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Restitution and Postcolonial Justice
A Dialogical Approach

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Julia von Sigsfeld

Abstract

The restitution of cultural belongings and the repatriation of ancestral remains has long been both a struggle and an issue of contention. This working paper provides an analysis of grounds for return and restitution frameworks based upon them in different national contexts. One European policy context, namely the German, is analyzed alongside three Latin American legislative contexts: the Argentinian, Chilean, and Brazilian. What defines and legitimizes the grounds for restitution across varied national contexts, and how can dialogical frameworks advance justice in restitution efforts? The paper interrogates existing restitution frameworks while advocating for a dialogical approach to restitution that foregrounds ethical deliberation and a dialogue among knowledges.

Keywords: restitution | repatriation | postcolonial justice | dialogical approach

About the Author

After completing her undergraduate studies at Goethe-Universität Frankfurt am Main, Julia von Sigsfeld (Mecila Junior Fellow, 2024) earned a master's degree from the London School of Economics. In 2020, she completed a PhD in the sociology of knowledge at the Lateinamerika-Institut, Freie Universität Berlin, as a fellow of the International Research Training Group "Minor Cosmopolitanisms". Following two and a half years as research assistant to the director of the State Ethnographic Collections of Saxony, Julia von Sigsfeld is, at the time of this working paper's publication, serving as restitution officer at the Ethnological Museum / Asian Art Museum (Prussian Cultural Heritage Foundation) in the framework of the project "The Collaborative Museum".

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1. Introduction

Confronting a history of dispossession and alienation, and of accumulation thereby, restitution is generally seen as a recognition of and corrective to historical injustice or, rather, as an element thereof.¹ Demands for the return of museologized objects, belongings, and ancestral remains are thus deeply connected to and indicative of struggles over postcolonial memory and justice. Not only do these demands surface suppressed histories and memories in public discourse, but they also expose the violence and Eurocentric foundations of heritage practices and museums. Furthermore, restitution efforts bring to light the epistemic and ontological frames from which these items or remains were taken, as well as their contemporary significance and (re-)constitution. Restitution is, therefore, fundamentally tied to processes of recognition, redress, and the pursuit of postcolonial justice. It is, at the same time, shaped by the tension between the epistemological and ontological foundations of these pursuits and the modern-colonial structures and norms within which they unfold.

Restitution has been shaped by struggles over the legitimacy of recovery claims and the principles underpinning them – vis-a-vis institutions, nation-states, and at the international level. For the longest time restitution claims have been met with claims to the legality of possession and confronted heritage regimes that act as infrastructures of retention. Nevertheless, primarily due to tireless activism, restitution remains an issue of contention. Early repatriation and restitution efforts, notably by the Māori and First Nations, can be traced back to the nineteenth century (McKeown 2020). They have become part of the international agenda since at least the 1970s, driven by the recognition of human and cultural rights as well as the broader processes of decolonization. In 1979, a study by the International Council of Museums (ICOM) concluded that restitution, as an ethical principle, “would ‘soon become an element of *jus cogens* of international relations” (Campfens 2023: 30). However, this has not happened so far.² The 1970

1 I am grateful to the Prussian Cultural Heritage Foundation and its Ethnological Museum and Asian Art Museum for supporting my leave of absence and to Mecila for enabling me to pursue research as a postdoctoral fellow. I would like to extend special gratitude for invigorating conversations and constructive feedback to Máximo Farro, Maria Luísa Lucas, Samuel Barbosa, Sérgio Costa, Talja Blokland, Fernando Nina, Marlena Barnstorf-Brandes, and Hauke Zießler.

2 Art historian Bénédicte Savoy has meticulously documented the resistance in Europe, more specifically in Germany, to restitution claims for African cultural heritage made by African leaders and intellectuals following independence. She reveals how these debates were effectively, though temporarily, sidelined and swept under the rug, only to resurface with renewed vigor in the 2010s (Savoy 2021).

UNESCO Convention³ reaffirmed the principle of non-retroactivity despite efforts of formerly colonized nations for it to encompass cultural belongings translocated under colonialism (Stahn 2023: 355–356). Attempts to include a right to restitution in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 were likewise met with resistance from former colonial powers (Vrdoljak 2008: 213–214). Thus, while an earlier draft of the UNDRIP included a right to restitution, the final version ended up stating that “states shall provide redress through effective mechanisms, which may include restitution [...] with respect to their [...] property taken without their free, prior and informed consent or in violation of their laws, tradition and customs” (United Nations 2007: article 11(2)), that Indigenous peoples have “the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains” (United Nations 2007: article 12(1)). Furthermore, it states that “states shall see to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous [*sic*] peoples concerned” (United Nations 2007: article 12(2); Vrdoljak 2008: 213–214; Stahn 2023).

Despite international advancements in recognizing cultural rights as human rights and the significant expansion of collective rights in Latin America in recent decades, restitution as a right or as a form of reparation has not gained significant traction in the region. The lack of comprehensive legislation for repatriation has compelled Indigenous communities to engage in arduous and resource-intensive recovery efforts, relying heavily on self-management and community-led initiatives. However, one existing legislative framework in Argentina and two draft laws on restitution in Chile and Brazil provide points of comparison. Meanwhile, in Europe, while postcolonial reckoning has yet to lead to larger-scale frameworks and governance structures for restitution, there have been some notable developments in recent years. In Germany, a significant shift has occurred over the course of the past years, from asserting the legality of museum acquisitions to questioning the legitimacy of their ownership (Oswald 2022). Different restitution frameworks thus call for examination, inviting exploration across various national contexts.⁴

3 The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1970 was designed to prevent the illicit import, export, and transfer of ownership of cultural property. It obligates signatory states to return cultural goods illegally acquired after the Convention’s ratification. Thus, this Convention does not apply retroactively to items taken before its implementation.

4 The paper focuses on restitution related to “(post-)colonial contexts” and not on e.g. restitution of Nazi-persecution related expropriated arts and belongings.

Restitution research encompasses a diverse and interdisciplinary body of scholarship that examines the return of cultural belongings and human remains from various perspectives. At the international level, studies focus on the role of international law and global frameworks, such as the 1970 UNESCO Convention and the UNDRIP, in shaping restitution debates (Esterling 2017; Macías Betancourt 2023). National contexts and legislation also feature prominently, with analyses exploring how specific countries address restitution through domestic legal frameworks and policy-making and comparative approaches providing insights into specificities and divergences (Verdesio 2011; Endere and Ayala Rocabado 2012; Yanase de Rezende 2019; Magallanes and Stella 2022). Scholars have further explored the intersection of law and decolonial approaches, critiquing Eurocentric legal norms (Loyola Daiqui and Sprute 2022). Case-specific studies, particularly anthropological ones, provide important insights into restitution and the (political) contexts in which they unfold, offering perspectives on the cultural, spiritual, and social significance of return (Sardi and Ballesterio 2017).

