Whoever's Right

Remarks on the Debate about Provenance and Return from the Perspective of Social and Cultural Anthropology

by Larissa Förster

Translation: Mitch Cohen

In the debate about colonial provenances and the restitution of objects from German museums to formerly colonized countries there is always an elephant in the room. The elephant is the law – when we are dealing with a "context of injustice", the question whether this is or should be justiciable, and when a museum item must therefore be returned. Many complain about the lack of legal instruments to place returns on a juristically solid basis. For this reason, some engage in legal dodges, others let political bodies decide, and yet others plead for a "Washington Declaration" for the colonial era or want to change customary legal practice with "Third World Approaches to International Law". Much is thus written about colonial legal orders, about the development of international law, hard law, and soft law, about German public and private law, earlier and today.[1]

From the viewpoint of social and cultural anthropology, however, a completely different gap in the debate is conspicuous: hardly anyone asks – much less investigates precisely – what legal ideas and what sense of justice prevailed in the societies colonized by the German Empire in, for example, 1884, 1904, or 1915.[2] Against the background of what norms and legal systems did African actors, for example, make gifts of, exchange, trade in, or consign everyday or cult objects to Europeans? Against the background of what legal norms and what sense of justice did indigenous people regard things as stolen, extorted, or robbed and did they ask

for them back or give them up for lost? What kind of reciprocity, redress, and punishment did they regard as appropriate, for example for taking things away?

Up to now, such questions have been raised almost solely about the historical context of colonial land seizure. For example, studies have been done on "traditional" land law in the 19th century and about taking owners by surprise, coercing them, or defrauding them when buying land. Well known is the "mile swindle" of the Bremen merchant Adolf Lüderitz when he concluded a contract with Nama captain Joseph Fredericks: whereas Fredericks assumed the English mile when surveying the land, Lüderitz assumed the much longer *German* mile. Of course, local actors in contract negotiations with representatives of the German Empire pursued their own political interests. And they resisted expropriation and expulsion, as shown by the example of the Duala King Rudolf Duala Manga Bell in Cameroon, who wrote petitions to the German Reichstag to defend himself.[3]

But what was the situation with movable property? African scholars of international law like Emmanuel Bello, Yolande Diallo, and Adamou Ndam Njoya have worked on the question of how an opponent's possessions were dealt with in martial conflicts in pre-colonial and early colonial Africa.[4] The draft of the "Guidelines on Dealing with Collections from Colonial Contexts" [5] published by the German Museum Association this May adduces a survey that the German Reichstag commissioned in 1907 on indigenous law in the German colonies that dealt with local ideas of property.[6] The authors of the relevant passage in the "Guidelines" conclude "that it can generally be presumed that Europeans knew very well when they 'acquired' objects from indigenous people unjustly or when the objects were unsalable, holy objects".[7]

From the context of the misappropriation of human remains, we know very well that the colonized people repeatedly and sometimes extremely vehemently protested against theft and appropriation. Another example from what was then "German Southwest Africa": the daughter of Jacobus Hendrick, whose skeleton was robbed

from a grave on the lower Kuiseb River by the German explorer Waldemar Belck 1884, took Belck to task in the coastal city Walvis Bay – whereupon the researcher gave her one of three stolen skulls.[8] In 1908, a colonial officer from Windhoek considered it impossible to receive permission from the inmates of the prison camp to perform autopsies on and dissect the corpses of their relatives – their "reluctance", he wrote, was too great.[9] In his newest book, in regard to the Australian context, the historian Paul Turnbull has assembled numerous forms of protest by the indigenous Australians against scientists' robbery of human bones.[10] They can all be understood as early demands for restitution, which means we can confidently reject the suspicion sometimes expressed that demands for restitution are owed solely to recent political developments – whereby the beginning of the debate on returning objects can be localized almost 50 years ago at the latest, when politicians and cultural functionaries from the decolonized states – above all UNESCO General Director Amadou Mahtar M'bow – pushed in UNESCO itself for regulation of the return of cultural goods. Thomas Fitschen vividly described how in the following decades this issue simply "got lost", however, through the "delaying resistance" of the states of the global North.[11] It is soft laws like the UNDRIP (United Nations Declaration of the Rights of Indigenous Peoples) that are the most likely to take legal customs of indigenous societies into consideration.

