

Talking and Going about Things Differently

On Changing Vocabularies and Practices

in the Postcolonial Provenance and Restitution Debates

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In early 2017, the South African museum scholar Ciraj Rassool characterised the situation of German museums as a 'difficult mixture of outdated debates and new opportunities' (Rassool 2017: 149). Since then, the situation has changed dramatically. Germany has seen the eruption of heated and at times acrimonious debates on colonialism and on colonial legacies in German museums. Moreover, the focus of ethnographic museums in Germany has shifted decisively towards issues pertaining to decolonisation.

Before looking at that transformation more closely, it is helpful to recall the events leading up to the colonialism debates in Germany. For a long time, working through the legacies of colonialism in museums had been a concern only of a small cadre of activists, scholars and museum practitioners. The majority of academics, museum directors, institutions and politicians gave it little attention. However, starting in 2004, the cadre's work began to pay off, and slowly but surely decolonisation appeared on the agenda of institutional actors. Several pivotal events including the return of human remains from Berlin to Windhoek in 2011 and the resignation of art historian Bénédicte Savoy from the advisory board of the Humboldt Forum in Berlin helped crystallise the debate. Last but not least, position statements such as the German Museum Association's Recommendations for the Care of Human Remains in Museums and Collections (DMB 2013), its Guidelines for the Care of Collections from Colonial Contexts (DMB 2018, 2019, 2021), and the very influential Report on the Restitution of African Cultural Heritage (Sarr and Savoy 2018) put pressure on administration bodies, especially museum funders. As a consequence, regional and national political actors began to address colonialism, provided political backing and funding for the project of working through the provenances of collections from colonial contexts¹ and created long-term structures for decolonisation, including the Department for Cultural Goods and Collections from Colonial Contexts at the German Lost Art Foundation, four permanent positions for provenance research at the Prussian Cultural Heritage Foundation as well as a Contact Point for Collections from Colonial Contexts at the Cultural Foundation of the German Federal States. Cultural institutions and their governing bodies made public pledges such as the pivotal 'Frame-

work Principles for Dealing with Collections from Colonial Contexts' (Federal Government Commissioner for Culture and Media et al. 2019) and the 'Heidelberg Statement' (Annual Conference of the Directors of Ethnographic Museums in the German Speaking Countries 2019) and started a variety of initiatives aimed at increasing access to their collections and shedding critical light on their history.

The changes long demanded by activists and scholars, implemented step by step by museum practitioners and eventually codified by politicians are an effort to distance German institutions from past, outdated and 'contaminated' practices perpetuating colonial power imbalances, colonial stereotypes and knowledge orders. They testify to a fundamental unease with established ways and a desire of 'doing things differently than before'. The work of doing things differently has gone hand in hand with speaking about things differently. New vocabulary has emerged and become crucial for talking about the history of collections. This includes *sensible Objekte/Sammlungen* (sensitive objects/collections), *koloniale Kontexte* (colonial contexts), *Erwerbungskontexte* (contexts of acquisition), *Unrechtskontext* (context of injustice) and *Zusammenarbeit mit Herkunftsgesellschaften* (cooperation with societies of origin). Over the past years, these and other terms have become critical for re-assessing museum objects and collections and making decisions about their future.

I would like to take language as a point of departure for approaching the broader dynamics of decolonialisation. Literary scholars Susan Arndt and Nadja Ofuatey-Alazard (2011) have pointed to the crucial role that language and terminology play not only in the formation and reproduction of colonial and racist stereotypes but also in their eradication. Initiatives for renaming streets (see the essay by Duane Jethro in this volume) have shown how interventions in existing vocabularies can be an important lever and symbol for decolonisation. In the museum sector, the debate on discriminatory language and the revision of racist titles for artwork have pointed in the same direction (Modest and Lelijveld 2018). The arguments about denominations, definitions and categorisations are evidence of a broader struggle of museum professionals and culture workers to 'reform' museums and turn them into 'differencing machines' of a more sensitive kind (see the Introduction of this volume). The rampant production of guidelines and programmatic texts in the museum sector and by government agencies is part of an ongoing search for new, more appropriate and self-reflexive ways of speaking, thinking and approaching museums and their colonial legacies.

However, change in the world of institutions is rarely brought about by independent invention or internal insight alone. Rather, it fundamentally owes its impetus to external criticism and inspiration, i.e. ideas and arguments that cross institutional, disciplinary and geographical boundaries (Macdonald, Gerbich and Oswald 2018). Even though in a different context – the analysis of practices of conflict resolution – Andrea Behrend has coined the term 'travelling model' (Behrends et al. 2014) that appears to be useful here as well. With Germany being a relative newcomer to the postcolonial restitution and repatriation debate (Fründt 2011), the question arises as to how far its recent debates and changes have been shaped by earlier discussions and experiences elsewhere, in fact by 'traveling models' or 'traveling concepts' (Bal 2002).