This working paper contributes to scholarship on restitution that links different contexts, particularly European and Latin American (Ochoa Jiménez 2024), demonstrating the value of joint readings to the study of restitution.⁵ It provides both an analysis of restitution frameworks based on law and policy in different national settings and bridges theoretical considerations of epistemic justice, as part of postcolonial justice, with practical implications. The paper advocates for a dialogical approach to restitution that foregrounds ethical deliberation and a dialogue among knowledges.⁶ The analysis is informed by both distanced and close readings of restitution frameworks, drawing on my professional involvement in the German museum sector. It is shaped by my positionality as a German-Latin American, non-Indigenous museum professional and researcher. While it engages with critiques of coloniality, the analysis is situated within the institutional order and its epistemic frameworks; it does not claim a decolonial approach but rather seeks to critically reflect on and intervene in these structures that shape contemporary restitution practice. The paper examines the German context, where restitution is guided by political will in the absence of a formal legal framework, alongside three Latin American contexts – Argentina, Chile, and Brazil – where restitution laws or draft laws have been implemented or proposed. Acknowledging

5 Research on restitution paradigms in Latin America could be further enriched by perspectives drawn from the experiences of the U.S., Canada, Australia, and New Zealand, where Indigenous scholars and communities have played a key role in shaping and advancing restitution discourses and practices (Aranui 2018; Herewini 2023). María Julia Ochoa Jiménez's article, which explores the Argentinian and U.S. contexts, serves as a strong example of such an approach (Ochoa Jiménez 2023).

6 The notion of *diálogo de saberes* (dialogue of knowledges) entailing epistemic and ontological negotiation derives from Latin American decolonial thought (Escobar 2007).

that these contexts are shaped by distinct histories of colonialism and coloniality and marked by different postcolonial conditions, it asks: What defines the grounds for restitution in different contexts, and how can dialogical frameworks advance justice in restitution efforts?⁷

2. Restitution Legislation in Latin America

Restitution claims within and to Latin America arise from a diverse array of historical contexts, actors, and practices of dispossession, as well as contemporary efforts of reappropriation and cultural resignification.⁸ These contexts include colonial extractivism, state violence, missionary activities, as well as religious violence and expropriation, and first and foremost scientific and ethnographic expeditions, including practices such as grave desecration and exhumations (Crespo 2020: 71–72). While restitution is not a generalized demand among peoples and nationalities or so-called descendant communities, numerous cases warrant attention, reflecting the complex entanglements between museum collections and experiences of loss, recuperation, and reappropriation.⁹ International media attention has largely focused on high-profile restitution cases, such as Colombia's efforts to recover the Quimbaya collection from Spain (Santos Acerbi 2024) and Mexico's claim to Austria's *Penacho de Moctezuma* (Losson 2022). Such cases highlight the growing significance of restitution in cultural foreign policy, which has in the past decades prominently focused on the recovery

7 The concepts in restitution discourse, such as “object/human remains”, reflect epistemological and ontological tensions (Curtoni 2022; Gouaffo 2023; Tupinambá et al. 2024). In this article, “restitution” and “repatriation” will primarily refer to cultural belongings and human remains, respectively, but be used interchangeably, acknowledging the limitations of this distinction. Quotation marks are used in order to highlight the tensions surrounding conceptions, like those concerning “cultural heritage”. The usage of “(cultural) belongings” aims at highlighting the relational beyond the notion of property.

8 Restitution claims have in the past arisen from increased visibility and awareness of collections, which remain limited, especially for items held abroad. Claims have been triggered by the public display of specific artifacts in exhibitions or as a consequence of exchanges or collaborative projects between museums and communities. For example, awareness and subsequent claims were sparked by the exhibition of Jurupixuna items in a Portuguese travelling exhibition in Brazil in the 1990s (Belo Gomes 2014; Santos Acerbi 2019) and the display of a loaned Tupinambá feather cape from Denmark's National Museum in São Paulo (Roxo 2024). This pattern underscores the crucial role of visibility in driving restitution efforts and the importance of making dispersed cultural belongings more accessible. Ongoing efforts to digitize collections, create databases, and increase transparency and awareness of the existence of collections aim to address this issue.

9 The terminology surrounding the stakeholders in restitution processes is equally contentious. Following Jeremy Silvester I foreground the usage of “descendant community/ies” (McGregor 2021: 42–43) over the usage of “communities of origin”, aware of critiques of essentialization and the politics surrounding definition and legitimization.

and protection of archaeological heritage (as “national heritage”) (Stahn 2023; Losson 2022).

Notable cases linking Germany with Latin America include the activist repatriation of two Shuar *tsantas* (shrunken heads) from Ecuador in the possession of the University of Göttingen in 1978 by a student collective (Müller 2021); the repatriation of the remains of Kryygi to her Aché descendant community in Paraguay from the Museo de la Plata and Berlin’s Charité in 2010/2012 (Ametrano 2015) and the return of two sacred masks to the Kogui in Colombia in 2023 and three further associated items in 2025 from Berlin¹⁰ (Brust et al. 2023), and the recent burial of Selk’nam remains in Lübeck.

Latin America’s distinctive colonial legacies and evolving rights landscapes make it a critical region for examining restitution frameworks. Although the region has witnessed significant advancements in Indigenous and collective rights in past decades, the recovery of cultural belongings and ancestral remains has not been meaningfully integrated into either a cultural rights framework or a reparative justice agenda. Argentina, Chile, and Brazil, with their distinct colonial histories and postcolonial trajectories yet comparable struggles with addressing dispossession and postcolonial justice, offer approaches to restitution which have not yet been systematically compared. This section explores what characterizes the frameworks to address restitution claims.

Argentina is the only country in Latin America with specific restitution legislation in force: Law 25.517/01 mandates the repatriation of ancestral remains. Restitution demands date back to the 1970s, with early requests to the Museo de La Plata denied under Civil Code Article 2340, which had classified remains as state public domain (Crespo 2022: 158; Endere and Ayala Rocabado 2012: 43). Before the law came into effect, repatriations required special legislation (Endere and Ayala Rocabado 2012; Crespo 2023) (Endere 2011). Law 25.517/01 stipulates that “aboriginal human remains” in public or private collections must be “put at the disposal of Indigenous people and/or communities of origin that lay claim on them” (article 1). It mandates that institutions shall treat unclaimed human remains with “respect and the consideration that is given to all human corpses” (Article 2). What is more, Article 3 makes prior consent of communities a condition for all research that affects them, “including their historical and cultural heritage”. The law does not specify criteria for such claims, leaving its application to provincial legislation (Endere and Ayala Rocabado 2012: 44; Molina

10 See press releases by the Colombian government and the Prussian Cultural Heritage Foundation (Cancilleria 2023; Stiftung Preußischer Kulturbesitz 2025).

Plaza 2020: 64).¹¹ Full implementation began in 2010 with Decree 701, which tasked the National Institute of Indigenous Affairs (INAI) with coordinating the law.¹²

Chile lacks specific restitution legislation but there have been legislative proposals with an emphasis on collective cultural rights. The 2022 draft constitution proposed recognizing Indigenous rights to repatriation and restitution.¹³ Aside from guaranteeing “access” to “cultural objects, human remains, and sites of cultural significance”, Article 102 would have made repatriation of “cultural objects and human remains” a right of “Indigenous peoples and nations” (Quinteros Cáceres et al. 2022). It furthermore would have required the state to “adopt effective mechanisms” for “restitution and repatriation”, furthermore tasking the state with its “recuperation” (Quinteros Cáceres et al. 2022).¹⁴ An earlier 2016 draft law (10.936-04) already posed collective cultural rights and a right to restitution, targeting sacred objects, identifiable human remains, and irregularly appropriated artifacts (Molina Plaza 2020).¹⁵ The law would require identifiable and recent human remains (Article 8) as well as cultural belongings “appropriated by irregular means” as well as “sacred objects” to be repatriated to legally recognized peoples and communities. It would establish the state’s duty to pursue repatriation from abroad, stipulating from the onset that the state shall hand over these repatriated remains to the respective community (Article 18), and it introduces indemnities for destroyed or irrecoverable items (Article 17). The Chilean draft law is the most comprehensive of the three, introducing rights and duties that extend beyond restitution to affect public and private institutions. It requires reporting the possession of human remains (Articles 8–12) and cultural items (Article 16), prohibits remains’ displays without prior consent (Article 8), and mandates their proper preservation (Article 10). Access to belongings for traditional practices is ensured (Article 12), and handling guidelines for unidentified remains (Article 8). The law also bans offensive displays (Article 14) which includes discriminatory depictions and means which “seriously contradict their cultural practices or customary law” (Article 2.c.) and requires classification and registration of items in Indigenous languages, respecting cultural protocols (Article 7). However, the law, which

11 For instance, Río Negro’s 2001 Law 3.468 mandates that claimant communities must be officially recognised (Molina Plaza 2020).

