

## Anthropology on trial: exploring the laws of anthropological expertise

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### Abstract

*This paper explores the role of anthropological expertise in shaping the outcome of legal proceedings under conditions of cultural diversity. Taking the state-driven land-restitution process in post-apartheid South Africa as its point of reference, the text reflects upon the work of anthropological experts in a number of cases and shows how their theoretical and political stances shaped the trajectories of their legal engagements. Pointing towards frictions that emerge in acts of translation between the seemingly objectivist rhetoric evoked in court and more relativist and subjectivist stances within the academy, the paper revisits and problematises debates around strategic essentialism. Sketching instead the contours of a 'recursive anthropology' that expresses itself in terms of a post-positivist universalism, the paper turns on the author's use of his own expertise in support of a White land claim, probing – and critically reflecting upon – the practical potential of a form of expertise grounded in such a recursive anthropology.*

### I. Introduction

This paper explores the role of anthropological expertise in shaping the outcome of legal proceedings under conditions of cultural diversity.<sup>1</sup> It takes as its empirical point of reference the practical engagement of anthropologists (including myself) in the state-driven land-restitution process in post-apartheid South Africa, in which the new state currently compensates victims of former land dispossessions that were based on racially discriminatory laws and practices. In such a setting, anthropological expertise can be brought to bear on everyday life in many different ways. Drawing on Setha Low and Sally Engle Merry's (2010) recent typology of forms of anthropological engagement, the use of such expertise (beyond academic teaching and research) can range from the public provision of information in allegedly neutral ways to modes of engagement that are more overtly positioned. Correspondingly, within the legal sphere, anthropologists can take up the roles of seemingly neutral expert witnesses, work as consultants or collaborators with particular parties, or act as more and more positioned advocates, or even activists, for certain groups.

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1 The research on which this text is based was financially supported by the Berne University Research Foundation (2009–2011) as well as by an Ambizione Research Fellowship of the Swiss National Science Foundation (2012–2015). This paper benefitted greatly from engaged discussions around presentations on various occasions. These include the 2013 conference of the Euro-African Association for the Anthropology of Social Change and Development (APAD) in Montpellier, a 2013 research seminar at the Institute for Anthropological Research in Africa (IARA) of the Katholieke Universiteit Leuven, the 2015 Joint Institutes' Colloquium of the Max Planck Institute for Social Anthropology & Institute of Social and Cultural Anthropology, Martin Luther University Halle-Wittenberg, and a talk at the 2015 Institute of Social Anthropology Seminar Series of the University of Bern. I am particularly indebted to Jonas Bens, Ann Cassiman, Brian Donahoe (also for his editorial acumen), Julia Eckert, Marie-Claire Foblets, Chris Hann, Mathieu Hilgers, Markus Hoehne, Tania Murray Li, Günther Schlee and Larissa Vetter for their constructive comments.

However, the neutrality of expert witnesses is, in practice, often difficult to achieve or guarantee<sup>2</sup> – a situation that is shaped by, among other factors, the peculiarities of the respective legal system. In adversarial (common-law) systems, the parties typically instruct expert witnesses to give evidence and do most of the cross-examination before a passive and impartial judge. In such settings, the neutrality of experts might be difficult to maintain because they are instructed by a particular party, which might put pressure on them to provide supportive evidence.<sup>3</sup> This might be less of a problem in inquisitorial (civil-law) systems, where judges are more active, calling witnesses, appointing experts and conducting most of the examination themselves (van der Walt, 2006). However, this ideal-typical distinction is arguably more a matter of degree than of kind, and in so-called mixed legal systems – such as in South Africa, where common-law and civil-law traditions have coexisted (Zimmermann and Visser, 1996, p. 3) – adversarial and inquisitorial aspects merge into an ‘adquisitorial’ system (Quadri *et al.*, 2015).

While South African judges, especially in the land-restitution process (Quadri *et al.*, 2015, p. 33), thus have more inquisitorial powers than in classical adversarial legal systems, the different forms of anthropological expertise referred to in this paper did not actually emerge through the activities of judges, but rather through those of various parties in legal proceedings. Covering a broad spectrum of engagements ranging from seemingly neutral expert witnessing in court to collaboration and consultation to advice and advocacy (if not activism), these forms of anthropological expertise are here only briefly invoked and alluded to as springboards to a broader reflection on how anthropological knowledge can, and should, be brought to bear on legal contexts in general. In other words, this paper is primarily meant as a ‘think piece’ – a contemplation on the relationship between anthropological expertise and the legal sphere and the kinds of anthropological knowledge and engagements that can, and should, be instantiated. I offer neither an ethnographically ‘thick description’ nor a sustained empirical analysis. To put it bluntly, if I am accused of describing examples of anthropological expertise merely as entry points into or exemplifications of my theoretical argument, then I have been understood.

In this spirit, this essay starts off with a vignette describing the work of an anthropologist, instructed by a claimant community, whose academic work was used during cross-examination in court to contradict her own expert statement. The conundrums following from this case are contrasted with the full-time expert work of two former *volkekunde*<sup>4</sup> professors who have started their own consultancy firm offering their services exclusively to White<sup>5</sup> landowners and who

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2 This might be the reason why Low and Merry (2010, p. S210) consider acting as an expert witness in court to be a form of advocacy.

3 As Johnston (1987, p. 249) succinctly puts it with regard to scientific expert witnesses, ‘A lawyer searching for an expert looks not only for a qualified person, but for an expert who can and will support his or her client’s position’. Susanne Berzborn – whose expert witnessing will be the topic of the first vignette below – points out that there might be a dilemma for anthropologists simultaneously doing research in a community and acting as expert witness in legal cases affecting this community, arising from the obligation to remain neutral and tell the ‘truth’, while nevertheless feeling a sense of obligation towards that community. In Berzborn’s case, she claimed that there was no such conflict of interests because her research results supported the interests of the community anyway (Berzborn, 2006, p. 23). For a comparable discussion of conundrums resulting from the demands of neutrality as expert witness and a sense of commitment towards the instructing party, see the contribution by Markus Hoehne in this issue.

4 *Volkekunde* (literally ‘knowledge about peoples’) is a subject that used to be taught at Afrikaans-medium universities. This is explained in greater detail later in the paper.