To that end, I focus on two concepts that have influenced the German debate in fundamental ways: *human remains* and *Unrechtskontext*. I identify the previous debates and

practices that gave rise to them, and ask why and how they came to be mobilised today. Their trajectories do not follow a linear or circular pathway originating from a single centre. Rather, they have entered the current German debate by way of multi-polar, non-simultaneous and meandering routes of proliferation. Their wide-scale adoption in the German museum world indicates a major shift in the conceptualisation of museum collections and museum work both by professionals and the broader public.

Methodologically, my analysis draws on various sources: fieldwork conducted on the repatriation of human remains from German institutions to Namibia, Australia and New Zealand between 2008 and 2018 (Förster 2013, 2020, Fründt and Förster 2021), on provenance research in institutions in Berlin and Jena (Förster and Stoecker 2016, Förster and Henrichsen, Stoecker and #Eichab 2018) and on the German provenance and restitution debate itself (Förster 2017a,b, Förster 2018a,b, Förster and von Bose 2018, Förster and Fründt 2017). In addition, my analysis is based on observations made as a speaker of the Working Group on Museums of the German Anthropological Association, where I co-convoked the 2017 conference “Provenienzforschung in ethnologischen Sammlungen der Kolonialzeit” (Förster, Edenheiser, Fründt and Hartmann 2018a), as a member of the German Museum Association’s working group for the “Guidelines on the Care of Collections from Colonial Contexts” (see (DMB 2021) and as a member of its working group for the second edition of the “Recommendations for the Care of Human Remains in Museums and Collections” (first edition: DMB 2013).² My involvement in the working groups requires carefully navigating the roles of observer, critic, initiator and occasional co-author. However, I believe that the insights gained from moving fluidly between these roles provide the analysis with a multifaceted granularity and a keen awareness of the major actors in the discussion.

‘Human remains’: catching up with the global repatriation movement

I have argued elsewhere that the repatriation of human remains from German institutions to their countries and communities of origin has played a vital role in decolonising museum language and practice (Förster 2018a: 16). When, in 2011, the Charité university hospital embarked on a series of returns to Namibia, Paraguay, Australia and Tasmania (Förster 2020: 120–112), resistance to restitution claims began to crack. A number of ethnographic museums and university collections followed Charité’s example and returned human remains to Australia, Brazil, Japan, Hawai’i, Namibia, New Zealand and Peru; one private owner returned human remains to Tanzania (Fründt and Förster 2021, Winkelmann 2020). Thanks to the German Museum Association’s ‘Recommendations for the Care of Human Remains in Museums and Collections’ (German Museums Association 2013), which emerged in response to—amongst others—the 2011 Namibia repatriations, a kind of consensus was reached in the German museum world: human remains from people of non-European descent that had been acquired as ‘specimens’ in former colonial territories needed to be returned.

When the subject of repatriating skeletal remains from former colonial territories entered the German debate, ‘human remains’ became the preferred term, despite the

existence of *menschliche Überreste*, its literal German translation. In the following I explore why the English term has become so widely used in German debates.

As the number of postcolonial nation states submitting repatriation claims to German institutions began to mount, museum practitioners and critics looked to the anglophone world for orientation. They considered the UK's 'Guidance on the Care of Human Remains' (Department for Culture, Media and Sports 2005)³ and the US legislation under the Native Graves Protection and Repatriation Act of 1990 (DMB 2013: 6, Bouteloup and Colin 2011: 4). Moreover, when planning handover ceremonies, German institutions familiarised themselves with the experiences, routines and protocols of former settler colonies such as Australia and New Zealand. In those encounters, German institutions learned not only good practices (Förster 2020: 116–118) but a new vocabulary for talking about repatriation.

'Human remains' figures prominently not only in anglophone repatriation discussions but also in contemporary anglophone museum practice and theory in general. One reason why the phrase took off in Germany is certainly that many German practitioners came to regard anglophone museums as more professional and progressive than their own. Another is that the foreign term has allowed German speakers to distance themselves from earlier institutional discourses and practices and signal postcolonial empathy with claimants. In their working paper 'Human Remains in deutschen Sammlungen' written for the Humboldt Law Clinic Grund- und Menschenrechte (Constitutional and Human Rights), Florence Stürmer and Julian Schramm explain why they prefer 'human remains' over 'menschliche Überreste':

Jedoch wird unserer Meinung nach der deutsche Begriff der menschlichen 'Überreste' dem Andenken der verstorbenen Menschen nicht gerecht. So impliziert er, ausgehend vom allgemeinen Sprachgebrauch, lediglich das Übrigbleiben materieller 'Reste'. Bei der Diskussion um Human Remains geht es jedoch um mehr. Es geht um das Andenken von Menschen, die (Re-)Individualisierung von verstorbenen oder getöteten, in der Regel zu Forschungsobjekten degradierten Personen. Der Begriff Human Remains lässt hingegen eine breitere Begriffsdeutung zu und kann so neben physischen Überresten auch immateriell Verbleibendes umfassen. Die vorliegende Arbeit verwendet daher bewusst den englischen Ausdruck Human Remains (Stürmer and Schramm 2019: 8).