12 For an overview of repatriations in Argentina see Endere 2022: 241–242.

13 For insights into the restitution panorama in Chile, see Lopes Fabris 2017; Maza and Ayala Rocabado 2020; Molina Plaza 2020; Atallah Leiva 2023.

14 The draft constitution would have recognized Indigenous peoples as pre-existing nations with rights to self-determination, legal pluralism, and protection of lands and resources. However, after initial support for constitutional reform in 2020, 62% of voters rejected the proposal in 2022. A second draft, less focused on collective rights, was also rejected in 2023, leaving Chile with its 1980 dictatorship-era Constitution, which does not recognize Indigenous peoples (Aylwin et al. 2024).

15 See Cámara de diputadas y diputados de Chile 2016.

is framed in terms of the shortcomings in collective rights of existing legislation, has not advanced.¹⁶ Rather, in broader revisions to Law No. 17288 on National Monuments of 1970, the heritage law that now classifies Indigenous heritage (archaeological sites and human remains) as state property (Ayala Rocabado 2020; Maza and Ayala Rocabado 2020; Abarzúa Órdenes 2020), is currently undergoing revision based on a large-scale consultation process which could lead to a significant expansion of collective rights. Repatriation protocols would be drafted through participative processes with the Indigenous nations involved.¹⁷

Brazil's 2024 Draft Law 118¹⁸ proposes a National Restitution Policy (Article 1) that aims at the "repatriation or voluntary return" of "historical and cultural artifacts" (which includes human remains, as stated in Article 2 (III)) but also archival material, audio material, and images (Article 3 (I) I.) from abroad.¹⁹ It stipulates that "unique" artifacts and artifacts "of identitarian and/or religious value" should be returned from collections within the country to their communities of origin (Article 6, *Parágrafo Único*), allowing for a copy to be kept by the restituting entity. Indigenous participation is foreseen in the creation of restitution mechanisms (Article 4 (I)) and establishment of repatriation criteria (Article 4 (VI)), but the framework is overall state-centered, with the government tasked with creating databases and pursuing international repatriation agreements. The draft frames restitution as recognition of historical injustice and as an "act of justice" but seems to foreground claims to "improperly" or "illegally" removed items, raising questions about the criteria for restitution and the balance of power between state and communities.²⁰

Comparing these frameworks reveals shared challenges and divergences. Argentina's approach reflects its post-dictatorship human rights discourse, focusing on dignity and memory politics (Verdesio 2011: 1; Crespo 2022: 159–160; Chaparro 2023: 9). Focusing

16 A draft law to amend the existing National Monuments Law had already been presented in 2018 (12.175-04). It would include a state duty to "repair" the "goods" of which Indigenous peoples have been deprived of "without consent" (Molina Plaza 2020: 85). This draft law was stopped, however, because it did not follow process of participation and prior consultation. See Cámara de diputadas y diputados de Chile 2018.

17 With thanks to Daniela Abarzúa Órdenes for the information regarding the current law revision process (personal communication, 7.4.2025).

18 Draft law 118 was proposed by federal deputy Túlio Gadêlha Sales de Melo, member of the party Rede Sustentabilidade (Gadêlha 2024).

19 The draft law uses "restitution" and "repatriation" interchangeably.

20 For insights into the Brazilian restitution panorama, see: Lima Melo 2010; Belo Gomes 2014; Santos Acerbi 2019; Yanase de Rezende 2019; Christofolletti and Santos Acerbi 2021; Brust et al. 2023; Tupinambá et al. 2024.

on both public and private institutions within the country, it applies to human remains only and not to cultural belongings nor even sacred objects and funerary artifacts (Endere 2022: 247; Molina Plaza 2020: 63). Chile and Brazil's proposals extend to cultural items but impose restrictions: Chile emphasizes sacred and unlawfully/unethically appropriated artifacts, while Brazil prioritizes items of unique (religious or identitarian) significance. The Brazilian framework is primarily oriented toward international restitution, whereas Chile's draft law balances domestic and international dimensions, addressing both public and private entities and mandating state-led efforts to recover items from abroad (Article 18). It also stipulates that internationally repatriated remains or belongings are returned to their communities of origin (Article 18). Issues of proof, categorization, and community agency arise as critical points of contention, alongside tensions between state control and Indigenous self-determination.

All three countries face common obstacles rooted in the tension between national heritage regimes and their imposition on Indigenous norms, impacting restitution claims (Acuto and Flores 2019: 24–25; Ochoa Jiménez 2024: 131). State control and ownership of cultural and archaeological heritage deemed national patrimony restrict possibilities for restitution (Endere et al. 2011: 173–174). Heritage laws, although aimed at protecting cultural artifacts from misappropriation and export, end up reinforcing the legality of retaining these artifacts under the guise of inalienable cultural heritage.

Recent cases, such as the Selk'nam repatriation case from Lübeck illustrate tensions between national heritage regimes and Indigenous rights and agency. In October 2024, the human remains of a Selk'nam man, named Hoshkó by the descendant community, were buried in a Lübeck cemetery by a delegation from Tierra del Fuego after two years of talks between the German stakeholders and the organisation Hach Saye. Selk'nam ancestral remains were highly prized by physical anthropologists; Hoshkó's skull was sent to Lübeck's ethnological museum in 1914 by a German emigrant. While the community initially sought to repatriate Hoshkó for burial on Selk'nam territory, Chilean legal requirements mandated that the remains pass through the Ministry of Culture, a process the community opposed due to concerns and potential further indignities. As a result, the Selk'nam opted for burying Hoshkó in a Lübeck cemetery to ensure his immediate dignity and rest, a possibility for a future repatriation to Tierra del Fuego remaining open (German Lost Art Foundation 2024; La Prensa Austral 2024). As can be gathered from reporting on the case, the tensions revolved around the classification of the skull as archaeological material thereby subject to the National Monuments Council's mandate (Saldivia 2024).

As seen here, relevant factors that shape legislative frameworks on restitution, beyond their subjects and objects of rights, range from the process through which draft laws come into existence to their legitimating framework. None of the draft laws emerged

from participatory processes, conflicting with UNDRIP's call for states to develop repatriation/restitution mechanisms in conjunction with peoples and nationalities (United Nations 2007). From the perspective of rights to prior consultation, the draft laws would need to be drafted by and with the peoples and communities concerned with restitution, entailing thereby a right to negotiate the terms under which restitution will be governed. All frameworks require claimants to be officially recognised, raising tensions with Indigenous self-determination (El-Gendi 2016: 508; Ochoa Jiménez 2024: 132).