5 I use the conventional categories African, Indian, coloured, Black (as inclusive of the previous three categories) and White to describe the different social groups that were identified as ‘distinct’ under the apartheid system, while acknowledging the dilemma that the inevitable usage of these socially constructed terms might reinforce their alleged ‘reality’ as biologically predetermined categories.

ostensibly fear that their objectivity would be compromised if they were to work for the post-apartheid government run by the African National Congress (ANC). Showing how their theoretical and political stances profoundly shaped the divergent trajectories of their legal engagements, the text uses these vignettes to unpack the notion of ‘anthropology on trial’ with regard to three different levels: the concrete role of anthropologists as experts in trials; the historical complicity of specific anthropologies in the making of colonial and post-colonial injustices; and the problem of recursive observation, namely with regard to the question of what kind of anthropology might be properly equipped in the first place to observe, interpret and explain these roles of anthropology as part of the problem and/or the solution.

Pointing towards frictions that emerge in acts of translation between the apparently objectivist rhetoric evoked in court and seemingly more relativist and subjectivist stances formulated within the confines of the academy, I then revisit debates revolving around the concept of strategic essentialism<sup>6</sup> and identify two problems with any approach based on this concept. The paper then argues for a shift in perspective that allows us to process more productively the theoretical and political–moral challenges highlighted by post-modern, feminist, post-colonial and post-positivist<sup>7</sup> anthropology. Within this shifted perspective, the problem becomes more one of acknowledging that, while epistemological universalism might not be justifiable with foundational certainty, it also cannot be avoided. The key issue then becomes how *pragmatically* to process this paradox. Against this backdrop, an epistemological argument is advanced in support of a recursive anthropology – one whose central theoretical tenets about social reality are also applicable to its own acts of observation as part of that same reality. In terms of social theory, it is argued, such an approach leads to a focus on human actors in their sociocultural conditionality, allowing for the possibility of rational practices while acknowledging the decentring effects of affects and routines. Subsequently, a political–moral argument for a triage among competing theories is developed with regard to their potential theory effects, which materialises into a plea for the very same subject-oriented, but decentred, practice theory.

The text then turns to the question of what kind of expertise might follow from such a recursive anthropology, answering in favour of a humanist stance that theoretically and politically–morally values individual perspectives and positionalities that are shaped by sociocultural conditions without being reducible to them. The author’s ongoing supportive engagement with a White South African land-restitution claim is put forward as an example of just such a stance. White land-restitution cases are highly contested issues in post-apartheid South Africa, going to the heart of the question of true victimhood under apartheid. More specifically, they pose the question of whether White individuals may legally and morally claim to be victims of apartheid politics even if such politics inevitably turned them into collective beneficiaries. Seen from the anthropological perspective outlined above, I argue for the legal and moral legitimacy of this particular land claim, which has also been the justification for my ongoing expert support. The specificities of this engagement as expert – its potentials and pitfalls – are discussed. While the claim was meanwhile recognised by the state as valid, its implementation still has not taken place, and thus requires further activism. Against this backdrop, the paper ends with a critical reflection on the implications of such a recursive anthropology for expert engagements.

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6 Strategic essentialism refers to the stance of theoretically rejecting homogenising, reductive and atemporal categories, while politically endorsing them for situated struggles. This is discussed in more detail in the third section of this paper.

7 As discussed in more detail in the fourth section, post-positivism refers to an epistemological position rejecting the core assumptions of positivism.

## **II. Anthropological expertise on trial in South African land restitution**

When apartheid came to an end in 1994, the new government immediately embarked upon a comprehensive land-reform programme in order to redress the highly inequitable access to South African lands that was a consequence of colonial dispossession. As enshrined in the property clause of the new Constitution in 1996, South African land reform comprises land redistribution, tenure reform and land restitution as its three legs. In the following, I will restrict my discussion to the restitution process, the legal particularities of which were laid down in the Restitution of Land Rights Act of 1994. This Act provides several criteria according to which claimants are entitled to restitution in the form of either restoration of a right in land or equitable redress (usually financial compensation). The claimant can be an individual (or the direct descendant of an aggrieved party) or a community (or part of a community). The claimant has to have been dispossessed of his or her land after 19 June 1913 on the basis of racially discriminatory laws and practices. Finally, claimants must not have already received just and equitable compensation and initially had to have lodged their claims before 31 December 1998. Subsequently, the lodgement period was reopened and extended until 30 June 2019 through the Restitution of Land Rights Amendment Act of 2014. Significantly, restitution has not been limited to former freehold ownership, but includes a whole array of registered and unregistered land rights derived from labour tenancy, sharecropping, customary law, beneficial occupation and the like.

The Restitution Act further established the Commission on Restitution of Land Rights as well as the Land Claims Court (LCC) as its key players. Subsequently, about 80,000 claims (the official figures vary) were validated as legitimate and in need of resolution. Since then, Commission bureaucrats have mediated between claimants and usually White landowners in order to settle on a largely market-oriented agreement in which the state buys the land and hands it over to the claimants. Originally, the LCC was established to grant restitution orders for each and every case. However, owing to the slow claims-handling process, amendments to the Restitution Act were made, shifting the approach from a judicial to an administrative one in 1999. Now the Chief Land Claims Commissioner has the power to facilitate and conclude settlements by agreement, and only claims that cannot be resolved in this way take the judicial route through the LCC.

With regard to contested claims that end up before the LCC, the Restitution Act explicitly states in section 30(2)(b) that 'expert evidence regarding the historical and anthropological facts relevant to any particular claim' is admissible before the court, and is indeed regularly adduced by various parties. In the following, I will provide short vignettes on the rather divergent involvement of two types of anthropological experts in land claims in order to reflect upon the ways in which anthropology itself has been put on trial.

### **2.1 Anthropological expertise in the Richtersveld Community land claim**

The first vignette is related to the Richtersveld land claim. Richtersveld is a large area of land situated in the north-western corner of Northern Cape Province. For centuries, it has been inhabited by a heterogeneous set of people. The British Crown annexed the region in 1847 to become part of what was then called Cape Colony. When diamonds were found in the 1920s, locals were removed and did not benefit from the mineral wealth, but did continue to live in the region. In the late 1990s, about 3,500 people from four local villages and various ethnic backgrounds lodged a restitution claim in the name of the Richtersveld Community, demanding the restoration of the diamond-rich land as well as financial compensation. The current owner of the land – the government-owned company Alexkor – contested the validity of the claim. In 2001, the LCC dismissed the claim, but this decision was overturned by an order of the Supreme Court of Appeal, which was upheld by the Constitutional Court (both in 2003). This was based on the finding that the 1847 annexation had only changed sovereignty, but not indigenous property

rights. Furthermore, the court determined that the dispossession was indeed racially discriminatory because the Richtersveld Community was, due to its 'race' and presumed 'lack of civilisation', deemed unqualified to be considered a holder of property rights requiring compensation at the time diamonds were found.<sup>8</sup> The case was thus returned to the LCC for the final determination of the legitimate amount of restitution.