However, in our opinion the German term *menschliche 'Überreste'* does not do justice to the memory of deceased people. Based on everyday language use it describes only the left-over of material 'remnants'. But in the discussion of *human remains* more is at stake. It is about the memory of people, the (re-)individualisation of deceased or killed people that were degraded to objects of study. The term *human remains* allows for a broader interpretation and can, in addition to physical remains, also comprise immaterial remains. Therefore, this article consciously uses the English term *human remains*. (Unless otherwise indicated, all translations are my own.)

Stürmer and Schramm's ascription of a broader moral and spiritual meaning to 'human remains' is indicative of an understanding that has become widely held in German museum practice and debate. Of course, the literal meaning of 'human remains' is no more

moral or spiritual than ‘*menschliche Überreste*’. Nevertheless, the English term provides Germans more room for imaginative reinterpretation. It has become a marker of cosmopolitan thinking and for a less demeaning, more sensitive stance to the human remains of formerly colonised people.

Two notable attempts were made early on in German discussions to introduce alternatives to ‘human remains’. The working group of the German Museums Association, which drafted the ‘*Empfehlungen für den Umgang mit menschlichen Überresten in Museen und Sammlungen*’ (DMB 2013), made the case for the German term:

Bewusst wird in den Empfehlungen der Ausdruck ‘*menschliche Überreste*’ anstelle des inzwischen eher gebräuchlichen englischen Begriffs ‘*human remains*’ verwendet. Der deutsche Ausdruck, der uns aus der Formulierung ‘*sterbliche Überreste*’ vertraut ist, führt uns deutlich vor Augen, wovon hier in der Regel die Rede ist: von verstorbenen Menschen. Anders als der Distanz schaffende englische Begriff berührt uns der Ausdruck ‘*menschliche Überreste*’ emotional. Das ist auch beabsichtigt, denn dies trägt zu einer Sensibilisierung bei (DMB 2013: 6–7).

A conscious decision has been made to use the German term ‘*menschliche Überreste*’ in the German version of the recommendations instead of the common English term ‘*human remains*’. The German term, which is familiar as it calls to mind the expression ‘*sterbliche Überreste*’ [‘*mortal remains*’], clearly brings home to the reader what is generally being talked about here: deceased human beings. Unlike the English term, which, being in a foreign language, is more remote for the German reader, the term ‘*menschliche Überreste*’ has an emotional resonance, which was indeed our intention because it contributes to making people more sensitive to the issue.

The working group seemed to prefer ‘*menschliche Überreste*’ to ‘*sterbliche Überreste*’ because it signifies the human being behind the skeletal remains. But it could also be argued the other way round: the term ‘*menschliche Überreste*’ originates in practices of comparing human and animal remains and thus exemplifies rather than transcends scientific classification.

The other effort came in 2013 when the Charité Berlin used the term *menschliche Gebeine* in the title of its edited volume on the human remains and repatriation debate (Stoecker, Schnalke and Winkelmann 2013).⁴ *Gebeine* is a somewhat old-fashioned synonym for the more mundane *Knochen* (bones). But it is also respectful, almost pious—consider the related term *Beinhaus*, or ossuary. Remarkably, by using *menschliche Gebeine*, Charité, one of Germany’s most prestigious institutions for the life sciences, opted for a religiously inflected word over that of the more scientific-sounding *menschliche Überreste*. Nevertheless, *Gebeine* did not catch on, and *menschliche Überreste* remained fairly common (e.g. Fuchs et al. 2020), albeit less prominent than *human remains*.

Another term that has had a remarkable career, especially in the media, is *Schädel* (skull). *Schädel* appeared frequently in German discussions,⁵ and the term *skulls* was used extensively by Namibian descendant communities and Namibian media when referring to the human remains returned from the Charité in 2011.⁶ There is a number of reasons why it gained traction. For one, a great majority of human remains from the colonial

era held in German institutions *are* indeed skulls. Around 1900, skulls were ‘collected’ in Namibia and in other colonies not only because of their physical longevity, but also because they provided more data than other parts of the skeleton. For another, and perhaps more surprisingly, skulls provided graphic documentary value. After the Charité returned its human remains to Namibia, the skulls were exhibited in public and their photographs were widely circulated. From a Namibian perspective, an international public long ignorant of the 1904–1908 genocide needed to be confronted with and educated about the skulls’ acquisition context. During the war against the Ovaherero, officials from the German Empire abducted bodies of Africans who died in concentration camps and sent the remains to Berlin as anatomical specimens. In the long struggle of Namibian activists for the international recognition of the genocide of the Ovaherero and Nama,⁷ the skulls were a stand-in for the individuals who had been killed and positive proof of German savagery (Förster 2020). The more visible the proof, the more awareness it could raise. At first glance, the approach may seem to contradict international standards in repatriation, which urge that images of human remains not be put in circulation. But Namibia’s efforts should not be misunderstood as sensationalistic or as ethically insensitive towards the individuals whose skulls were on display. Rather, they were a practice of naming and shaming colonial perpetrators and of paying tribute to their victims.

