC, the analysis does not reach the question of scientific analysis because possessory control is illegitimate. To proceed with analysis in the absence of FPIC perpetrates



injustice and ignores the value system of the culture from whom the individuals originated, i.e. that Hawaiians consider the practices of scientific analysis as forms of desecration.

We strongly recommend non-intrusive forms of inquiry be conducted first to help establish the probable ethnicity of the ancestral remains, including research of historical records and documents regarding the circumstance surrounding the original acquisition of the remains, identify provenance, date of removal, and any known family names and genealogies. Only where the results of the ethnographic approach are insufficient to meet an agreed upon standard of identification, will forms of non-intrusive analysis, including metric and non-metric observations be allowed to establish probable ethnicity. However, this must all be done through meaningful consultation with Indigenous Peoples. All intrusive forms of analysis must be barred unless FPIC is clearly provided by Indigenous claimants.

## 7. Indigenous Practices Should Not Be Dismissed in Favor of Scientific Analysis

The „recommendations“, particularly in Section 3.2 regarding analyzing human remains, regard Indigenous practices as „mythical“ and explain away this disregard for religious and cultural beliefs as subservient to scientific analysis. Science and Indigenous practices are not mutually exclusive, and the science of one culture should not subject another culture's ancestors to intrusive practices without the presence of FPIC.

The tone that pervades the „recommendations“ and that is especially prevalent in Section 3.2 is emblematic of the shift and self-reflection that must occur in Germany. Indigenous repatriation brings forward a legacy from past generations that must be addressed by museums, collectors, auction houses, governments, and other repositories, which may be difficult and unpalatable to reflect upon, admit connection to, and take responsibility for perpetuating. Such institutional self-reflection will unearth the historic and legal legacy of viewing Indigenous Peoples as outside of the realm of humanity, either as property or incapable of legal capacity. In understanding the history of the dehumanization of Indigenous Peoples and the roles museums and other repositories played, German museums and repositories will be better able to identify

and acknowledge their current roles in perpetuating injustice against Indigenous Peoples. Indigenous Peoples have their own traditional laws and legal systems, regardless of nation-state law. They have the right of sovereignty, unimpeded by persecution by nation-states. Today, Indigenous Peoples are acknowledged and supported as human beings within the realm of protections of human rights under the law. When a People (living or deceased) is not recognized as human beings, it is an indicator of persecution and human rights abuses. However, under the „recommendations“, our Ancestral relatives are not afforded this same dignity. They are treated as property and reside in a perpetual state of posthumous slavery.

In the Native Hawaiian international repatriation claim in Dresden, the statements mentioned earlier asserting that „[i]t is impossible that the acquisition was illegal“ in the absence of documentation wrongly presumes that Hawaiians would undoubtedly provide ancestral remains as tokens of friendship with non-family members. That Arthur Baessler had „friendly contacts with the Natives“ does not guarantee that these Hawaiians would provide him a calvarium and mandibula belonging to their ancestors.

The arguments made by representatives in the above-mentioned statement fly in the face of the Hawaiian value system and the core of the Hawaiian concept of humanity, which is based in part upon *ohana* (family) bonds and relationships. The final unsupported assertion provides that „[t]here is no reason to believe that the above mentioned human remains. . . was not accorded „proper treatment“.“

The author does not bother to mention whether his definition of proper treatment contemplates Hawaiian values and practices. Perhaps Hawaiian ideas on humanity simply did not matter to him. It is discriminatory to define proper treatment of humans irrespective of the living culture to whom the remains belong. Taken together, these statements are an expression of intellectual savagery, defined as using one's intellect to deny people their humanity.

## 8. Framework for Repatriation Should Include Ethical Considerations

In Section 3.4, it is confusing why so much emphasis is placed on German law with regard to repatriation when it is admittedly inadequate to address the challenges posed by repatriation. This admission of inadequacy should initiate the movement toward more capable systems such as ethical considerations, by which to address equitable claims for repatriation to country of origin.

## 9. Indigenous Remains are People and Not Objects

As described earlier, the objectification of Indigenous Peoples reflects severe, deep-set, and continued discrimination in the law, academia, and institutions, such as museums, that require significant reflection and change. Despite the case law establishing that a corpse must not be downgraded to the status of an object, the „recommendations“ in Sections 2, 3, and 4 clearly objectify human remains, as we will show. How is it that such a characterization does not violate „human dignity“ and downgrade skeletal remains to the status of an object? Also, why is it that the older remains are, the less protections they are afforded as human beings? In Hawaiian thinking, for instance, the opposite is true. The older an ancestor is, the higher the level of care and respect.