During the initial trial at the LCC and, subsequently, during the hearings in 2005 regarding the restitution package and the final list of beneficiaries, the German anthropologist Susanne Berzborn – who had done her doctoral thesis on the community (Berzborn, 2004) – was instructed by the claimants to act as expert witness. During her cross-examination in 2005 by Advocate Henk Havenga, Berzborn was confronted with an English translation of sections of her German PhD thesis (see especially Berzborn, 2004, pp. 383–384). These, Havenga claimed, suggested that it had actually been the idea of the lawyers to pursue the claim in terms of a larger regional Richtersveld Community rather than merely on behalf of the less numerous ethnic Nama residents. Berzborn responded that she did not know whether this was correct but that, at the time of the claim, it had been assumed that it would be a Nama claim. Moreover, Havenga pointed out that Berzborn had repeatedly stated the local need to 'construct' a community. To this, Berzborn replied that 'construction' did not mean inventing, but merely emphasising certain aspects in part already present, and that identity was always dependent upon context. Finally, Havenga quoted from Berzborn's interview with a 65-year-old Nama man who insisted that the claim should only benefit his ethnic group and that, because of the land claim, everybody now claimed to be Nama. Berzborn dismissed this as an isolated opinion, insisting that, in general, the whole community was behind the claim. Quizzed by Judge Antonie Guildenhius on the relevance of this issue, Havenga explained that it had to do with the claim of the beneficiaries for hardship and suffering. Advocate Geoff Budlender, representing the claimants, replied that his clients admitted that not every member of the community had suffered in the same way. As it turned out, the court accepted Berzborn's explanation and Havenga's challenge to the composition of the claimant community was ultimately unsuccessful. Eventually, two years later, the claimants and respondents reached a settlement that was made an order of court on 9 October 2007.<sup>9</sup>

## 2.2 The *volkekunde* professors

The second example refers to two former South African *volkekunde* professors who had taught anthropology at Afrikaans-medium universities during the apartheid era. Throughout much of the twentieth century, the discipline in South Africa had been divided between sociocultural anthropology and *volkekunde*. Sociocultural anthropology drew primarily on British social anthropology, and was practised mainly at English-medium universities and tended towards liberal, anti-apartheid politics. By contrast, the Afrikaans-medium *volkekunde* (literally, 'knowledge about peoples') was based primarily on pre-World War II German *Völkerkunde*, equated an essentialised notion of 'culture' with an ethnic group in its key notion of 'ethnos', and was by and large

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8 For a summary of the case, see *Alexkor (Pty) Ltd and Another v. Richtersveld Community and Others* 2004 (5) SA 460 (CC).

9 See *Mail & Guardian Online*, 4 May 2005 and 9 October 2007, Berzborn (2004, pp. 378–390) and Robins (2008, pp. 30–32). Interestingly, the subsequently revised and published German version of Berzborn's PhD thesis no longer mentions the very active role played by the lawyers in adopting a more inclusive regional Richtersveld identity (Berzborn, 2006, p. 371). However, in an English paper published in 2007, Berzborn (2007, p. 305) mentions that the 'inclusive definition of the claimants was strongly recommended by the legal advisors', while emphasising that 'these identities have not been "invented" . . . just for the land claim, but existed beforehand. People reorganise identities and construct them with existing material that is interpreted and compiled in a new manner'. Evidently, her expert witnessing had not only been informed by her anthropological expertise, but subsequently also shaped the way she phrased and clarified her anthropological research results.

supportive of apartheid principles (Spiegel and Becker, 2015, p. 755). With the end of apartheid, the official days of *volkekunde* were numbered as well. In 2000, the two branches unified in the new professional association 'Anthropology Southern Africa', with *volkekunde* basically eclipsed by a broadly sociocultural anthropological perspective (Spiegel and Becker, 2015, p. 757).

Against this backdrop, two former *volkekunde* professors had left their universities and become full-time land-claims researchers when I first met them during my fieldwork in 2010. As one of them explained to me in an early interview, 'I don't act as expert for the [ANC] government; I want to be objective'.<sup>10</sup> In addition, they also did not work for African claimant communities, thus offering their anthropological expertise exclusively to current White landowners opposing the validity of land claims – something they evidently did not see as undermining their objectivity in any way. One of these professors had continued publishing academically about land claims as well. In one of his publications, he contested the validity of a claim by a Venda community, asserting – against the claimants' own reasoning – that the defeat of their king Khosi Mphephu in the 1898 war against the then Zuid-Afrikaansche Republiek (ZAR) had simultaneously caused the complete loss of their traditional land. In other words, the author re-instantiated the colonial argument that the Venda, due to their 'race' and presumed 'lack of civilisation', did not constitute holders of property rights requiring compensation (which, by the way, is the same argument underpinning the historical dispossession of the Richtersveld Community). Therefore, the argument implies, the change of political sovereignty in 1898 simultaneously extinguished any indigenous property rights – simply because there was none. Yet, in spite of thus allegedly not qualifying for compensatory land at the time 'in accordance with international law', the author went on, they still received about 100,000 hectares as their own Venda 'homeland' from the government (de Beer, 2003, p. 140) – something akin to an undeserved gift. The paper does not provide the reader with the ultimate outcome of this restitution case, which was probably still pending when the text – evidently based on the research report written by the author for the White landowners opposing the validity of the claim (see de Beer, 2003, p. 133) – was published.

In another paper, the same author dismissed as a fabrication the existence of the 'Mekgareng community', which had lodged a land claim on a number of farms in the North West Province. He based his judgement on the fact that the group, whose name is clearly identifiable as coming from a Sotho/Tswana language, claimed to comprise people of multiple ethnic origins and never to have owed allegiance to any particular chiefdom. According to the author, '*From an anthropological perspective the existence and functioning of a heterogeneous community who ... shared rules ... held in common by such community during the time indicated by the claimants, is inconceivable*' (de Beer, 2006, p. 32, emphasis added).

These two vignettes open up a space for reflection on the different ways in which anthropology itself is put 'on trial' in the course of offering expertise in South African land restitution. I hereby propose to understand 'anthropology on trial' in three different ways: first, regarding the concrete role of anthropologists as experts in current legal proceedings and trials, invoking anthropology as part of the (present-day) solution; second, concerning the historical complicity of specific anthropologies in the making of colonial and post-colonial injustices, zooming in on anthropology as part of the (historical) problem; and, third, with regard to the recursive question as to what kind of anthropology today might be properly equipped to observe, interpret and explain these roles of anthropology as part of the problem and/or the solution.