The term *Schädel* has nevertheless not become predominant in German discussions about repatriation; instead, it tends to be subsumed under *human remains*. One likely reason is that not all human remains are crania alone—pieces of hair and skin have been found in collections as well (Förster and Stoecker 2016). Another may be that *Schädel* has a somewhat informal, casual sound to it that may seem insufficiently sensitive. Also in an anglophone context, *skull* can be perceived as too scientific and too in thrall to the language of past eras.⁸

Finally, another term closely related to ‘human remains’ that continues to appear is ‘ancestral remains’ (Eforde, Keeler and McKeown 2020). Most common in Australian, New Zealandic and Hawaiian contexts, the term ‘ancestral remains’ or ‘ancestors’ reflects indigenous practices of creating a more intimate link between the repatriated and the repatriating, between the living and the dead, between subjects and objects.⁹ In line with general calls to re-humanise and re-individualise human skeletons (Rassool 2015), ‘ancestral remains’ is also a critical revision of ‘human remains’ and the scientific distinction between human and animal remains. In the report of the 2020 conference held in Tanzania titled ‘Beyond Collecting: New Ethics for Museums in Transition’, the event’s organisers—Goethe-Institut Tanzania, the National Museum of Tanzania, the Museum am Rothenbaum and Berlin Postkolonial—make this explicit:

The scientific notion of ‘human remains’ was discussed among the participants. Out of respect, African experts suggested the term ‘ancestors’ instead. Therefore, this conference report uses hereinafter the notion ‘ancestors’. This distinction is especially relevant in Tanzania, where the return of ancestors is a major subject in public discussions. [...] From an African perspective, ‘human remains’ should no longer be called in this Eurocentric way, as it degrades them to scientific objects or museum exhibits. Instead, they should be treated as human individuals, family members and community leaders, whose absence is in some cases deplored until this very day. It is therefore

more appropriate to talk about this theft as dehumanisation of the ancestors rather than of their objectification, so that we remain in the human's logic. (Goethe-Institut Tanzania et al. 2020: 11)

The equivalents to 'ancestral remains' or 'ancestors' have not yet taken hold in the German debate, however. For those who tend to regard themselves as the descendants of colonial perpetrators, talk of 'ancestors' does not come easily. Nevertheless, the Grassi Museum für Völkerkunde zu Leipzig has made a first attempt to replace 'human remains' and *menschliche Überreste* with *Ahnen* and *Vorfahren* (ancestors).¹⁰ As its director stated in an interview:

Wir möchten den Begriff 'menschliche Überreste' nicht mehr benutzen. Wir benutzen lieber 'Vorfahren' oder 'Menschen', weil die Überreste wieder zu Menschen gemacht und zurückgegeben werden.¹¹

We do not wish to use the term 'human remains' any longer. We prefer 'ancestors' or 'human beings', because the remains are remade into human beings and returned.

It remains to be seen whether *human remains* will continue to be the most popular term in the German debate, or whether that spot will eventually go to *ancestors*. At any rate, the use of *human remains* can be read as an attempt on the part of German speakers to distance themselves not only from earlier, colonial scientific discourse, but also from uncritical talk of 'specimens' and 'collection materials' in today's discussions. Its use has encouraged Germans to see the German repatriation debate as part of the wider efforts of indigenous communities around the world to reclaim the mortal remains of their ancestors from museum storages, to access cultural heritage and to achieve self-determination.¹² As the trajectory of *human remains* and its alternative terms demonstrate, the questions of who speaks, to whom and about whom one speaks, and in which language and with which words one speaks, have become key issues in decolonisation debates.

Unrechtskontext: coming to terms with Germany's violent past

While the career of 'human remains' is an example of how terminology in Germany was shaped by international debates, I now want to consider a word in colonialism discussions that arose from German memory culture: *Unrechtskontext*. Its use shows how working through the legacy of German colonialism draws on earlier experiences of working through and coming to terms with Germany's other 'difficult heritages' (Macdonald 2009).