Furthermore, an evolution of cultural rights marks a significant shift in international law, expanding from individual human rights to include collective and Indigenous rights over cultural heritage (Gerstenblith 2023: 334–340). This shift allows a reframing in the conversation on restitution, moving away from questions of illegitimate acquisition and toward rights of access and control, emphasizing that holding cultural belongings without consent infringes on cultural rights and disregards Indigenous or marginalized knowledge systems. The “cultural significance” criterion enables restitution even without demonstrating past wrongful taking, foregrounding the right of communities to maintain their cultural identity and access their heritage. However, national legislation largely neglects restitution in terms of the recuperation of belongings as a core aspect of cultural rights. What is more, restitution is not placed within a framework of a right to self-determination and within a path toward legal pluralism. Many advocates now urge for restitution to be placed in the context of a more substantial right to define and manage cultural heritage – also intangible heritage – according to the respective normative orders and systems of belief (Ochoa Jiménez 2022). The state also arguably has a duty to recognise these and support the establishment of means to exercise them (Sogbesan and Laotan-Brown 2022).

To conclude, this section has tried to show the complexity of restitution legislation and the inclusions and exclusions that are written into these frameworks and different forms of legitimations that they rest upon as reflective of top-down approaches and the conspicuous omission in restitution discussions of mention of a dialogue of knowledges which could lead to epistemic and ontological negotiations. As seen here, even when written in the language of reparation, frameworks fall short of acknowledging and

repatriating agency and defining power.²¹ As I will detail in the final section of this paper, a dialogical approach that foregrounds ethical deliberation, participatory mechanisms, and epistemic justice offers a transformative pathway to address the limitations of restitution frameworks in Argentina, Chile, and Brazil.

3. Restitution Policy in Germany

Germany's approach to restitution provides a compelling context to disentangle the legitimized grounds for restitution in the absence of an immediate legal framework. Through the tireless demands pushing for a confrontation with the colonial past and with the collection genesis of ethnological museums, there has been a significant shift in the German discourse from a claim to the legality of acquisitions to a wider-spread recognition of the entanglement of museum collections with colonial injustice and the legitimacy of restitution claims. Unlike other European countries that are developing legal frameworks for restitution, Germany's response remains largely fragmented, reactive, and shaped by notable high-profile cases such as the 2022 restitution of the Benin Bronzes to Nigeria. These restitutions, while significant, occur within a patchy and claim-based (rather than systematic or proactive) landscape that lacks a comprehensive restitution policy framework or systematic funding mechanisms.

Germany lacks a statutory regulation specifically addressing restitution for cultural belongings and objects acquired in "colonial contexts", an umbrella term used in German restitution and museum provenance discourses. The *Kulturgutschutzgesetz* (Cultural Heritage Protection Law), first issued in 2007 and reformed in 2016 ratified the UNESCO Convention of 1970 into national legislation. It is only applicable from the date it was ratified and does not apply retroactively.²² As legal scholars have pointed out, private law remains the only legal recourse. However, general property law provisions, including statutes of limitation and the claimant's burden to prove ownership, render such claims nearly impossible (Thielecke 2020: 64-65).

21 What has been delineated so far must, beyond issues of practice and implementation, be understood within the context of the everyday continuities of coloniality embedded in structures, lived experiences, and the concrete realities of ongoing dispossession and extractivism, though doing so would go beyond the scope of this article. Carolina Crespo for instance points at how in Argentina from 2016 to 2019, while the INAI conducted repatriations of Indigenous ancestral remains, framed within a human rights discourse, national security forces simultaneously carried out violent repressions against Mapuche communities, bolstered by government and media defamation to legitimize these actions (Crespo 2022: 153).

22 The UNESCO Convention does, however, allow for retroactive bilateral agreements (Esterling 2017: 301).

Nevertheless, in response to growing demands for addressing Germany's colonial legacy and following the inclusion of the commitment to face up to Germany's history of colonialism in the 2018 governing coalition agreement, the Framework Principles for Dealing with Collections from Colonial Contexts was drafted as an expression of political will in 2019. The Framework Principles were issued by the Federal Government Commissioner for Culture and the Media, the Federal Foreign Office Minister of State for International Cultural Policy, the Cultural Affairs Ministers of the *Länder* and the municipal umbrella organizations. The paper expresses a commitment to find responsible ways of dealing with so-called "collections from colonial contexts" (establishing that these refer not only to former *German* colonies) (Federal Government Commissioner for Culture and the Media et al. 2019: 2). It is clearly stated that the Framework Principles establish a commitment of establishing means for the return of "human remains" and cultural property which was "appropriated in a way which is no longer legally and/or ethically justifiable" (Federal Government Commissioner for Culture and the Media et al. 2019: 2). Point No. 7 on returns states that a) human remains "are to be returned", and that b) "identifying cultural objects from colonial contexts which were appropriated in a way which is no longer legally and/or ethically justifiable and enabling their return" is a "moral and ethical obligation and an important political task" (Federal Government Commissioner for Culture and the Media et al. 2019: 6).

In a similar vein, albeit also pointing to the role of the "significance" of belongings, the recommendations for museums and museum professionals by the German Museums Association on Dealing with Collections from Colonial Contexts, issued two years later in 2021, delineate two approaches to restitution: when belongings were "removed unlawfully"/ "wrongfully taken" ("*zu Unrecht entzogen*" in German) and when the belongings were/are of special significance (German Museums Association 2021: 82–84). The guidelines, recommending a "middle course," state:

return of collection items from colonial contexts should therefore be considered when the circumstances of acquisition appear wrong from today's point of view, and also when it is an item which at the time of its removal from the community of origin was of special religious or cultural significance and it has maintained this significance until today or even regained it (German Museums Association 2021: 83).

The so-called Heidelberg declaration, a declaration by the museum directors of ethnological museums, also from 2019, speaks of return of "objects which were brought into the museums due to unlawful circumstances at the moment of their creation or of collecting," adding that "possibilities for restitution should furthermore be negotiable where objects are of significant value to their communities of origin" (Directors of Ethnographic Museums in German Speaking Countries 2019).

Provenance research is firmly positioned as the cornerstone for assessing acquisition/appropriation circumstances and thereby cemented into a requisite for legitimizing restitutions. The Framework Principles expressly position provenance research as “the foundation for assessing the origins of artifacts and the circumstances of their acquisition”, making it a condition for “making a sound, fact-based assessment of the circumstances of acquisition in each case” (Federal Government Commissioner for Culture and the Media et al. 2019: 5). A need for (further) provenance research is invoked on any occasion by decision-makers and museum representatives when restitution claims arise.

While the growing interest in provenance research reflects and contributes to an important broader societal reckoning with colonial history – driven by the tireless effort of civil society and academic actors (Habermas 2021: 98–99) – its centrality in restitution processes as a base for legitimacy presents significant difficulties. The recent restitution of the Benin Bronzes highlights the complexity of this issue. Framed as a paradigm shift in the German restitution landscape, this case constitutes the largest transfer of ownership of colonial loot to date. However, its exceptional circumstances highlight the limitations of provenance research as the primary legitimizing base for restitution. In almost unparalleled manner, the sequence of events in the British assault on the Benin Kingdom and the looting of the royal palace was reconstructable based on archival and even photographic sources. With a view to the breadth of ethnological museum collections in Europe, it can be argued easily that the provenance details will be so blatant and so easy to reconstruct only in relatively few cases (Bose and Kuhn 2024). For most items in ethnological collections, reconstructing a direct acquisition/appropriation context is far more challenging (Grimme 2020).

Further complicating this process are the systemic challenges facing museums, which largely lack the resources to systematically examine the vast collections under their care beyond individual, third-party funded projects. At the same time, the overwhelming evidence of certain collections’ intrinsic entanglement with German and European colonialism, together with existing information on appropriations linked to colonial violence (Adjei and LeGall 2024; LeGall 2023), raises questions about the continued emphasis on reconstructing individual provenance stories and why, acknowledging the political and diplomatic complexities involved, restitutions are not more proactively and systematically pursued in clear-cut cases.