To begin with, the vignettes point towards the problem of the positionality of anthropological experts in current legal proceedings: to whom are they willing to offer their expertise? Evidently,

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<sup>10</sup> Interview, 15 January 2010.

these are issues closely linked to political sympathies and convictions (see also Bens, this issue). Yet they also strongly relate to experts' own theoretical approaches: while the sociocultural anthropologist Berzborn insisted on the dynamic, multidimensional and situationally constructed nature of collective identities, the former *volkekunde* professor de Beer could not conceive of a landholding multi-ethnic community with a name from only one South African linguistic tradition (Sotho/Tswana) and without a chief as anything but fictional; whereas Berzborn substantiated indigenous land rights as having survived the colonial annexation in 1847, de Beer thought that the 1898 defeat had terminated not only Venda sovereignty, but also Venda land rights (presumably because of the unexpressed premise that the Venda, because of their 'race' and 'lack of civilisation', had automatically lost all rights in the land upon loss of sovereignty).

Yet the involvement of these two contrasting forms of anthropological expertise evidently also highlights different understandings about the nature of the historical problem in need of legal redress, and of the historical complicity of specific anthropologies in its making. While an anthropology still smacking of the homogeneous 'ethnos' of apartheid times is being offered as the framework for enabling present-day solutions in the expertise of the two former *volkekunde* professors, this very same anthropology is discarded in the expertise of Susanne Berzborn and criticised as part of the historical problem that needs to be overcome.

If anthropology is thus 'on trial' for its closely related dual contribution – for possibly helping with the legal solution, but potentially also having contributed to the historical problem – the third recursive problem poses itself with particular urgency: what kind of anthropology is arguably in the position to apprehend and explain these different roles of anthropology in the first place? Over the past decades, the project of such a reflexive anthropology has been predominantly depicted in terms of post-positivist relativism, very often in stark contrast to the proclaimed positivism and universalism of the law to which it ostensibly offers its expertise (see the contributions by Jonas Bens and Markus Hoehne in this issue). In the following, I first critically engage this argument about apparently disjunctive epistemologies between positivist law and post-positivist anthropology and the solution of strategic essentialism often suggested to pragmatically overcome the frictions between the two, and then venture an alternative approach.

### III. Apparently disjunctive epistemologies and strategic essentialism

In his account on 'Anthropology and the law: historicising the epistemological divide' (this issue), Jonas Bens succinctly demonstrates how earlier debates on objectivity in post-World War II US anthropology did not really question the epistemological compatibility of anthropology and law to the same extent that came to dominate theoretical debates since the 1970s and 1980s in the context of the reflexive turn (Hymes, 1972/1999; Clifford and Marcus, 1986; Zenker and Kumoll, 2010a). However, in recent decades, many anthropologists have highlighted profound differences between anthropological and legal thinking from a number of different angles: in terms of crucial distinctions in the modes of imagining the real (Geertz, 1983); as a contrast between non-probabilistic reasoning with high tolerance for low accuracy in the case of law and probabilistic reasoning ascribing great importance to accuracy in the case of social science (Driessen, 1983); with regard to six basic differences in the way lawyers and anthropologists think (Kandel, 1992); in terms of lawyers' deductive reasoning, which subsumes unproblematic facts under general principles, vs. anthropologists' analogic and dialectical reasoning, which is much more conscious about the making of 'facts' (Rigby and Severeid, 1992), and so on. In this way, much recent anthropological work has pointed towards 'the epistemological confrontation of anthropological interpretive hermeneutics and the court's legalistic orientation towards facts, sometimes labelled positivism' (Thuen, 2004, p. 266). Anthony Good expresses a similar perspective:



'Above all, it is important to remember that lawyers take matters which have been established to the appropriate standard of proof to be "facts", and see their subsequent task as deciding how the law should properly be applied to those facts, whereas for anthropologists "facts" are always products of a particular theoretical approach, and 'truth' is at best provisional and contested.' (Good, 2007, p. 34)

Interestingly, despite such assertions of profound differences, many of these same authors simultaneously caution against overstating the differences between law and anthropology and falsely proclaiming absolute contrasts, noting that the differences should be understood more in terms of emphasis and degree than of kind (e.g. Kandel, 1992, p. 4; Thuen, 2004, p. 275; Good, 2007, p. 34; see also Bens in this issue). Coming from the side of law, Larissa Veters and Marie-Claire Foblets (this issue) also provide an important empirical corrective to the often caricatured stereotype of the naively positivist legal practitioner. Furthermore, as the above example of Berzborn's explanation of the anthropological meaning of 'constructing' identities in the Richtersveld hearing illustrates, the translation of anthropological expertise into law is often difficult, but not impossible. What is more, such translation also occasionally shifts legal reasoning profoundly towards perspectives cherished within anthropology – as was the case, for instance, with the acceptance of an anthropologically informed conception of culture as unbounded and ever changing in recent Canadian jurisprudence on aboriginal title (Thuen, 2004, pp. 269–270).

Few authors thus actually insist on true incommensurability between law and anthropology.<sup>11</sup> Nevertheless, as shown above, many anthropologists still highlight substantial differences between law and anthropology with regard to professional standards and ethical codes, the handling of facts and truth and the need to propagate 'essentialisations' and 'simplifications' within legal settings rather than 'context-dependent diversity ... as argued by anthropologists' (Thuen, 2004, p. 280). Given the widespread imaginary of such disjunctive epistemologies, many anthropologists insist on the need to take up the role of strategic essentialists when acting within the legal sphere while adhering to the proper disciplinary standards of anti-essentialism when acting within their discipline. As Robins (2008, p. 34) points out, 'activists and NGOs [non-governmental organisations] regularly resort to "benign" forms of strategic essentialism when they represent their clients' in legal settings (Hoehne in this issue makes the same argument for his own strategic essentialism as expert witness).

The Indian scholar Gayatri Chakravorty Spivak, whose work is situated at the intersection of feminism, Marxism, deconstructionism and post-colonial studies, famously wrote about 'a strategic use of positivist essentialism in a scrupulously visible political interest' (Spivak, 1988, p. 205). She thereby introduced 'strategic essentialism' as a highly influential stance both for theoretically deconstructing any essentialist categories within the academy and, simultaneously, for invoking such categories – for example, 'the subaltern' or 'women' – for the sake of political action. The presumption of a profound disjuncture between a preferred analytical anti-essentialism on the one hand and a necessary political essentialism and its strategic deployment on the other has come to characterise much of the reflection in post-modern, feminist, post-colonial and post-positivist anthropology.