The operative word in *Unrechtskontext* is *Unrecht*, which translates into 'unlawfulness' or 'injustice'.¹³ The term *Unrechtskontext*—literally, the context of unlawfulness or injustice—is used widely in the German museum world to refer to the acquisition of an object under improper circumstances. In 2019, directors from ethnographic museums across Germany, Switzerland and Austria agreed that acquisitions that implied *Unrecht* should be returned:

Es versteht sich von selbst, dass aufgrund von Unrecht im Moment des Herstellens oder Sammelns in die Museen gelangte Objekte—wenn dies von Vertreter/innen der

Urhebergesellschaften gewünscht wird—zurückgegeben werden sollten (Jahreskonferenz der Direktor/innen der Ethnologischen Museen im deutschsprachigen Raum 2019).

It is a matter of course that objects that were brought into the museums through unlawful circumstances at the moment of their creation or of collecting should be repatriated if desired by representatives of the originator communities.

The directors made clear that the determination of an *Unrechtskontext* is tantamount to an ethical obligation.

In contrast to *human remains*, *Unrechtskontext* is specific to the German-language debate. For example, Sarr and Savoy, writing in French, speak of 'dispossession' without mentioning 'historical injustices'. The two key documents in the Dutch debate—Return of Cultural Objects: Principle and Processes (National Museum for World Cultures 2019) and Guidance for the Way Forward for Colonial Collections (Council for Culture 2021)—use 'involuntary disposal and separation' and 'involuntary loss of possession' as criteria for return. Interestingly, the idea of 'involuntary loss' reflects the perspective of the deprived person or community rather than a general judgement on circumstances at the time.¹⁴

Unrechtskontext first appeared in the German colonialism debate on account of the recommendations that the German Museums Association published in 2013. Though the recommendations apply to a broad range of human remains from prehistorical times to today, they were written against the backdrop of the repatriation debate (4–5). The museum association defines *Unrechtskontext* as a 'particularly problematic' acquisition in which 'the person from whom the human remains originate was a victim of injustice' (DMB 2013: 10). For an acquisition to be unjust or unlawful, the death of the person must have been caused by an act of violence or the extraction of his or her body parts or their placement in a collection must have been made without proper consent (DMB 2013: 10–11). In such instances, the German Museums Association recommends that the remains be returned if requested.

The recommendations were published at a time when the legality of museum collections in Germany were not yet in question. For many years, museums emphasised that they had acquired their objects legally from donors or sellers and that no local or international law had been in place at the time of the object's acquisition on whose basis it could be reclaimed (DMB 2019: 65–74).¹⁵ Of course, these arguments ignored the possibility of donors' acquiring objects violently from previous owners and the violation of any customary laws. The purpose of the term *Unrechtskontext* was, therefore, to shift the debate from the legal field, where little could be gained, to a moral arena. It claimed that the non-justiciability of violent acts of acquisition under colonial rule did not mean an end to the debate on provenance and return but its starting point.

In 2018 the German Museums Association issued 'Guidelines. The Care of Collections from Colonial Contexts' (Deutscher Museumsbund 2018, 2019, 2021). Though focused on artefacts, the guidelines address the topic of colonialism more fundamentally. The second and third edition recommends that 'zu Unrecht entzogenes Kulturgut' ('cultural ob-

jects removed unlawfully') be returned. As in the Dutch policy papers, other criteria also apply:

Rückgaben von Sammlungsgut aus kolonialen Kontexten sollten also sowohl dann in Erwägung gezogen werden, wenn die Erwerbsumstände aus heutiger Sicht als Unrecht erscheinen, also auch dann, wenn es sich um Sammlungsgut handelt, das zum Zeitpunkt, als es aus der Herkunftsgesellschaft entfernt wurde, für diese von besonderer religiöser oder kultureller Bedeutung war und diese Bedeutung bis heute behalten oder auch wiedererlangt hat (DMB 2021: 84).

The return of collection objects from colonial contexts should be considered when the circumstances of acquisition appear wrong from today's point of view, and when the object at the time of its removal from the community of origin was of special religious or cultural significance and it has maintained or regained this significance today.

The notion of *Unrecht* recurs in Germany's key policy document on the subject: the 'Framework Principles for Dealing with Collections from Colonial Contexts', which was issued in March 2019 by the ministers of the German federal government, the federal states, and the national associations of local municipalities. Here, *Unrecht* encompasses both a wider meaning ('the injustices committed during the colonial era' [p. 1]) and a narrower sense ('acquired in a way that is no longer legally or ethically defensible' [p. 2]).

Despite the ubiquity of the terms *Unrecht* and *Unrechtskontext*, their use has encountered pushback.¹⁶ Some critics complained about its lack of a broader ethical framework (Förster et al. 2017: 15), while others argued that singling out specific contexts of injustice skirted around the issue of whether – or rather the fact that – colonialism as such was historical injustice (Eckstein et al. 2017: 2). At the GMA conference in 2015, the German historian and public intellectual Jürgen Zimmerer argued against differentiating legitimate and illegitimate acquisitions under colonial rule. Instead, he maintained, we should consider all colonial objects to be unethically acquired unless proven otherwise:

Entgegen der häufig zu findenden Praxis, dass ein Erwerb als rechtmäßig angesehen wurde und wird, bis der Unrechtscharakter erwiesen wird, gilt eigentlich das Gegenteil: Koloniale Objekte stehen unter dem Verdacht, unrechtmäßig erworben zu sein, bis das Gegenteil bewiesen ist (Zimmerer 2015: 24).