At the heart of this issue is a debate within the German museum sector about whether colonialism as a whole should be regarded as a “context of injustice” (Eckstein et al. 2017; Howes 2020; Förster 2022). The 2019 Framework Principles indicate that “not every cultural object from colonial contexts was violently seized”. The Guidelines state “the authors consider it to be problematic to deny that the communities of origin had

any agency and to declare them all to be victims” (German Museums Association 2021: 83).

This perspective has been strongly opposed by activists and organizations whose efforts have been instrumental in advancing the debate on restitution in Germany, in which at present it is insinuated that a colonial context would not necessarily imply a problematic provenance, which in effect downplays the systemic injustices and racialized violence inherent in colonial practices (Mboro et al. 2019). As Larissa Förster explains, the term *Unrechtskontext* originates from Germany’s confrontation with National Socialism in its memory politics. Discussions surrounding collections from “colonial contexts” have unfolded against the backdrop of a key presumption in NS-era provenance research: property losses suffered by individuals persecuted under National Socialism are generally considered “‘unlawful seizures’ [...] unless evidence to the contrary can be presented” (Förster 2022: 65). Historian Jürgen Zimmerer, among others, has been outspoken in favour of considering colonial acquisitions/appropriations “unethically acquired unless proven otherwise” (Zimmerer 2015: 24 cited in Förster 2022: 65). Instead of fostering a relational perspective that links expropriation due to Nazi persecution with (post-)colonial contexts in line with Michael Rothberg’s concept of multidirectional memory, the dominant memory and restitution discourse and governance in Germany has lately adopted an even more distinctly separatist approach.²³

Though not to dismiss the complexities of the interactions taken place in the context of colonialism, that for example historian Bernhard Gissibl persuasively points at (Gissibl 2019), with a view toward the *longue durée* of extractivism and accumulation by dispossession and conditions of colonality that exceed colonialism, the focus on the immediate context of acquisition/appropriation is painfully narrow. As Carsten Stahn puts it:

The traditional logic, according to which the legality of acquisition is taken for granted, unless involuntary dispossession can be positively shown, is subject to critique in colonial contexts. It faces not only challenges in relation to the proof of non-consensual acquisition, but disregards the structural nature of colonial injustice. It banalizes the structural and epistemic violence inherent in colonial relations. It assumes that the taking was acceptable according to the standards of the time, as long as no proof to the contrary is offered (Stahn 2023: 320).

Thus while “colonial contexts” is explicitly widely framed in the German discourse, going beyond conditions of immediate colonialism, and hence in theory inclusive of more recent historical contexts like the Latin American shaped by colonality, the focus

²³ See Rothberg 2020.

on the immediate circumstances of acquisition sidelines broader understandings of (post-)colonial injustice. The “context of injustice”, narrowed down to the circumstances of change of ownership, neglects the larger historical processes of dispossession. This is relevant to restitution claims from Latin America, for instance, and beyond, that might involve belongings legally acquired but embedded in larger contexts of destruction of life-worlds and territories, dispossession and displacement. This approach also fails to account for the consequences of the translocation and alienation and the violence tied to belongings’ inscription into a modern/colonial and Eurocentric system of value and signification.²⁴

Isabelle Reimann and Nahed Samour critique the current focus on proving an individual context of injustice for repatriation, arguing that this approach neglects the systemic nature of colonial violence. They call for a systematic framework that proactively addresses colonial injustices, engages with descendant communities, and moves beyond restrictive case-by-case assessments and case-specific evidence (Reimann and Samour 2022). As Carola Thielecke and Tobias Schmiegel highlight with a view toward postcolonial memory culture, this perspective risks sidelining larger contexts and interrelations by putting emphasis on an “individual case-by-case justice” (Thielecke and Schmiegel 2023: 289).

Hence, provenance research has not only been burdened with expectations to provide readily interpretable answers with regards to a context of injustice narrowly conceived of in terms of the immediate change of ownership. What is more, the expectation to “prove” the conditions are “no longer” or “from today’s perspective” justifiable, has led to the untenable placement of burden of proof of colonial violence expectations on claimants and the playing off against each other of postcolonial memories and the colonial archive. Friedrich von Bose and Konrad Kuhn advocate for viewing provenance research as an open-ended process, emphasizing that recognizing collections as “fundamentally tied to colonial contexts” allows for moving beyond simplistic dichotomies of “legitimate acquisition” versus “illegitimate appropriation” (Bose and Kuhn 2024).

As shown here, the German restitution framework lacks a formalized ethical approach for addressing cases that fall outside the currently legitimized grounds for restitution, such as the immediate context of acquisition, though there have been recent restitutions that exceed these narrow criteria, like the return of twenty-three artifacts to Namibia without explicit reliance on acquisition contexts (Stiftung Preußischer Kulturbesitz 2022). This case underscores the need for a consistent ethical framework to guide decisions in situations where provenance research cannot fully capture the complexities of colonial injustice or the cultural significance of contested artifacts and returns.

24 See Crespo 2020 for an analysis of the violence of “collecting” and subsequent transfiguration.

Centring the perspectives of stakeholders demanding restitution reveals that claims often point to the larger historical context. Restitution is not merely a matter of correcting individual wrongs; it is related to demands for reparative justice and a means of realizing cultural rights. While provenance research is invaluable for detailing acquisition/appropriation histories and contributing to an engagement with the colonial past, it cannot comprehensively address the complexities underlying restitution claims, the structural nature of (post-)colonial violence, its enduring impact or the “cultural significance” of belongings and objects. Although provenance research is a developing field with important ongoing discussions (Weber-Sinn and Ivanov 2020; Rivoir 2023; Binter et al. 2024), institutionally it is still largely anchored in the (unilateral) determination of the conditions of the change of ownership, providing a limited framework for generating knowledge needed to approximate postcolonial justice. Despite provenance research being positioned today as a necessarily collaborative and transdisciplinary endeavour, institutional restitution processes have yet to formalize the inclusion of knowledges and perspectives from descendant communities or claimants to complement or extend beyond it.

Coloniality is then reproduced in view of the lack of a legal basis for postcolonial justice efforts and structures for more encompassing ethical considerations. The lack of transparent ethical guidelines and formalized processes, at the national, state, or institutional level reproduces relations and conditions of injustice and exacerbates power imbalances between institutions and claimants/claimant communities or descendant communities. This absence of procedures to arrive at ethics-based considerations leaves stakeholders without reliable and transparent processes or timelines. Furthermore, reliance on a case-by-case approach, shaped by political pressures, diplomatic considerations and geopolitical interests, leaves restitution claims vulnerable to shifting political climates and political will (Aguigah 2023).