The topics discussed in the „recommendations“ include „property rights“ and the „concept of possession.“ Section 2 of the „recommendations“ asserts that it is generally accepted among legal experts that the human remains of persons who died a long time ago are „tradable items“ and rights of ownership may exist. However, no case law or treatise is cited to establish these assertions. Generally, there is an enormous lack of references throughout the „recommendations“. Assertions are made that seemingly come out of nowhere and are touted as generally accepted. These citations are imperative to ensure accountability. Also, there is no established period of time by which human skeletal remains lose their humanity and become property. Such a delineation should never be made and not only calls forth ethical and moral concerns, but makes our Ancestors slaves through the legal framework of property law. And once again, the „recommendations“ ignore any need to demonstrate requisite FPIC. Instead, they continue to support

the objectification of remains for possessory purposes that allows for maintenance of collections while undermining claims for repatriation.

Section 2 of the „recommendations“ asserts that even though rights of ownership may exist in human remains, it does not mean ownership must always have been effectively transferred to the museum. An example is given where a thief does not acquire ownership of items stolen by him, including human remains and cannot therefore transfer ownership. The discussion shifts to circumstances under which ownership may pass to a museum at a later time, despite theft. Consistent with previous sections, this one also promotes ownership and possession at the expense of legality and ethics. Recognizing the means to negate the theft of human remains is shameful.

Section 2's position regarding legal provisions that allow claims for the return of human remains are flawed because they continue to objectify human remains into property. Once ethnicity is established, the focus should be on identifying who has the highest level of standing to decide proper treatment, members of the same ethnic group whose values deplore grave disturbance and who are closest in relations of the deceased, or museum staff who promote the collection, continued possession, and ownership of human remains acquired illicitly. It is our sincere hope that these „recommendations“ can be revised to identify ethical and professional standards to guide meaningful consultation among museums and Indigenous claimants.

## 10. „Recommendations“ Should Include Ethical and Legal Considerations

Section 3.5 regarding „Ethical Principles for Museums and Collections containing Human Remains“ correctly identifies that in certain cases involving the severity of the breach of law, a limitations period is secondary to the principle of material justice. The failure to obtain consent amounts to a severe breach of law and material justice dictates the return of human remains and funerary objects to the country of origin.

It is properly asserted that use of human remains in a modern context is achieved through consent. However, it is problematically asserted that „such a solution does not normally exist in relation to the human remains in historical collections.“ This is incorrect. If consent is demonstrated

for remains in historical collections, continued possession is allowed. Absent consent, possession must give way to repatriation.

Under Section 4 and elsewhere throughout the „recommendations“ it is important to hold human dignity as the highest ethical value and this should be guaranteed absolutely with high requirements placed on a finding of offense against it. It is asserted that removal of ancestral remains without family knowledge or approval meets the high requirements of offense against human dignity. So sacred is the duty to care for deceased family members that nothing short of permission to remove can overcome the duty. Further, this section correctly asserts that for archaeological collections, human remains „cannot be excluded from the guarantee of human dignity solely on the basis of their age.“ With regard to cultural claims, this section properly identifies that for cultures for whom the duty of care for the dead is a significant practice (as with Hawaiians), such beliefs must be recognized and followed over scientific interests.

#### **11. A Process for International Repatriation Needs to be Established**

Section 4.5 outlines processes for the return of human remains and, most importantly, recognizes that when a museum determines that return of human remains is required, such museum „can of course proactively set the return in motion...“ This section holds the most promise for the fair consideration of return claims. However, assertion of a limitations period is highly problematic. In Hawaiian culture, *aloha* (love) and respect for the ancestors is considered *pau'ole* (without end). The continued recognition of a limitations period utilized to cure illicit acquisition or other injustice is a critical issue that must be reconciled in order for the „recommendations“ to have any chance of being fair and meaningful to Indigenous claimants.

In general, the process of international repatriation should include the following:

- (1) an itemized inventory of cultural items and identification of the provenance of each;
- (2) notification by the museum or repository to the Indigenous Peoples potentially affiliated to these cultural items based upon provenance;
- (3) the conduct of meaningful consultations so that museums and In-

digenous Peoples may obtain required FPIC, agree upon the process to identify the ethnicity of the human remains and thereby the culture that the funerary objects, sacred objects, and cultural patrimony belong to;

(4) the conduct of exhaustive research of historical documentation to establish the circumstances surrounding collection, the ethnicity of the individuals disinterred, and whether FPIC was obtained in the collection of the remains and cultural items;

(5) a determination of ethnicity based upon historic documentation where the evidence meets an agreed upon standard of identification;

(6) where historic documentation is determined to be insufficient, obtaining FPIC to conduct non-intrusive analysis for the limited purpose of identifying ethnicity;

(7) a determination whether FPIC was obtained to continue possessory control or a determination that FPIC was not obtained such that the remains and cultural items are eligible for repatriation; and

(8) establishing a process for the timely transfer of possession, and the export and repatriation of the ancestral remains and cultural items.