Contrary to the usual practice of regarding an acquisition as lawful until its unlawfulness is proved, the following is actually valid: colonial objects are under the suspicion of having been acquired unlawfully until the opposite has been proved.

Zimmerer raises the crucial question of where the burden of proof in provenance research lies. Though this question merits further discussion, it lies beyond the scope of my work here.¹⁷ At any rate, Zimmerer's call to reverse the burden of proof is reminiscent of the presumption rule in National Socialist-era provenance research, which generally considers 'losses of property of persons persecuted under National Socialism during the persecution period' as 'unlawful seizures'—unless evidence to the contrary can be presented (German Lost Art Foundation et al. 2019: 21–22, 97–98).

The similarity is not coincidental. In fact, I would like to argue that the debate on *Unrecht* committed or experienced under National Socialist rule underlies the use of *Unrechtskontexte* in Germany's postcolonial discussions, though the connection is rarely mentioned today. One exception is Wiebke Ahrndt of the Übersee-Museum Bremen, speaker of the working group that issued the 2013 recommendations. In her summary of the latter she describes how the understanding of human remains acquired between 1933 and 1945 became a point of departure for defining *Unrechtskontexte* in the 2013 recommendations:

Bei unseren Überlegungen sind wir zunächst von dem Unrecht ausgegangen, das Deutsche anderen Menschen in der Vergangenheit zugefügt haben. Einigkeit herrschte [in der Arbeitsgruppe; L.F.] darüber, dass ein Mensch, der im 'Dritten Reich' in einem Konzentrationslager ermordet wurde und dessen sterbliche Überreste anschließend in eine Sammlung verbracht wurden, schweres und nicht wieder gut zu machendes Unrecht erlitten hat. Kein noch so großes wissenschaftliches Interesse kann es rechtfertigen, dass diese menschlichen Überreste in der Sammlung verbleiben und eventuell sogar Forschungszwecken dienen. Nur die Rückgabe an die Hinterbliebenen oder—falls dies nicht möglich ist—eine würdevolle Beisetzung sind hier geboten. Wenn Konsens über diesen Sachverhalt besteht, muss dann Gleiches nicht auch für die Opfer anderer Genozide gelten (Ahrndt 2013: 316)?

In our reasoning we departed from the injustice that Germans have inflicted on others in the past. We [the working group; L.F.] agreed that a person who was murdered in a concentration camp in the 'Third Reich' and whose mortal remains were subsequently placed in a collection, suffered a grave and irreparable injustice. No research interest, however large, can justify human remains being kept in the collection and serving scientific purposes. The return to the bereaved—or if not possible, a dignified burial—is imperative. Must not the same consensus apply to the victims of other genocides?

Ahrndt's remarks built on the work of the 'Arbeitskreis Menschliche Überreste', a working group of anatomists, lawyers, historians and ethicists that had convened ten years earlier to assess anatomy and pathology collections. In 2003, the group issued the 'Stuttgart recommendations'¹⁸ for collections 'die nach früheren Grundsätzen bzw. nach Grundsätzen anderer Rechtsordnungen rechtmäßig, nach unserer gegenwärtigen Bewertung aber unrechtmäßig hergestellt wurden' ('that have been produced lawfully according to earlier principles or principles of other legal systems, but unlawfully according to our current validation') (Jütte 2011: 43).¹⁹ A paragraph under the heading 'Ethical viewpoints' in the Stuttgart recommendations concludes:

Ergibt sich, dass der Verstorbene aufgrund seiner Abstammung, Weltanschauung oder wegen politischer Gründe durch staatlich organisierte und gelenkte Gewaltmaßnahmen sein Leben verloren hat oder besteht die durch Tatsachen begründete Wahrscheinlichkeit dieses Schicksals, ist dies eine schwere Verletzung seiner individuellen Würde. Wurde ein solcher *Unrechtskontext* festgestellt, sind die Präparate aus den einschlägigen Sammlungen herauszunehmen und würdig zu bestatten oder

es ist in vergleichbar würdiger Weise damit zu verfahren (Arbeitskreis 'Menschliche Präparate in Sammlungen' 2003; highlights are my own).

If it turns out that the deceased person has lost his/her life as a consequence of state-induced violence because of his/her descent, world view or for political reasons, or if the latter is considered likely, this is a grave violation of individual human dignity. If *circumstances of injustice* have been diagnosed, it is imperative to remove the specimens from the collection, bury them in a dignified manner or proceed with them in a similarly dignified way.