Adding to these challenges is the decentralized structure of German collections, which can be governed by various entities, including federal or state government administration (direct or indirect), municipal authorities, independent public entities, or private foundations, each with distinct (legal and financial) frameworks for deaccessioning (Pöschl 2024). Institutions must then navigate processes involving other German governmental bodies, such as the Federal Foreign Office, the Federal Government Commissioner for Culture and the Media and the regional ministries, which pursue broader diplomatic or bilateral interests. At the same time, partnerships with (e.g. former colonized) states and especially diverse descendant communities – whose interests are not homogenous – remains challenging and require careful and nuanced engagement. While countries like Australia and New Zealand provide financial support for restitution processes, the question of who shoulders the financial burden in other

cases remains ambiguous given the lack of clear funding mechanisms. Economic factors also weigh heavily on source communities, who often face significant barriers to participating fully in restitution processes.²⁵

The governance of restitution tied to colonial contexts in Germany to date remains fragmented. In November 2023, the Bundestag's Budget Committee tasked the Federal Foreign Office (AA) and the Federal Government Commissioner for Culture and Media (BKM) with developing a joint concept to clarify responsibilities for the return of cultural assets and ancestral remains by April 30, 2024 (Fues 2023, 2024a). With the breakup of the governing coalition at the end of 2024, however, the governance model has not yet been formalised (Fues 2024b). Whereas funding for a new Contact Point for Ancestral Remains was approved by the Bundestag Budget Committee's in October 2024, the €2.4 million Restitution Fund allocated over four years starting in 2024 has not been operationalised (Fues 2024b).

Having delineated some of the difficulties with the German restitution framework and the currently legitimized grounds for restitution, it is clear that not only are there considerable unmet responsibilities with regards to the fulfilment of existing obligations as rights-based demands foreground concerning among others the repatriation of human remains, but there is still a long way to go with respect to restitution based on ethical grounds.²⁶ A dialogical approach to restitution, as I will argue for in the last section of this paper, offers a pathway to move beyond the limitations of the current framework.

4. A Dialogical Approach to Restitution

Guided by dialogue, polyphony, and exchange, the act or gesture of restitution should not be considered as a dangerous action of identitarian assignation or as the territorial separation or isolationism of cultural property. On the contrary, it could allow for the opening up of the signification of the objects and open a possibility for the "universal" [...] (Sarr and Savoy 2018: 2–3).

Intrinsic to (post-)colonial violence is the epistemic and ontological injustice enacted through negation, erasure, and imposition. These forms of violence are central to

25 The economic dimension of restitution, such as resources needed for preparing for the return of cultural items or ancestral remains, as well as preservation and reintegration, warrant greater consideration.

26 A recent report by the European Centre for Constitutional and Human Rights based in Berlin argues that the German state, according to its Basic Law, has to repatriate human remains in order to fulfill rights of the deceased and their descendants a postmortem right to respect, a right to rest in peace, and a right to care for the deceased in culturally appropriate ways (Toffa and Imani 2022).

colonialism and coloniality, shaping postcolonial injustices and manifesting in the structures that regulate conviviality and the governance of what has been transformed into “cultural heritage” under modern-colonial frameworks and cultural property regimes. Ethnological museums have served as infrastructures thereof, through the power they have assumed in the representation of the Other(ed), a power exercised by the imposition of paradigms, categories, and modes of signification (Sarr and Savoy 2018: 37–38). Displaced museologized belongings, entities, or items have been subjected to these and reshaped thereby (Sarr and Savoy 2018: 30). Restitution thus simultaneously entails a work of memory and a work of history as well as a process of re-appropriation or reconnection, of reinvention and of re-investing with social function and meaning (Silvester and Shiweda 2020: 32; Sarr and Savoy 2018: 30, 32). It can allow for a rupture with a monopoly of and an opening in the means of signification, exceeding a single narrative and requiring a pluralisation of the conceptions of “cultural heritage” and the means of relating to it (Sarr and Savoy 2018: 29, 33, 38).

Current restitution frameworks have yet to do justice, however, to an in-depth dialogue between knowledge frameworks and perspectives on postcolonial justice. Rather than being taken for granted as a postcolonial justice effort in itself, then, it is worth examining how restitution as a framework and process or practice approximates epistemic and ontological justice. Whereas return is sometimes (conveniently) framed as a form of reparative justice in itself, restitution in the form of the return of belongings violently dispossessed, for example, is arguably not more than a restoration of the state prior to the expropriation (Toffa and Imani 2022). Restitution frameworks are not only embedded in the postcolonial frameworks of law and the structures governing conviviality, but also generally depart from a transfer of ownership assuming it constitutes a priori a form of redress that neither engages in broader considerations of justice and historical redress, nor examines potentially diverging understandings thereof. De-/postcolonial critiques put to question whether any kind of justice at all can be achieved via or within the very structures that reproduce the coloniality of being (Rivera Cusicanqui 2010). In any case, the postcolonial restitution framework is based on a (capitalist) concept of property which in itself can constitute an act of epistemic and ontological violence in light of diverging normative orders and property regimes (Theurer and Kaleck 2020; Ochoa Jiménez 2022; Barbosa et al. 2024; Ugwuanyi 2024; Bens 2025).²⁷ Thus, though restitution functions within a logic constitutive of the very structures that enabled and secured dispossession in the first place, postcolonial justice cannot be approximated unless restitution is placed within a dialogue that addresses diverse understandings of redress. Overcoming a presumption of redress as such would require decentring

²⁷ See Tynan 2021 on relationality as a practice of being, knowing, and doing and on responsibility over ownership.

the dominant paradigm of restitution by expanding the comprehension of its meaning to include the perspectives of those with stakes in the process. Currently, restitution frameworks do not originate from the perspective of reappropriation but are instead shaped by a single-narrative approach that reflects epistemic and ontological violence, particularly when property-centric perspectives are imposed.²⁸ This is why restitution agreements, transfer of ownership legal documents, may not only inflict harm through their language and the logic they are based upon, but because they are far from what is needed from repair (Shannon et al. 2017). Cases of repatriation of ancestral remains in Argentina, for example, highlight the importance of reburial practices beyond the act of return, which highlights how restitution/repatriation may constitute a mere starting point for broader processes of justice and reparation.

Over and above that, as the analysis here has shown, adding to the critical analysis of restitution, is the fact that restitution frameworks not only remain divorced from demands for the recognition of systemic injustice and broader postcolonial justice, but are constrained by being shaped by narrow or monological definitions of and approaches to legitimacy. How can restitution meaningfully contribute to postcolonial justice if it fails to engage with plural understandings of (in)justice, history, and meaning? For restitution to serve as redress, it must confront its own embedded narratives and expand beyond a singular, dominant framework of interpretation.²⁹

Approximating epistemic exchange and ontological negotiation must begin, at a minimum, with a dialogical approach to frameworks and practices. While restitution processes are inevitably confronted with the incommensurability of epistemic and ontological frameworks, as well as the postcolonial structures that shape conviviality, these challenges should not deter efforts to envision change within existing structures and implement more horizontal and dialogical forms of deliberation.

German restitution policy reflects an approach in which ethical deliberations are subordinated not only to historical “facts” produced by conventional provenance research but also to unilateral determinations of whether a context of injustice can be proven, particularly in the absence of a transparent, dialogical deliberation process. The

28 Curtoni (2022), for instance, critically examining restitution in Argentina, argues that it operates as a “device of coloniality” that limits Indigenous agency and reinforces hegemonic state control. He highlights how terms like *restos* dehumanize ancestral remains, detaching them from their spiritual and relational significance within Indigenous worldviews. Curtoni advocates for a shift from restitution to recuperation, emphasizing a reclamation process driven by peoples and nationalities. This approach reframes restitution as a pathway to self-determination, challenging colonial power structures and fostering new forms of meaning grounded in Indigenous epistemologies and practices.