Repatriation has been done many times before and there are numerous resources available to educate German museums and other repositories and assist with navigating unknown issues to help establish a clear and functional repatriation process. The very first step is to ensure that Indigenous Peoples are at the table of any planning process when discussing and planning procedures for Indigenous repatriation. Our involvement in the planning process restores agency and dignity after it has been taken away from us and our ancestors. It also ensures a mutually respectful process that will help institutions and repositories to fully understand how to proceed with repatriation in a manner that is culturally sensitive and mutually respectful. Furthermore, it will help to establish core relationships with Indigenous Peoples that have been significantly and profoundly absent in the past. This involvement will also lead to greater understanding and healing from the injustices that surround the unauthorized removal of Indigenous ancestral remains and cultural items from their lands of origin.

The „recommendations“ have failed to involve Indigenous Peoples in their authorship. They are clearly lacking Indigenous perspectives, voices, and leadership, which should be paramount in any issue that

directly affects Indigenous Peoples as profoundly as international repatriation does. In addition, the „recommendations“ have given short shrift to the plethora of Indigenous and scholarly information available on repatriation.<sup>15</sup> Rather than establishing a process for international repatriation for Indigenous Peoples, it has become a treatise of faulty arguments for German institutions to use to retain within their possession Indigenous family members, funerary objects, sacred objects, and cultural patrimony. Finally, the „recommendations“ fail to review and include the procedures for repatriation that Indigenous Peoples and nations have established in Australia, New Zealand, and the United States, the most active nations in establishing policies and procedures for repatriation to Indigenous Peoples.

### Conclusion

We recommend that the *Deutscher Museumsbund* (German Museum Association) revise the „recommendations“ and German Cultural Heritage Laws so that they even go beyond what the United States, Australia and New Zealand have addressed in repatriation. While domestic laws, such as the „National Museum of the American Indian Act“ (NMAIA) and the „Native American Graves Protection and Repatriation Act“ (NAGPRA) were established to address repatriation to American Indian Tribes and Native Hawaiian Organizations from the Smithsonian National Museums and federally funded institutions, respectively, they

<sup>15</sup> Native American Graves Protection and Repatriation Act (1990); Sangita Chari / Jaime M.N. Lavallee (eds.), *Accomplishing NAGPRA. Perspectives on the Intent, Impact, and Future of the Native American Graves Protection and Repatriation Act* (First Peoples), Corvallis 2014; Fine-K.S. Dar, *Grave Injustice: The American Indian Repatriation Movement and NAGPRA*, Lincoln 2002; C. Timothy McKeown, *In the Smaller Scope of Conscience. The Struggle for National Repatriation Legislation, 1986–1990*, Tucson 2013; Joe Edward Watkins, *Sacred Sites and Repatriation: Contemporary Native American Issues*, Philadelphia 2006; Edward Halealoha Ayau, *Restoring the Ancestral Foundation of Native Hawaiians: Implementation of the Native American Graves Protection and Repatriation Act*, in: *Arizona State Law Journal* 24 (1992), pp. 193–216; Edward Halealoha Ayau, *Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public*, in: *Cardozo Journal of International and Comparative Law* 11 (2003), pp. 409–466; S.S. Harjo, *Native Peoples' Cultural and Human Rights: An Unfinished Agenda*, in: *Arizona State Law Journal* 24 (1992), pp. 321–328; Sherry Hutt / C. Timothy McKeown, *Control of Cultural Property as Human Rights Law*, in: *Arizona State Law Journal* 31 (1999), pp. 363–390; Honor Keeler, *Indigenous International Repatriation*, in: *Arizona State Law Journal* 44/2 (2012), pp. 703–802.

have not yet expanded into the private art market, nor do they address the remains of other Indigenous Peoples. Germany has the opportunity to do this through its cultural heritage laws and the „recommendations“ in a new and improved draft. At present, these „recommendations“ simply do not represent a fair, equitable process for the consideration of repatriation claims by Indigenous Peoples.

We further recommend a revision of the „recommendations“ in which Indigenous Peoples play an active role in redrafting with a perspective toward a more balanced approach. Museums and institutions in Germany will ultimately benefit from the resulting dialogue and broaden their knowledge base and understanding of Indigenous Peoples. Long-lasting relationships will be built among German institutions and Indigenous Peoples as has been the case in the United States and other countries. German museum audiences will ultimately be better educated on Indigenous issues, as relationships of trust begin to develop and German institutions start to educate the public regarding Indigenous perspectives on legitimately held collections.

While it is the prerogative of the *German Museum Association* to decide their course of action, it is the duty of Indigenous Peoples to defend and protect our ancestors, funerary objects, sacred objects, and cultural patrimony, as well as our values and beliefs. We have the opportunity to do both in a manner that reflects positively on us and our respective ancestors. But first, we must each commit to elevate our respective humanity – our understanding of who we are as human beings through the proper treatment of the ancestral dead and their possessions.<sup>16</sup>

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<sup>16</sup> Editors' note: Since the publication of this article, the Dresden Museum has begun the process of repatriation, see: Jörg Häntzschel, *Tausende Köpfe*, in: *Süddeutsche Zeitung*, 24.10.2017, <http://www.sueddeutsche.de/kultur/voelkerkunde-tausende-koepfe-1.3722250> (22.05.2018).

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