The recent controversy following Adam Kuper's provocative criticism of the notion of 'indigeneity' in his paper 'The return of the native' (2003) is a case in point. Kuper's assertion that 'indigeneity' should be rejected as both a necessarily essentialist anthropological concept and a

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<sup>11</sup> Niklas Luhmann's (1995, 2004) theory of interpenetrating yet autopoietic social systems (such as 'law' or 'science') incapable of apprehending each other except in terms of their own self-referential binary code is one prominent exception.



dangerous political tool for activists has generated varied responses. Tellingly, much of the subsequent discussion has focused on the question of whether ‘indigeneity’ should be rejected in principle due to its cultural essentialism or, to the contrary, its strategic essentialism should be endorsed politically in order to improve the life of marginalised groups.<sup>12</sup>

These and other debates within anthropology and beyond have been of crucial importance, stressing the need to theorise collectivities not in a fixed, homogenising and atemporal manner, while acknowledging that, in the course of political action, some simplifications might be necessary to advance a cause. Yet the inflationary use of strategic essentialism also comes with some problems, two of which I want to highlight here.

The first problem derives from a slippage in the use of the term ‘essentialism’, shifting from a particular type of theory regarding social phenomena to an epistemological stance. Essentialism is typically described as referring to some unchanging, primordial ontology; in other words, with regard to the phenomenon characterised in terms of an ‘essence’, its temporality is suppressed and the relevance of agency, namely the possibility of changing it, is denied (Herzfeld, 2010).

Such an essentialist attitude has been rightly criticised with regard to numerous social phenomena – prominently in the field of collectivities such as ‘race’, gender, sexual orientation, the subaltern, ethnicity, nationalism and so forth.<sup>13</sup> Yet, as an epistemological stance, ‘essentialism’ – in the sense of an unchanging, atemporal and axiomatic framing of the world that, within the act of its own application that allows apprehending ‘the world’ in the first place, necessarily suspends the possibility of it being subject to agentic change (otherwise, such framing would be inconsistent analytically and irrelevant politically) – *seems impossible to avoid*. Put differently, even the argument of strategic essentialism with regard to theories on social phenomena such as ‘the subaltern’ or ‘women’ makes use of an essentialist epistemology in the outlined sense. Thus, as I discuss in more detail in the next section, the problem shifts towards acknowledging, and practically processing, the paradox that, while epistemological essentialism (or universalism) cannot be justified with foundational certainty, it also cannot be avoided. In short, while the talk of strategic essentialism is crucially important when it comes to deconstructing allegedly unchanging notions of specific collectivities (i.e. essentialist social phenomena), it prevents apprehending the fact that, whether we like it or not, epistemologically speaking, we are all essentialists.

The second problem is of a more political–moral nature and refers to the seemingly plain and simple question of how we can decide whom to support through strategic essentialism in the first place. Given the origin of this political strategy at the intersection of feminism, Marxism, deconstructionism and post-colonial studies, the answer has apparently been self-evident: strategic essentialism should be in support of groups and minorities of some relatively subaltern standing. Yet, as Silke van Dyk (2012) has recently pointed out in a brilliant intervention on the missed chances for a progressive post-structuralist politics, the normativity of an anti-essentialist celebration of alternative voices has become increasingly habitualised with regard to only those marginalised voices that in their self-evident ‘progressiveness’ appear unproblematic (e.g. ‘the subaltern’ or ‘women’). The relatively marginalised voices of, for instance, neofascists in Germany (currently again alarmingly on the rise) usually do not feature in such strategic-essentialist politics (van Dyk, 2012, p. 198), thereby unfortunately allowing evasion of the deeper question regarding what kinds of political and moral standards can justifiably, if only temporarily, be allowed to crystallise into a stance for emancipatory analytical and political action.

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12 See Zenker (2011) for a summary of this controversy and the proposal of a concept of ‘indigeneity’ that is both analytically non-essentialist and politically useful.

13 For a useful discussion of variants of essentialism with regard to such theories on social phenomena, see Phillips (2010).

#### IV. Post-positivist universalism and recursive anthropology

While the privileged perspective of (social) science, scientific objectivity and even universalist attitudes did not constitute existential concerns in anthropology for much of the first half of the twentieth century (see also Bens in this issue), one would be hard pressed these days to find an anthropologist who has not been affected, one way or another, by the reflexive turn and the conundrums following from a growing awareness of ‘the poetics and politics of ethnography’ (Clifford and Marcus, 1986; see also Zenker and Kumoll, 2010a).

However, threats to a rather unproblematic self-understanding of anthropology as an ‘objective science’ also followed from broader shifts in the philosophy of science since the 1950s, often referred to as a move from positivism to post-positivism. As Zammito (2004, p. 6) points out, positivism ‘has come to be used pejoratively to signify whatever is distasteful about an opponent’s position’, whereas it is better used in a more restrictive sense to refer to an epistemological position in the wake of Auguste Comte and the Vienna Circle of logical positivism, emphasising ‘relentless phenomenalism, antimetaphysicalism, and unitarian hierarchy of knowledge’ (Zammito, 2004, p. 7). Since the 1950s, such positivist thinking has ever more frequently and vociferously come under fire by so-called post-positivists, especially through the work of Thomas Kuhn (e.g. 1962) and Willard van Orman Quine (e.g. 1953), but also through interventions by critical rationalists such as Karl Popper (e.g. 1959) and Hans Albert (e.g. 1968/1985).

As a more comprehensive engagement with these developments is clearly beyond the scope of this text,<sup>14</sup> I will restrict myself to two profound objections to a positivist understanding of science, namely arguments advancing the impossibility of certain justification in the theory of knowledge and those dissolving the theory–observation distinction at the heart of positivism. In his argument regarding the so-called Münchhausen Trilemma, the critical rationalist Hans Albert (1968/1985) showed that all of the only three possible attempts to get a certain justification for any truth must fail, as these lead, first, to an infinite regress, namely the necessity to go further and further back in search of a foundation; second, to a logical circle, namely the tautology of using statements earlier identified as themselves in need of justification; or third, to the breaking-off of the process, namely the arbitrary suspension of the principle of sufficient justification (Albert, 1968/1985, p. 18).

Moreover, the theoretical–observational distinction, which had allowed positivism to ‘objectively’ appraise the comparative adequacy of theories through their confrontation with theory-independent empirical observations, came under critical scrutiny as well. Establishing what came to be known as the ‘theory-ladenness of observation’, post-positivists such as Thomas Kuhn demonstrated that there is no neutral observational vocabulary. Instead, observations inevitably entail a theoretical framework for their discernment; what counts as an observation and what specific meanings observation terms have in concrete empirical settings is always already imbued with theoretical preconceptions (Shapere, 1984, pp. 102–119).