29 Advancing this work will require deeper engagement with decolonial and/or participatory methods centering descendant and Indigenous communities as agents in shaping the meanings and practices of restitution as well as alternative normative orders.

currently legitimized grounds for restitution are, first of all, narrowly defined in terms of a response to an unjust/unethical context of acquisition/appropriation underscoring its immediacy and demonstrability based primarily on archival historical sources. At the same time, there is no comprehensive approach to the restitution of collections, not to mention a discussion of a systematic entitlement to claim back belongings tied to contexts of injustice. Concrete demands for return, moreover, challenge the German restitution framework, which does not count on (formalized, fair, transparent) means to provide ethical responses to cases that exceed the currently legitimized grounds. The restitution framework thus fails to address both the immediate violent, deceptive, nonconsensual, or otherwise unethical nature of the extraction or expropriation of belongings and the broader structural conditions and historical effects of colonialism and coloniality. Instead, provenance research – rendered an evidentiary exercise – attempts to reframe a fundamentally political deliberation into a scientific and ostensibly neutral issue, rendering it more manageable and contained.³⁰

In Latin America, none of the frameworks have so far relied on systematic participatory processes of definition or prior consultation. Restitution has not been integrated into broader frameworks for cultural and collective rights. National (draft) laws in Argentina, Chile, and Brazil maintain tension with heritage regimes that secure state ownership and control. These legal frameworks fail to engage with demands for access, agency, and self-determination, leaving restitution disconnected from structural demands and transformation. A more comprehensive approach would situate restitution within a broader framework that recognizes the right of peoples, nationalities and communities to define and manage “cultural heritage” according to their belief systems, practices, and customary norms. The restitution frameworks of Argentina, Chile, and Brazil reveal common challenges that include state-centric governance, a unilaterally defined scope, and a lack of participatory mechanisms. These frameworks exclude Indigenous and descendant communities’ voices from the processes of defining restitution criteria and implementing policies. While these challenges highlight the limitations of existing monological approaches, they also underscore the potential of dialogical frameworks to address these shortcomings.

A change of perspective toward a more decidedly dialogic approach concerning restitution requires an acknowledgment that the struggle for postcolonial justice is a dynamic, contested process that requires ongoing negotiation, dialogue, and adaptation. A dialogic approach foregrounds restitution as a key site for epistemic exchange and ontological negotiation, requiring spaces for dialogue and deliberation. Thus, first and foremost, a paradigm shift toward a more dialogical and therefore more soundly ethics-

30 I thank Sérgio Costa for his observation regarding the role of science in attempts to neutralize political tensions, which has been incorporated here.

based approach to restitution that seeks to overcome the Eurocentrism of current ones, would entail foregrounding the epistemological and ontological grounds that give rise to restitution efforts. Such an approach could take into consideration, beyond the immediate context of acquisition, the wider legacies of dispossession, alienation, and cultural loss as well as foreground more decidedly the significance of the belongings in question. Beyond a look into the past and the injustice committed by or related to the translocation of a cultural belonging (and what this loss or alienation then meant for itself but also to the network of relations in which it was entangled), a look into the possible futures of a belonging or artifact and what its “return” might engender can constitute another powerful source of consideration (Gavua 2023). Such an ethics-based restitution framework as delineated here is especially relevant to contexts where restitution demands might not be tied to a wrongful, illegal, or unethical acquisition/appropriation but tied to processes of politicization, reclamations of territories and rights.

A change of perspective demands a reorientation of provenance research, reducing the disproportionate reliance on colonial archives, treating it only as one element within a broader ethical deliberation that prioritizes reparative justice. Dialogical and therefore ethics-based restitution processes would need to be informed by different and broader approaches to research and knowledge, including oral histories and more ethnographically substantiated research (Förster 2021).

As referenced here throughout, while theoretical perspectives foreground epistemic justice as intrinsic to postcolonial justice, rights-based approaches emphasize instead the importance of prior consultation and power over and participation in decision-making concerning “cultural heritage”. The analysis of restitution frameworks presented here reveals that ethical restitution requires dialogical approaches. A dialogical model has also been proposed in relation to the right to participation in reparation measures following human rights violations, focusing not only on outcomes but also on the participatory processes themselves as integral to reparation (Laplante and Reyes 2023). Similarly, dialogical approaches have been explored in adjacent fields, such as curating (Reca et al. 2019; Szöke 2023). The call for a dialogical approach aligns with the recommendations by German Museums Association’s guidelines that advocate for engaging in discussions with the “community of origin” to achieve “a mutually acceptable assessment” (German Museums Association 2021: 83). Additionally, Andreas Mehler’s recent survey of restitution experts underscores the need for “bottom-up approaches with an emphasis on consensual and collaborative processes” (Mehler 2024: 25).³¹

31 The repatriation of ancestral remains to Namibia has highlighted the complexities that arise when descendant communities are excluded from state-to-state repatriation processes (Barnstorf-Brandes 2021).

Along those same lines, civil society initiatives have appealed for the establishment of an advisory board for Germany's repatriation funding mechanism, while engaged professionals have appealed for prior consultations and respect for the agency of descendant communities in repatriation preparations and processes (Brandstetter 2024; Decolonize Berlin 2023). Together, these theoretical, rights-based and practical perspectives underscore the relevance and applicability of dialogical frameworks to restitution.

Hence, while dialogical approaches offer a conceptual shift in restitution practices, their success depends on the development of practical mechanisms that institutionalise these principles. Dialogical approaches can be integrated at multiple levels, including the development of legal frameworks, institutional processes, and the concrete implementation of restitution practices. Putting in place dialogical means would ensure that restitution serves not only as a response to past injustices but as a path toward new and different relations surrounding "cultural heritage". Central to this is the recognition that restitution frameworks are subject to ongoing negotiation and new consensus-building. Legal barriers have not only served to deter restitution possibilities but also have had paralyzing effects for envisioning alternative restitution frameworks. Recognizing that laws are neither static nor immutable but capable of evolving in response to societal demands, legal frameworks for restitution should be defined through consultation and participatory processes, as has already been the case with the development of (national or professional) guidelines in some contexts. A shift toward participatory legislative processes would include co-creation mechanisms and could institutionalize prior consultation, ensuring a voice, particularly for descendants, in the definition of the criteria, scope, and implementation strategies of restitution laws.

Restitution commissions, at the national, state, or institutional level, could serve as a guiding and consultative body, issuing recommendations on not only restitution policy and governance, but frameworks and mechanisms. They could furthermore act as deliberative bodies to mediate disputes, evaluate claims, and accompany restitution processes. Examples like the Smithsonian's Native American Repatriation Review Committee or the Netherlands' Colonial Collections Committee can provide insights for designing effective restitution commissions tailored to regional contexts: The Smithsonian's Native American Repatriation Review Committee, established under the National Museum of the American Indian Act, is composed of seven members nominated by Native American tribes, anthropological, and museum organizations, including two traditional Indian religious leaders. The committee oversees the Smithsonian's repatriation processes, ensuring fairness in determining cultural affiliation and resolving disputes related to the return of human remains and cultural objects. It also provides independent recommendations to the Smithsonian Secretary

upon request. Additionally, the committee supports initiatives such as travel grants, ceremonial spaces, workshops, and the re-housing of sensitive objects, aiming to facilitate collaboration and cultural sensitivity in repatriation efforts. In the Netherlands, an independent Colonial Collections Committee was recently set up in the past years to advise the Minister of Education, Culture and Science on restitution claims - providing a model that can be expanded upon (Colonial Collections Committee n. d.).

Public institutions are bound by the rules governing the (in-)alienability and disposal of state property and must therefore rely on mechanisms that provide clarity and legitimacy in restitution decisions.³² While restitution is inherently a political and ethical issue of contention, it stands in tension with but also requires legal certainty. This can be achieved through the establishment of legitimized deliberative processes that create transparency and ensure accountability in restitution processes that could ensure restitution is grounded in what Sarr and Savoy describe as an “ethically just equation that is also juridically viable” (Sarr and Savoy 2018: 44).