So it is remarkable that whenever the question arises of the legality at the time of the acquisition of objects, one looks only at one's own historically grown legal system and seldom at the historical legal system of the "others". It seems as if their legal ideas were still allotted to the field of mythology or religion. Shouldn't we have learned from the debate about "non-European art" that here we have to do with artistic and aesthetic practices and discourses even though the concept of "art" itself may not at that time have been or may still not be established? Rights and norms should not have to be codified to be taken seriously as such.

In the debate around ethnographic collections, for a long time we spoke of source

communities, a term fortunately replaced in recent years by the less technical-sounding term origin societies.[12] The most recent exhibition catalog of the anthropological museum of the University of Zurich speaks of "Urhebergesellschaften" (authorial societies) [13] – a thought-provoking attempt to grant authorial rights to the origin societies, at least on the linguistic-symbolic level.

In one of its exhibitions, the museum gives another thought-provoking impulse for a change of perspective – in the opposite direction. The issue here is the Austrian researcher and collector Heinrich Harrer, who, on his tour through the Amazon Basin in 1966, was and complained about being the victim of thievery countless times: "For the local groups based on egalitarian organization, the distribution of property served to maintain the social order. [...] Strangers who, consciously or unconsciously, did not adhere to the customs in trade [...] were 'tamed'."[14]

Ethnology has approached the question of ownership, possessions, and cultural property many times. The limitations of the concept of ownership have thereby been shown, as they developed from the Roman and later European nation-states' legal orders. Things are not everywhere *either* the property of an individual *or* of a collective. Sometimes a wide variety of claims to co-ownership are bundled in an object, as the ethnologist Brigitta Hauser-Schäublin writes: "Rights to patterns and motifs, rights to produce or commission the production of such a thing, and the rights to store [...], to show and to see (or to exclude a certain public), to touch and to pass on, bequest, or inherit, to divest oneself of something or even to destroy it." [15] These diverse dimensions of rights to the same thing cannot be grasped with a capitalistic concept of ownership like ours.

Of course, it is incredibly difficult to carry out anthropology of law historically and to reconstruct local ideas of law and justice in the colonial period and before it. All the more so, because they were suppressed and reshaped by the colonial legal practice. On top of that, local actors even made use of the legal means available in the colonial state or in the German Empire to register complaints and to articulate their own

claims. That's why the point cannot be to turn the debate about the colonial legacy of European museums into a dispute among legal experts, no matter where they come from. But it is high time that we finally historicize, decentralize, and thereby decolonize our way of looking at legal foundations and legal practices.

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https://www.faz.net/aktuell/feuilleton/debatten/koloniale-raubkunst-wer-fuehlte-sich-beraubt-15906194.html

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[1] On this, cf. the following highly instructive papers: Kaleck, Wolfgang, 2018, Das Recht der Mächtigen. Die kolonialen Wurzeln des Völkerrechts. In: Blätter für deutsche und internationale Politik 8: 115–120; Schönberger, Sophie, 2016, Restitution

of ethnological objects: legal obligation or moral dilemma? In: Museumskunde 81/1: 45–48; idem, 2018, Ein politisches Projekt: In: Sueddeutsche Zeitung, 21 June; Thielecke, Carola; Geißdorf, Michael, 2018, Sammlungen aus kolonialen Kontexten: Rechtliche Aspekte. In: Deutscher Museumsbund (ed.): Leitfaden zum Umgang mit Sammlungsgut aus kolonialen Kontexten. Berlin: 65–74.

[2] An exception here is: Deren, Richard, 2018, Zwischen Recht und Politik. Die Rechts- und Eigentumsverhältnisse an Kulturgütern der Kolonialzeit nach deutschem Zivilrecht und Völkerrecht. In: Völkerrechtsblog, 28 Sept. 2018, doi: 10.17176/20180928-103227-0.

[3] Cf. Austen, Ralph A.; Derrick, Jonathan, 1999, Middlemen of the Cameroons Rivers: The Duala and their Hinterland, c. 1600–c. 1960. Cambridge University Press.