These and other critical engagements with central tenets of positivism introduced a strong dose of epistemological and ontological indeterminacy into the philosophy of science. Under such post-positivist conditions, anthropology seems to have been truly confronted with its own contingency – that is, with the vast realm of its own possible theory-worlds solely delimited, on the one hand, by what seems very unlikely, if not impossible (in terms of theory-immanent falsification) and, on the other hand, by what appears as necessary (see Luhmann, 1995, p. 106). If one takes this situation as the starting point for anthropological theorising, then the challenge becomes how to position oneself within this field of post-positivist contingency. How can we act responsibly as anthropologists in such a way that we take responsibility for the effects of our own

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14 For an excellent dissection of post-positivism from Quine to Latour, see Zammito (2004).

descriptions and explanations, even though the actual nature of these effects remains indeterminate and uncertain? In other words, on what can we found our research in such post-foundational times?

I wish to offer three tentative suggestions as to what kind of anthropology might be appropriate for this challenge, summarised under three headings: 'inevitable epistemological universalism', 'recursive anthropology' and 'political-moral triage of theories'. Starting off with the theme of inevitable epistemological universalism, it is important, first, to re-emphasise that, if one takes Albert's argument seriously, it becomes impossible to justify any universalism with certainty. And, indeed, much social-constructivist criticism since the 1980s has been concerned with the deconstruction of allegedly given, universal 'facts' – from gender and sexuality to madness and natural sciences (Hacking, 1999). Thus, if universalism is so hard to defend, why should we consciously embrace it?

In his 2004 paper 'Why has critique run out of steam?', Bruno Latour points out that excessive deconstruction has led to a weakening of reality. This is so, Latour argues, because social-constructivist critics have debunked seemingly 'natural facts' through an idiom of performativity (what Latour calls 'a fairy position'), demystifying such 'facts' as actually being the mere effects of social and cultural projections (Latour, 2004, pp. 237–238). However, as Latour shows, such critics ironically assume for themselves an idiom of factuality (what he calls 'a fact position'), when it comes to the indisputable 'reality' of those phenomena they themselves cherish, be it 'economic infrastructure', 'discourse', 'race', 'gender', 'neurobiology' or whatever else. These 'real' facts are then used as the basis for the first idiom of performativity in order to debunk the 'false facts' of others (Latour, 2004, pp. 238–239). Latour himself wishes to transcend this dichotomy between performativity and factuality through a sociology of association that focuses on 'matters of concern' rather than 'matters of fact' (what he calls 'a fair position') (Latour, 2004, pp. 243–248).

I am sceptical, however, that Latour himself can ultimately escape the dichotomy between performativity and factuality. This is so – as Richard Rottenburg (2005, p. 264) has observed for science and technology studies in general – because '[t]he process of construction, if it is to be described and analysed at all, can only be described as an element of an external reality'. In other words, Latour's own observations of both how post-modern critics operate and of how actants enter into networks around matters of concern must ultimately equally make use of an idiom of factuality. It seems that neither post-modern critics, nor Latour, nor – for that matter – anyone else can ultimately escape an idiom of factuality. The unfounded epistemological universalism of such an idiom of factuality with its claims to 'truth' and 'plausibility', it seems, is ultimately an inevitable predicament (see also Zenker, 2010). Instead of getting paralysed by this predicament or trying in vain to escape it, Niklas Luhmann (e.g. 1991) has suggested processing it pragmatically: if we cannot escape the tyranny of an unfindable, always partially blind yet also inevitable universalism, which of its many versions is the most productive and most fruitful one in its application and consequences?

This leads me to my second suggestion, namely to the plea for an inevitably universalist anthropology that is recursive. Elsewhere, Karsten Kumoll and I have suggested focusing on 'recursivity' rather than merely 'reflexivity' when rethinking the intersections of epistemology and representational practice in anthropology. Reflexivity refers to the process of turning in on oneself and making, through forms of self-reference, the sociocultural preconditions of observation and representation the explicit object of reflection. Recursivity constitutes a special form of such reflexivity, demanding that the observation of others and the observing self are aligned in such a way that the formal and substantive presumptions underlying the process of observation are repeated in a similar way. Put differently, recursivity refers to the question: *To what extent is what is said consistent with both the fact that it is said and how it is said?* (Zenker and Kumoll, 2010b, p. 27).<sup>15</sup>

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<sup>15</sup> The position that I am advancing here is one of epistemological recursivity. For a rather different approach, propagating ontological recursivity as a form of ontological repetition in which ethnographers are advised to adopt the ways in which their informants make worlds, see Henare *et al.* (2007) and Holbraad (2012).

A recursive theory, in this sense, is hence applicable to itself. In other words, the more recursive a theory is, the more it treats the capacities of the observing anthropologist and the observed actors in the field as being alike in principle. Under conditions of epistemological indeterminacy, recursivity is arguably a reasonable epistemological criterion for theoretically positioning oneself because there is no reason to assume that the observing anthropologist has in principle any better capacity to apprehend the 'true' nature of the social world than any other social actor.

In this sense, recursivity offers a gradual criterion according to which theoretical approaches can be distinguished as being more or less recursive. At one extreme of the spectrum, non-recursive positions arguably comprise, for example, forms of 'discursive determinism' or claims to 'radical alterity', which paradoxically presuppose knowledge for the observer, the possibility of which is simultaneously denied explicitly, at least for everyone else. Less extreme, but still tending towards the non-recursive end of the spectrum, would be arguments about ideologies and mystifications of class, gender, 'race' and so forth that only the enlightened observer is ultimately capable of debunking. According to Luc Boltanski, Bourdieu's critical practice theory ultimately reveals itself to be such a non-recursive sociology as well, given that it presupposes an 'asymmetry between deceived actors and a sociologist capable – and, it would appear from some formulations, the only one capable – of revealing the truth of their social condition to them' (Boltanski, 2011, p. 21). By way of contrast, the more one moves towards the recursive end of the spectrum, the less are the capacities of the observer treated as surpassing those of the observed. Advocating a theoretical stance that is recursive thus effectively leads to a practice theory that focuses on human actors as the subject of action. Such a practice theory takes reasoning and rational actions seriously – *pace* Bourdieu – without reducing all action to 'rational choices' and precluding the decentring effects of socialisation, enculturation, affects and routines. Such an approach hence leads to a subject-oriented but decentred practice theory – as proposed, for instance, by Max Weber (1921/1978) a long time ago with regard to actors, who are presumed to be capable of rational, affective and habitual orientations in their practices.