A common guideline with respect to dialogical mechanisms could be agreed upon across the national, regional, or institutional spectrum.³³ Restitution ethics boards within museums could guide the institutionalization of means of dialogue within restitution processes. Such means would provide a platform for dialogue and deliberation, ensuring that restitution processes consider multiple knowledges and (historical) perspectives, providing transparency over restitution decision-making. At the same time, embedding dialogical principles and consultative mechanisms into restitution efforts enables institutions to navigate political and structural complexities that inevitably characterise restitution processes more effectively. Furthermore, dialogical frameworks prioritize ethical considerations, integrating states agreements with the cultural protocols and practices of source communities.

A dialogical development of guidelines for concrete individual restitution processes could ensure that restitution practice does not reinforce or reproduce coloniality but respects cultural protocols and the respective ontological frameworks (Tupinambá et al. 2024). The recent restitution of a Tupinambá feather mantle (an *encantado*, or enchanted object/being) to Brazil's Museu Nacional from Denmark elucidates the challenges when state-to-state repatriation stands in tension with descendant community perspectives, demonstrating the need for more dialogical frameworks. After twenty-four years during which restitution demands remained unresolved, the repatriation to the Brazilian state from Denmark's *Nationalmuseum* took place in 2024.

32 See Pöschl 2024 for an overview of the German landscape.

33 Léontine Meijer-van Mensch, former director of the State Ethnographic Collections Saxony with its Ethnological Museums Dresden, Leipzig, and Herrnhut, has advocated for a transnational European approach to restitution as an alternative to individual, nation-focused strategies (Fues 2024c).

As press reports detail, Danish security concerns led to the transfer being conducted in secrecy, which directly conflicted with the Tupinambá community's cultural protocols requiring departure and welcoming ceremonies for the ancestral being. What is more, the Tupinambá community had to raise their own funds to attend the repatriation ceremony after conservation measures had taken place due to a lack of government support, highlighting financial and structural barriers. Additionally, the mantle's return is intertwined with the unresolved struggle for Tupinambá land rights and demands for support to establish an autonomous cultural centre, underscoring the broader complexities of restitution processes (Roxo 2024).

Dialogical approaches allow for rethinking ownership by incorporating plural understandings of cultural belongings while also creating space for alternative custodial arrangements. A key point of reference is the recent advancement of a framework of "ethical returns and shared stewardship" at the Smithsonian Institution in the United States. The Smithsonian issued a Shared Stewardship and Ethical Returns Policy (SSER) in 2022 which opens up possibilities for the respective institutions to introduce collaborative collections care and shared authority and ownership as well as for restitutions based on ethical considerations, even when legal requirements like the National Museum of the American Indian (NMAI) Act (1989/1996) do not mandate it (Smithsonian Ethical Returns Working Group 2022). Restitution considerations include the harm caused by retaining objects or belongings and the broader context of their acquisition. Smithsonian museums are encouraged to proactively identify items for restitution. Efforts include developing accessible processes for external parties to request restitution, establishing ethical guidelines for decision-making, and ensuring comprehensive communication throughout the process.

The *Nosso Sagrado* [Our Sacred] collection in Brazil can be highlighted as an example of shared curatorship (Russi 2024; Brulon Soares 2024). Sacred Afro-Brazilian objects, confiscated during police raids between 1889 and 1945 under discriminatory laws, were stored in the Civil Police Museum as evidence of "Black Magic". In 2017, the movement *Liberte o Nosso Sagrado* [Free Our Sacred] advocated for their restitution, leading to their transfer to the Museu da República in 2020. This process adopted a model of shared curatorship, with *mães* and *pais-de-santo* (Afro-Brazilian religious leaders) involved in decisions about the collection's preservation and display.

This shows the relevance of placing restitution within a broader spectrum of ethical collections care that seeks solutions for cases when return is not possible for different reasons, among them for example due to the large-scale contamination of collections with biocides, but also in light of demands that exceed return in targeting, for instance, mechanisms of access, consent, and decision-making power within collection-holding institutions.

To summarise, as a starting point, a dialogical approach can be (more firmly) embedded across all phases of the restitution process, ensuring epistemically just practices. In the phase of knowledge production, research must incorporate diverse epistemologies to complement and challenge archival records. Decision-making procedures should foreground ethical deliberation and a dialogical approach to multiple perspectives. The creation of overarching frameworks, such as national policies or restitution laws, based on dialogical and participatory mechanisms can challenge the entrenched coloniality of existing ones. Dialogical principles must also guide the handling of individual cases, including the preparation for restitution and the modalities of return. Furthermore, through dialogical means, restitution can be envisioned and debated as a starting point for what might follow after restitution, embedding it within broader reparative frameworks. Such a multi-layered dialogical approach offers the possibility for the restitution process itself to become a meaningful form of postcolonial justice.

Hence, while dialogical approaches to restitution and their implementation are complex, they offer the potential to ensure decisions are informed by multiple perspectives, ethically grounded, and transparent. The development of clear procedures – such as ethical guidelines and restitution commissions – not only promotes transparency and accountability but also enables case-by-case attention while addressing broader considerations. These include not only the immediate injustices of dispossession but also the deeper structures of epistemic and ontological violence that underpin them. Although dialogical approaches might not fully challenge entrenched (modern-colonial) paradigms, they create space for a pluralization of perspectives by fostering a dialogue among knowledges. This requires rethinking the grounds for restitution, the mechanisms through which they are defined, and the processes that govern their implementation. By embedding deliberation, ethical decision-making, and epistemic exchange into restitution frameworks, a dialogical approach reimagines restitution as a transformative process rather than a unilaterally defined act of redress. Thereby, it adds to Mecila's understanding of conviviality as an emergent outcome shaped by conflict, cooperation, and the negotiation of power within conditions marked by inequality (Costa 2019; Manzi 2020; Suárez 2022). By adopting a dialogical approach, restitution can draw nearer toward epistemic exchange and ontological negotiation, transcending its legalistic and monological confines. In doing so, restitution opens pathways to postcolonial justice and embraces and unlocks the multiple significations that restituted items entail.

5. Conclusion

As restitution is intrinsically tied to broader societal reckonings with postcoloniality and reflects the (postcolonial) power dynamics at play, the specific grounds for restitution – and the frameworks for defining them – have historically been contentious and must now be further examined through a dialogical approach. In this paper, I have advocated for the transformative potential of such an approach as a way to approximate restitution to a process of postcolonial justice, grounded in the analysis of various restitution contexts.

As I argue in this paper, the specific grounds for restitution, as well as the frameworks for defining and implementing them, must be positioned within broader ethical deliberations and dialogical approaches. While aspirational, there are numerous practical avenues to envision and explore. Much more consideration is required to envision ways of creating space for more dialogical processes and fostering ethical deliberations.

In the Latin American national contexts analyzed here, efforts remain limited, focusing for instance only on ancestral remains, emphasizing state agency over the rights and voices of communities and peoples, and restricting rights to restitution on matters of demonstrable lack of consent. Similarly, in Germany, restitution remains limited by the absence of a legal base and an ethical framework as well as narrowly defined grounds to legitimize restitution. All of these frameworks fail to prioritize the agency and decision-making power of descendant communities, leaving restitution criteria unilaterally defined by state or institutional actors.

As this paper demonstrates, the assumptions underpinning restitution as an act of justice must be critically examined. The paper thus interrogates existing restitution frameworks while advocating for a dialogical approach to restitution that foregrounds ethical deliberation and a dialogue among knowledges.

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