[4] Cf. Ndam Njoya, Adamou, 1988, The African Concept, In: UNESCO (ed.): International Developments of Humanitarian Law. Geneva, p. 5ff.; Jaguttis, Malte, n.d., Colonialism and its Objects. Remarks on the Framework of Restitution and Repatration under International Public Law. In: Artificial Facts. A Trans-National Exhibition and Research Project: http://artificialfacts.de/colonialism-and-its-objects-remarks-on-the-framework-for-repatriation-and-restitution-under-public-international-law1/.

[5] Download at: https://www.museumsbund.de/publikationen/guidelines-on-dealing-with-collections-from-colonial-contexts/

[6] Schultz-Ewerth, Erich; Adam, Leonhard (eds.) 1930, Das Eingeborenenrecht. Stuttgart. On colonial officers' discussion of African property rights in what was then German Southwest Africa, cf.: Stoecker, Holger, 2017, Auf dem Hügel der Schreckensechsen. In: FAZ: 18 Oct., and in greater detail: idem, 2018, Koloniales Kronland und Ausfuhrverbot. Wie die Fossilienfunde für die deutsche Wissenschaft

gesichert wurden. In: Heumann, Ina; Stoecker, Holger; Tamborini, Marco; Vennen, Mareike (eds.): Dinosaurierfragmente. Zur Geschichte der Tendaguru-Expedition und ihrer Objekte, 1906-2018. Göttingen, p. 53.

[7] Deutscher Museumsbund, 2018, Leitfaden zum Umgang mit Sammlungsgut aus kolonialen Kontexten, 1st version. Berlin, p. 69, available at: https://www.museumsbund.de/publikationen/leitfaden-zum-umgang-mit-sammlungsgut-aus-kolonialen-kontexten/. See also, further down in this blog, the call for comments on the handbook draft for the purpose of revising it.

[8] Förster, Larissa; Henrichsen, Dag; Stoecker, Holger; Eichab, Hans, 2018, Re-individualising human remains from Namibia: colonialism, grave robbery and intellectual history. In: Human Remains & Violence 4/2: 45–66.

[9] National Archive of Namibia, ZBU 2027, SSAWW.II.d.8 Eingeborenenangelegenheiten Herero Alte Akte Generalia. Letter of the State Secretary of the Reichs-Kolonialamt to the Gouvernor of Windhoek, 31 July 1908.

[10] Turnbull, Paul, 2017, Science, Museums and Collecting the Indigenous Dead in Colonial Australia. Cham, in particular chapter 11.

[11] Fitschen, Thomas, 2004, 30 Jahre Rückführung von Kulturgut. Wie der Generalversammlung ihr Gegenstand abhanden kam. In: Vereinte Nationen 2: 46–51. Cf. also Paczensky, Gert von; Ganslmeyer, Herbert, 1984, Nofretete will nach Hause. Europa – Schatzhaus der “Dritten Welt”. Munich, p. 17.

[12] On criticism of the term “source community”, cf. Macdonald, Sharon; Lidchi, Henrietta; von Oswald, Margareta, 2017, Special Section: Engaging anthropological legacies. Introduction. In: Material Worlds: Advances in Research, No. 5, p. 95-107, here p. 99.

[13] Flitsch, Mareile; Powroznik, Maike; Wernsdörfer, Martina (eds.), 2018, Begegnung

– Spur – Karte. Das ethnografische Erbe von Heinrich Harrer und Peter Aufschnaiter. Stuttgart.

[14] Exhibition plaque from “Begegnung – Spur – Karte. Die Expeditions-Sammlungen von Heinrich Harrer”, seen on 28 Sept. 2018.

[15] Hauser-Schäublin, Brigitta, 2018, Ethnologische Provenienzforschung – warum heute? In: Förster, Larissa; Edenheiser, Iris; Fründt, Sarah; Hartmann, Heike (eds.): Provenienzforschung zu ethnografischen Sammlungen der Kolonialzeit. Positionen in der aktuellen Debatte. Open-access publication of the Humboldt-Universität zu Berlin. Berlin, p. 327–334, here p. 331, available at: http://dx.doi.org/10.18452/19029