Besides offering epistemological arguments for adopting a recursive universalist anthropology that translates into a subject-oriented but decentred praxeology at the level of social theory, there is also a political–moral argument to be made for such a stance, deriving from what could be called a political–moral triage of theories. Earlier in this paper, I emphasised that anthropology is 'on trial' with regard to the historical complicity that specific anthropologies have had for the historical development of colonialism in South Africa, which land restitution today is meant to partly redress. Given the massive 'theory effect' (Bourdieu, 1989, p. 17) that especially the Afrikaans-speaking *volkekunde* in South Africa had in restructuring the social world it purported to merely represent, the question that anthropology wants to pursue clearly also has a strong political–moral dimension. Put differently, when positioning ourselves theoretically, we also have to take pre-emptive responsibility for the potential theory effects that are likely to follow from our own theoretical stances.

In his book, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age*, Hans Jonas (1984) develops the idea of a 'heuristics of fear': when in doubt about the likely effects of a technological innovation, the more pessimistic rather than the more optimistic prognosis should be taken as valid in order to avoid the worst under conditions of uncertainty. Transferring this idea into the realm of the ethics of science, I would argue that we should equally approach different social theories with a heuristics of fear: assuming the worst prognoses for the likely theory effects of different theories to be valid, which approach shall we choose? To my mind, such a line of reasoning ends up making a strong political–moral case for, again, theoretically maximising the agency of the observed 'Other'. It leads to a more humble and modest position when it comes to knowing what is best for others and, instead, prefers to take seriously the 'Other's' ways of making sense of the world. In other words, it leads to a political–moral argument

for a practice theory that – *at the theoretical level* – offers to everyone (observers and observed alike) the same right to decide what is best for them and what it really means to live a good life.

However, if we merely maximise the agency of the observed ‘Other’ at the theoretical level of our analysis, we run the risk of turning the theoretical ‘freedom’ and ‘liberty’ of the observed to potentially act ‘at will’ into a cynical ideal. Evidently, most real actors lack the rights and resources to make use of such theoretically postulated ‘freedoms of choice’. It is hence crucial to not only assume ‘agency’ in our theoretical analysis of empirical situations, but to also contribute as much as possible during research and generally through forms of engaged anthropology to the practical expansion of real capabilities of real actors in the world.<sup>16</sup> It is here where our thus positioned anthropological expertise can, and arguably should, make a difference.

## V. Recursive anthropological expertise in a White South African land claim

What kind of expertise can be derived from such a recursive anthropology? First of all, one that is humanist in outlook, unapologetically focusing on human subjects in their sociocultural conditionality as being at the centre of practical engagements, without neglecting the difference that their relative access to and control of objects (including resources) can make for their agentic entanglements. While actor-centred in its orientation, such an expertise furthermore emphasises the (re)production and (re)negotiation of webs of meanings under conditions of asymmetrical power relations that permeate hegemonic discourses. Moreover, such expertise is anti-deterministic in its outlook, following up on the multiple ways in which human beings are shaped by their sociocultural surroundings and predisposed to act in certain ways without seeing them as being forced to do so. At the same time, such expertise refrains from overstating the role of voluntarism, acknowledging that ‘structures’ – arguably a shorthand for, among other things, the practices of others (rooted in their agency) as they appear towards an individual actor (see Zenker, 2013, p. 34) – may exercise decentring affective or habitual influences on that individual actor as well. In this way, the recursive anthropological expertise that is propagated here favours a stance that theoretically and politically–morally values individual perspectives and positionalities, which are shaped by their sociocultural conditions without being reducible to them.

Over the course of fifteen months of multi-sited ethnographic fieldwork conducted in South Africa since 2010, I have traced land restitution within and between various state institutions and regarding four exemplary claim settings all related to the former homeland KwaNdebele (see Zenker 2012, 2014, 2015a, 2015b). Throughout this research, my slowly growing expertise has been in demand by a number of different actors: various land claimants, current landowners, legal representatives, NGO activists and state officials have asked me to share my knowledge and opinions with them regarding potential next steps and likely outcomes of processes in which we were all enmeshed. State officials have also requested my evaluation of general land-reform policies. In all these contexts, I have tried to help my interlocutors as much as possible and, to the best of my knowledge and belief, without compromising confidential information. Protecting confidential material has turned out to be quite a challenge, given that my interlocutors were often parties in a land conflict and hence eager to get information about their opponents, while trying to hide their own sensitive facts from me. Apprehending the social realities in terms of the recursive anthropological expertise outlined above has meant that applying my expertise inevitably requires a great deal of tact and difficult manoeuvring from my side.

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<sup>16</sup> This is not the place to further expand on this issue, but a political–moral argument for a practice theory – *at the practical level* – can be construed in terms probably not all that different from Amartya Sen’s capabilities approach (Sen, 1985, 1999).

Apart from giving non-compromising advice whenever asked, I have often also referred my interlocutors to other experts in the field of land restitution who were better equipped to help with matters at hand. These include activists in legal NGOs and lawyers specialised in land law, but also state officials that I knew were reliable and responsive to problems on the ground. This was also the initial situation with a particular land claim that I want to briefly focus on now, namely the claim lodged by a White man called Abraham Viljoen.<sup>17</sup>

Within South African land restitution, the typical claimants are communities that lost their land in the process of being forcibly relocated to reserves and now aspire to return to their former homes. However, White farmers were also dispossessed (although usually compensated) by the apartheid state in its endeavour to consolidate existing homelands, and they too have lodged restitution claims. I have been particularly interested in studying the situation of such White land claimants because they constitute a classificatory anomaly: individually they claim victimhood, but categorically they belong to the formerly privileged ‘race’ of beneficiaries (or even perpetrators). As such, I assumed that their land claims would offer an interesting entry point into analysing the contested production of land restitution’s moral community.

Initially, it took me quite some time to identify, through my contacts at the Commission on Restitution of Land Rights, a number of White land claims, as claimants are not classified or distinguished on the basis of ‘race’. Eventually, in late August 2011, I came across Abraham Viljoen, then in his late seventies. In the course of many hours of interviews, I obtained a substantial body of information that I subsequently cross-checked through interviews with other key players, documentary evidence from newspapers and other sources contemporaneous to the events at issue. I also learned that others had researched his life story as well, providing a wealth of data that I could use for purposes of triangulation.<sup>18</sup> These sources form the basis of the following summary of Viljoen’s biography.

Abraham Viljoen is the identical twin brother of Constand Viljoen, the former chief of the South African Defence Force and political leader of the right-wing Freedom Front. Abraham, however, followed quite a different political path. Since the 1960s, he has been engaged in the South African Council of Churches (SACC), was active in the left-liberal anti-apartheid movement, offered help during the 1986 battle against the ‘independence’ of the former homeland KwaNdebele, and facilitated negotiations between the ANC and right-wing Whites (such as his brother) in the transitional period of the early 1990s. Having lost his employment and pension because of his political activism in the mid-1980s, he was additionally dispossessed around the same time of his lease rights regarding Bezuidenhoutskraal, a cattle farm north-east of Pretoria, when all farms in the area around Rust de Winter were expropriated by the apartheid state for the purpose of consolidating the nearby KwaNdebele homeland for the Ndebele nation. Being forced to live with his cattle without tenure security on various pieces of land in the wider Rust de Winter area, Viljoen lodged a restitution claim in 1997 that was dismissed in 2006 on the basis of the (mis)construction that he had been a labour tenant who had not been dispossessed on the basis of racially discriminatory laws and practices.

