A Helping Hand? Comments on the „Recommendations for the Care of Human Remains in Museums and Collections“ by the Deutscher Museumsbund (German Museums Association)

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“)[1] 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[2] 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

[1] 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 (12.12.2016).

[2] 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.

„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).

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)[3], for example, recognises sacred beliefs as a basis for claims to land, while the „Native Title Act" (1993)[4] 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.

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

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

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 was often strongly opposed[5], 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[6] and the British Museum of Natural History[7]), and with some governments' official acknowledgement of

[5]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).

[6]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).

[7]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 (12.12.2016).

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 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."[8]

[8]Graeme Neate, Aboriginal Land Rights Law in the Northern Territory Volume 1, Chippendale NSW 1989, pp. 82-87, p. 89.

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.[9]. As a general principle, the more criteria a person can satisfy, the stronger their claims to lands.

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)[10], 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 rela-

[9]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.

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

tion 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 significance 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".[11] 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.[12] 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 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:

[11]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)

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

„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 . . . ".[13]

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.[14] 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[15], 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 by the „recommendations" only as a suggested time frame. However,

[13]Alfred Cort Haddon, Torres Strait fieldwork journal, unpublished, Cambridge University Library HP papers, 1888, p. 66.

[14]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.

[15]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.

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[16], 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[17], who was killed and his skull sent to England in 1802, Carnambaygal, killed in 1816[18], and Poltpalingada, Wunamachoo, and Bokalie, whose remains were stolen after their deaths at the turn of the 19th century and sent to Edinburgh University[19]; Natcha[20], Jandamarra[21], and Truganini[22], 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.

[16]British Museum, 2013 British Museum Policy: Human Remains in the Collection.

[17]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).

[18]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).

[19]Fforde, Collecting the Dead.

[20]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 (12.12.2016).

[21]June Oscar, Bunuba Elder Personal Communication, Interview with Michael Pickering, 2013. See also Howard Pedersen / Banjo Worrunmurra, 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 (12.12.2016).

[22]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).

Further, since first colonisation, names and genealogies have been collected. These documents have been crucial to land claims and native 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.[23] This extensive documentation, ranging from the notebooks of anthropologists and missionaries through to the 'Register of Wards 1957'[24], 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

[23]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).

[24]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).

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 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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