Another paragraph specifies the specimens whose provenance bothered curators most at the time: 'Präparate aus der NS-Zeit' ('specimens from the National Socialist era'). The anatomist and historian Sabine Hildebrandt has noted that the study of anatomical collections from the National Socialist era started in the 1990s and eventually resulted in a 2004 initiative by the Kultusministerkonferenz (Standing Conference of the Ministers of Culture in the German States) to study specimens from victims of National Socialism in German university collections (Hildebrandt 2016: 14). The 2003 Stuttgart recommendations grew out of these developments and laid the groundwork for a heightened sensitivity to acquisition practices and mechanisms for human remains; it was to human specimens acquired during the National Socialist rule what the Washington Principles on Nazi-Confiscated Art of 1998 was to artefacts acquired during National Socialist rule.

Consciously or not, the term *Unrechtskontext* in the Stuttgart recommendations invokes the National Socialist regime, which is referred to as an *Unrechtsstaat*, *Unrechtsregime* or *Unrechtssystem* in German public discourse and memory culture.²⁰ The genealogy of *Unrecht* in this context starts with a 1946 essay by the legal scholar Gustav Radbruch titled 'Gesetzliches Unrecht und übergesetzliches Recht'²¹ (Hackmack and Kaleck 2021: 390) and the ground-breaking plea by Hessen's Attorney General Fritz Bauer in 1952 that National Socialist Germany be seen as an *Unrechtsstaat* (Claer 2003). Since then, legal scholars and academics have debated the proper definition of *Unrechtsstaat*. Some voices in the public sphere have also associated the term with the former GDR, which prompted others to ask whether the National Socialist regime and the East German state can be compared (ibid.). At any rate, *Unrechtskontext* references debates that lie at the heart of recent political discourse. Indeed, the German government's coalition agreement from 2018 states that working through the legacies of the National Socialist terror regime, the dictatorship of the Socialist Unity Party of [East] Germany and German colonial history is part of Germany's 'democratic consensus' (CDU, CSU and SPD 2018: 7994–7997).

In sum, the term *Unrechtskontext* draws significantly on debates about Germany's National Socialist past. First formulated in the Stuttgart recommendations from 2003 and then operationalised in the German Museum Association's 2013 recommendations, it provides criteria for museum professionals in the handling of human remains across separate historical and museological debates. Its moral appeal has created momentum for postcolonial repatriation and restitution and has made professionals as well as a broader public more aware of problematic acquisition practices and mechanisms.

Conclusion and outlook

The two terms examined above represent two different frames of reference for the German debate on postcolonial provenance research and restitution: global discussions of the history and the future of museum collections and German memory culture. Both suggest that the debate about human remains can be a motor for decolonising efforts in and around museums and that 'traveling models', concepts and practices are fundamental for achieving change.

The repatriation debates in the USA, the UK and in former settler nations have considerably shaped discussions in German museums, not only with regard to issues of human remains, but also to cultural heritage and the decolonisation of museums. Museum practices in Australia and New Zealand have inspired German anthropologists, curators and scholars, and provide good-practice examples of how to care for sensitive objects, how to cooperate with countries and societies of origin in provenance research and how to work towards the return of museum artefacts and human remains. More recently, the Black Lives Matter Movement has given the debate another important twist by focusing attention on antiracism and pointing towards discriminatory language and practices in museums. Perspectives and objections of societies of origin and diasporic communities continue to be instrumental in challenging German institutional practices and instigating their change.

At the same time, the memory culture and memory politics that have evolved in Germany since the Second World War provide a productive resonance chamber for the debate on colonialism. Working through the pasts of the National Socialist and East German regimes has helped forge a language for addressing historical injustices in Germany. Mobilising the notion of *Unrecht* has, if indirectly, helped create a lever for postcolonial restitution. In particular, the on-going institutionalisation of National Socialist-era provenance research and the increasing number of Jewish property restitutions have become points of reference that postcolonial provenance researchers and restitution advocates can look to and work towards, dock on to, borrow from or distinguish their work from if needed. Nevertheless, the relationship between decolonising efforts and efforts to come to terms with the National Socialist past remains in negotiation. A vivid example is the controversy that erupted surrounding the invitation of Achille Mbembe to hold the keynote address at the Ruhrtriennale.²²

The terms *human remains* and *Unrechtkontexte* have demonstrated that a substantial part of the work of decolonisation is epistemic, that is to say, it depends on a revision of (museum) concepts, categories and classifications, many of which were established more than a century ago, and the creation of new language for decolonial approaches to museum objects and practices. Searching for new ways of talking about old collections is part of a growing desire to break with the past and to reform the museum as an institution and an attempt to overcome what has been so aptly called 'colonial aphasia' by Anne Stoler (Stoler 2016; see also Habermas 2019).

The trajectory of the two terms I traced here remains incomplete, of course. In a watershed moment like ours, when after decades of activist and scholarly engagement wider swaths of society are finally ready to confront Germany's colonial past, future dis-

putes about appropriate terminology are likely to emerge anywhere that contestations over the postcolonial consensus arise.