This was the situation when I first met Viljoen in 2011. When I learned about the status quo of his land claim and saw the letter of dismissal, I agreed that it was probably *legally* inappropriate because the rights in land that Viljoen had lost – namely twenty years of (beneficial) occupation and the unregistered right of a long-term lease on the portion of Bezuidenhoutskraal (with the exclusive option to buy it) – arguably satisfied the broad statutory definition of rights in land (see above),

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17 See Zenker (2015b) for a detailed description and discussion of the land claim on which the following presentation is based.

18 Publications dealing with Abraham Viljoen’s role during the anti-apartheid struggle include Boynton (1997), Sparks (2003), Slabbert (2006) and Cruywagen (2014).

thus rendering Viljoen eligible for restitution. When I asked my informants and friends in the Commission what could be done, I was told that Viljoen should formally request a review of the dismissal by the Regional Land Claims Commissioner. At this point, I tried to mobilise friends and acquaintances within legal NGOs, law firms and the Commission. Tellingly, however, none of my contacts was willing to engage with this White land claim. Apart from the fact that time and financial resources for voluntary work were very limited in any case, this refusal to help was arguably also related to the fact that, although the LCC has in principle recognised restitution claims by Whites as legal and ruled upon the merits of individual cases, state officials, legal activists and other members of the public have categorically questioned and challenged White land claims on *moral* grounds. As I argue elsewhere in greater detail (Zenker, 2015b), the bone of contention has thereby consisted in the question of whether White individuals can morally claim victimhood of apartheid politics, even though these politics inevitably turned them into collective beneficiaries.

Against the backdrop of the recursive anthropology outlined above, I have answered this question with regard to the land claim of Abraham Viljoen in the affirmative. Given that Viljoen and his family are too poor to afford extensive legal counselling, yet not poor enough to qualify for legal aid (as do many African claimants), Viljoen has been in continuous need of additional support. For this reason, I decided to offer my expertise and active engagement in order to have the dismissal of his claim reviewed. With the help of legal officers within the Commission, we put together affidavits by Viljoen and his family members, detailing his rights in land that he had lost in the process. These documents were compiled and delivered by early March 2012. However, this submission subsequently got held up in different sections of the Commission, despite weekly enquiries from the Viljoen family and myself. The only other expert who was willing to help in this situation was Peet Grobbelaar, a White attorney I knew through my research who usually represents White landowners against land claimants, but also occasionally acts for White land claimants. He supported our enquiries through some pro bono work, writing letters of enquiry and performing a number of other services. In March and April 2013 – during the course of two further months of my fieldwork in South Africa – the Viljoen family, attorney Grobbelaar and I intensified the pressure on the Land Claims Commission, threatening to take the case to the LCC. This eventually proved effective, and the land claim was finally recognised as valid by the Regional Land Claims Commissioner on 6 May 2013.

Since then, however, the implementation of this valid claim through either land restoration or financial compensation has again been stalled by the state bureaucracy. In the meantime, the lodgement period for new restitution claims was reopened and extended until 30 June 2019 (see above), leading to new claims in the area. State officials have presented these competing claims as the main reason that Viljoen's valid land claim cannot be finalised through either land restoration or financial compensation (even though Viljoen has made it clear that he does not wish to have the original land restored to him).

I am aware, of course, that some take offence at the fact that I, a White, male, middle-class South Africa-born German, have offered extensive help and anthropological expertise to a White land claimant. However, as I politically and morally object in principle to any post-apartheid racialisation of South Africa's moral community through state-driven land restitution, I have continuously provided my recursive anthropological expertise – and am still doing so at the time of finalising this paper in April 2016 – so that hopefully, in the not-too-distant future, Viljoen's racially discriminatory dispossession will finally be redressed.

## **VI. Conclusion: exploring the laws of anthropological expertise**

In this paper, I have made anthropology on trial the subject of my reflection. Drawing on exemplary vignettes pertaining to the rather divergent performances of anthropological experts in the ongoing



South African land-restitution process, I have highlighted how anthropological expertise, particularly in the South African context, is 'on trial' for its Janus-faced potential to be part of both the historical problem and its current legal solution. Given the variable implications of South African anthropologies in the making of colonial injustice, this raises the recursive question as to what kind of anthropology might be best equipped to observe, interpret and explain the potentially dubious role of 'anthropology' in South Africa.

Arguing against inflated claims of disjunctive epistemologies (not to mention an incommensurable divide between the workings of law and anthropology), I have highlighted the importance of an anti-essentialist stance with regard to theories on social phenomena (especially concerning collectivities). At the same time, I have pointed out epistemological and political-moral problems in the widely propagated strategy of strategic essentialism. Taking seriously the challenge of epistemological and ontological indeterminacy, I have outlined, as an alternative, the post-positivist universalism of a recursive anthropology, which transposes itself, in terms of a social theory, into a subject-oriented yet decentred praxeology. Finally, highlighting the humanist ethos of such a recursive anthropology, I have illustrated the kind of expertise made possible by such an approach through the example of my ongoing expert engagement with a White restitution claim in South Africa.

Anthropological expertise is used beyond the academy, whether or not we explicitly act as experts – for instance, Berzborn's doctoral thesis might still have been translated and used in court even if she had not acted as an expert witness in the Richtersveld land claim. Thus, anthropologists are well advised *pre-emptively* to try to influence the potential appropriation of their expert knowledge. However, keeping control over one's expertise entails much more than merely acting in certain ways as an expert. It starts earlier, and in much more profound ways, with the metatheoretical choices we make regarding our theoretical frames of references. As I have tried to show, the social lives of actually existing anthropologies, with their potentially dire consequences, force us to take stock of, and responsibility for, the anthropologies that we produce.

In this spirit, I have outlined a recursive anthropology. I acknowledge that it is incapable of promising the (allegedly) comprehensive improvement of humankind through social engineering, but by the same token it is also incapable of ideologically justifying any totalitarian system (such as apartheid). While such a post-positivist universalist anthropology cannot be justified with certainty and hence firmly remains contingent, it constitutes a theory for whose theory effects one might be willing to take responsibility. As such, it produces an expertise that can, and I would argue should, be made relevant beyond the academy through context-sensitive engagements.

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