

A Good Starting Point? Critical Perspectives from Various Disciplines

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Introduction

When the German Museums Association (Deutscher Museumsbund, DMB) published their „Recommendations for the care of human remains in German museums and collections“¹ 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 collec-

¹German 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 (12.12.2016).

tions. 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, 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.²

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 2011–2014.³ Not only would precise references to these processes and programmes have aided readers and appliers of the guidelines to situate cases and

²International Council of Museums (ICOM), Code of Ethics, 1986, current version available at 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 (12.12.2016); Native American Graves Protection and Repatriation Act, see <https://www.nps.gov/nagpra/MANDATES/INDEX.HTM> (12.12.2016).

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

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. 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 historical 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 legitimate 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').⁴ In the Anglo-American literature the eth-

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

ical debate is more extensive and long-standing.⁵ 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.⁶

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.

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

⁵See 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.

⁶Cf. 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).

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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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 published 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.

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Holger Stoecker was from 2010 to 2013 a member of the Charité Human Remains Project at Charité – Universitätsmedizin Berlin, Germany, which researched the provenance of Human Remains in Berlin anthropological collections. Here, he focused on human remains from today’s Namibia, which came to Berlin during the colonial period. Currently he is working on the colonial and political history of the Brachiosaurs brancai in the Naturkundemuseum Berlin. He has published on African-German History of Science, Missions, and Colonialism as well as on anthropological collecting and collections in colonial contexts. His current affiliation is with the Seminar für Afrikawissenschaften, Humboldt-Universität zu Berlin.

Andreas Winkelmann is an anatomist with a special interest in the history of his profession and in ethical aspects of the use of human bodies for anatomical purposes. He headed (together with Thomas Schnalke) the Charité Human Remains Project, which from 2010 to 2013 produced interdisciplinary provenance research on skeletal remains from Namibia and Australia in Berlin anthropological collections and organised several restitutions of human remains to Indigenous communities. His current affiliation is with the Institut für Anatomie, Medizinische

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