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Notes

- 1 Cf. in the coalition treaty of 2018: 'Die Aufarbeitung der Provenienzen von Kulturgut aus kolonialem Erbe in Museen und Sammlungen wollen wir [...] mit einem besonderen Schwerpunkt fördern' (CDU, CSU and SPD 2018: 8048–49).
- 2 Though I finished parts of this article after assuming the position of Head of the Department for Cultural Goods and Collections from Colonial Contexts at the German Lost Art Foundation, I completed the fieldwork beforehand. Most recent developments like the second edition of the 'Guidelines. Care of Human Remains in Museums and Collections' issued in June 2021 could not be considered in this article.
- 3 The Guidance on the Care of Human Remains was based on provisions from the UK's Human Tissues Act of 2004. Interestingly, the Human Tissue Act was created in response to a scandal involving the unauthorised removal of organs from corpses in a Liverpool hospital in the 1980s—not in response to the colonialism debate.
- 4 The volume was published as part of the Charité's Human Remains Project, which investigated the provenance of Namibian, Australian and Tasmanian human remains between 2010 and 2014.
- 5 This has been well-documented here: <https://www.freiburg-postkolonial.de/Seite/n/anthropologische-schaedelsammlungen.htm>. In 2016, an artwork created by the German theatre company Flinn Works used the term in the play 'Schädel X': <https://flinnworks.de/de/projekt/sch%C3%A4del-x>
- 6 See the front pages and headlines in *The Namibian* and *Republikein* and other Namibian daily newspapers on 4 and 5 October 2011.
- 7 For a more detailed history of this struggle, see Kößler 2015.
- 8 For example, a member of the Charité reported that the Australian repatriation team of 2013 was irritated to hear Charité staff speak about 'skulls' that they had returned to Namibia in 2011. See Andreas Winkelman, personal communication to author, 26 April 2013.
- 9 Indigenous communities often use their own specific terms. These include 'Old People' (Australia), *iwi kupuna* (Hawai'i) or *koiwi tangata* (New Zealand).

- 10 See the museum's website: <https://grassi-voelkerkunde.skd.museum/forschung/dekolonisierung-restitution-und-repatriierung/>
- 11 See 'Sächsische Museen starten Website zur Dekolonisierung'. Interview mit Léontine Meijer van Mensch, *mdr*, 20 March 2021. <https://www.mdr.de/kultur/ausstellungen/grassi-museum-voelkerkunde-plattform-dekolonisierung-100.html> und <https://grassi-voelkerkunde.skd.museum/forschung/dekolonisierung-restitution-und-repatriierung/anfragen/>
- 12 Claimants frequently cite article 12 of the United Nations Declaration on the Rights of Indigenous People of 2007.
- 13 Depending on the context, the term *Unrecht* is translated differently. Vice versa, the English term 'injustice' can be translated into *Unrecht* or *Ungerechtigkeit*. Although the various dimensions of *Unrecht* merit further discussion, their discussion lies beyond the scope of this essay.
- 14 Involuntary loss is one out of three criteria put forward in these documents. The other two are 'illegal acquisition' and 'heritage value'.
- 15 See Förster 2018b. For more details, see Hackmack and Kaleck 2021 and Theurer and Kaleck 2020.
- 16 Criticism of the term was the reason why an explicit definition of *Unrechtskontexte* was not provided in the German Museum Association's 2018 guidelines. *Unrecht* itself, however, remained a criterion in the guidelines.
- 17 Broadly speaking, the 'Restitution Report' by Sarr and Savoy also advocates a reversal of the burden of proof, which is one reason why it has been so controversial.
- 18 The full name of the recommendations is the 'Empfehlungen zum Umgang mit Präparaten aus menschlichem Gewebe in Sammlungen, Museen und öffentlichen Räumen'.
- 19 One of the reasons for the establishment of the working group was the controversial exhibition 'Body Worlds' by Gunther von Hagens. The exhibition had stirred heated debates about body donation, informed consent and the question of whether and how to exhibit human tissue (Jütte 2011: 1).
- 20 *NS-Unrecht* (National Socialist injustice) has become a common term in Germany's official compensation politics. See: https://www.auswaertiges-amt.de/de/aussenpolitik/themen/internationales-recht/Historische_Verantwortung/entschaedigung-ns-unrecht/203834; in English: <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/internaterecht/compensation-for-national-socialist-injustice/228224>
- 21 This can be translated as 'legal injustice and suprallegal justice' or as 'statutory lawlessness and superstatutory law'.
- 22 For a list of articles about the debate, see <https://serdargunes.wordpress.com/2020/05/18/wer-zuerst-x-sagt-hat-gewonnen-die-achille-mbembe-debatte-eine-artikelliste/>

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