

HERITAGE IN WAR

Loyola University, New Orleans,
18th – 19th March 2020

BOOK OF ABSTRACTS



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18th March

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09.00 – 09.30	Registration		
09.30 – 09.40	Welcome		
09.40 – 10.55	Nancy Sherman Stoic Consolations on the Destruction of Cultural Heritage in War		
10.55 – 11.25	Coffee		
11.25 – 12.25	Joanne Dingwall McCafferty Culture as a Human Right	Michael Robillard Cultural Heritage, Non-Identity, and the Starting Gate of Fairness	Nigel Pollard How the 'Monuments Men' Perceived Value
12.25 – 13.30	LUNCH		
13.30 – 14.30	Lisa Giombini Beyond Authenticity: Politics and Ideology in Heritage Conservation.	Erich Hatala Matthes What Does Cultural Heritage Preservation Preserve?	Kevin Malmquist Military Necessity and Military Consequences of the Bombing of the Abbey of Monte Cassino
14.40 – 15.40	Nadia Mehdi A Defence of Queer Culture	Shawn Kaplan Stewardship of Cultural Heritage During Armed Conflict	Carolyn Korsmeyer When Damage Becomes Memorial
15.40 – 16.10	Coffee		
16.10 – 17.25	Robert Hopkins Architecture, Forms of Life and Collective Memory		
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19th March

	Audubon Room	Octavia	Claiborne
09.30 – 10.30	<p>Peter Jordan-Turner</p> <p>The Photograph: Protector of Last-Resort</p>	<p>Jeremy Davis</p> <p>Cultural Heritage, Agent-Relative Value, and War</p>	<p>Emma Cunliffe</p> <p>Back to Basics: the What, Where and How, of Cultural Property Protection in War</p>
10.30 – 11.00	Coffee		
11.00 – 12.00	<p>Sanna Lethinen</p> <p>Cultural Heritage's Dimensions as a Right in Hohfeldian Framework</p>	<p>Saba Bazargan-Forward</p> <p>Reparations for Defiling Cultural Sites</p>	<p>Marcin Rau</p> <p>Destruction of Cultural Heritage in the Majesty of Law. Critical remarks Regarding the "Olive Branch" Operation</p>
12.10 – 13.10	<p>Patrizia La Piscopia</p> <p>Overcoming ethical polarisation through the promotion of a new dialogue among heritage professionals.</p>	<p>Nour A. Munawar</p> <p>Competing Heritage: Curating the Future Heritage of Post-Conflict Syria</p>	<p>Jonathan Peterson</p> <p>TBA</p>
13.10 – 14.15	LUNCH		
14.15 – 15.15	<p>Edward Winters</p> <p>An Investment of Ghosts</p>	<p>Elizabeth Scarbrough</p> <p>What's the Use? Reconstructing Cultural Property after War</p>	<p>Daniel Attas (Hebrew University of Jerusalem)</p> <p>Is there a Cultural Right to Possess?</p>
15.25 – 15.55	Coffee		
15.55 – 17.10	<p>Laurie Rush</p> <p>Working with the Army to Save Cultural Property in Conflict Zones A Qualitative Analysis</p>		



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Stoic Consolations on the Destruction of Cultural Heritage in War

Nancy Sherman

The ancient Stoics force us to rethink our attachment to cultural objects and our valuation of them as a central part of flourishing. Pushing the Socratic view to an extreme, they hold that virtue alone is sufficient for happiness. External goods, including cultural artefacts and edifices, the historic and ritual monuments of a culture or religion, are classified as “indifferents,” to be preferred rather than dispreferred, but themselves not the kinds of things that can make or break our happiness. Rome may burn under Nero’s hand, the most precious tombs and monuments may be leveled by war, the glories of Greece demolished by battle. All these are disasters, but for the wise person or advanced moral aspirant, they amount to a different kind of injury from that of losing or failing to cultivate one’s goodness.

The view strikes many of us as not merely paradoxical (which the Stoics would admit it is), but inhumane. We may rehearse evils in order psychologically to protect ourselves against actual harm. But to claim there are no real harms or moral injuries, individual or collective, in the wake of actual cultural devastation is quite another matter. Moreover, to muster Stoic views in defense of failures to protect against the destruction of heritage in war seems itself an absurd kind of armor.

Still, Stoic consolations may give us some space to wonder whether removing cultural heritages that are the source of constant strife may, in some theoretical landscape, at least, not be such a bad idea. Think here of the Temple Mount in Jerusalem (Har Habayit and Haram-Al Sharif) one and the same site with competing cultural narratives and identities—and a flashpoint for violence.¹ Stoic meditation on our relationship to things and our investment of value in them may give us some “calm” to think about how we value and ritualize objects, to what lengths we go to defend them, and what our shared obligations to protect them are. Seeing through a Stoic lens may not ultimately be a way of extending just war protections to cultural artefacts, but it may be an important tool for sharpening our focus on how we value things in a good life.

¹ I owe thanks to conversation with Michael Gross for this example.



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Architecture, Forms of Life and Collective Memory

Robert Hopkins

It is one thing to have information about the past, another to remember it. The traces of earlier civilisations certainly offer rich sources of information about the cultures that created them, but can they also constitute a form of collective memory? I will attempt to argue so. Memory is representing the past to oneself. The representations in question need not be mental, and the memories for which they are the vehicles can be collective. Buildings can symbolise what Susanne Langer called 'an ethnic domain' - the distinctive form of life of a society or culture. Buildings can therefore be the vehicles of collective memory for earlier forms of life. When they are, their loss in war (or otherwise) amounts to loss of shared memory for the past. Lost memories cannot be replaced, but at best substituted by other ways of preserving the same information. But memories have a value that goes beyond that of the information they retain: who would swap remembering their childhood for other ways of knowing about it? Where buildings act as vehicles of collective memory for earlier forms of life, we thus have distinctive reason to preserve them from the ravages of war.



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Working with the Army to Save Cultural Property in Conflict Zones A Qualitative Analysis

Laurie Rush

The Ethics in War Project has raised the key question; how should the protection of cultural property be weighed against other priorities in conflict zones? Over fifteen years of participant observation with the US Army's most deployed division, 10th Mountain, time with US Central Command, and employment at Garrison Fort Drum has offered an opportunity to address this question in detail. The United States has ratified the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. However, in preparation for battle and in the "fog of war," obedience to treaty law and the internationally recognized laws of armed conflict requires more than passive agreement to follow the law if there is to be any reasonable expectation that cultural property is actually going to be protected. Effective cultural property protection requires detailed definitions and identification of cultural property from the global to the very local level, education and training of deploying personnel so that they can recognize and respond appropriately to such property, and most important a nuanced understanding across the military force of how implementation of cultural property protection might contribute to greater success for any given military mission. From the importance of identifying the tunnels associated with ancient water systems to developing a sophisticated understanding of the relationship of vehicle damage to sacred sites and the placement of IEDs, recent research and experience has begun to demonstrate unequivocally that CPP can contribute to mission success. However, implementation of a viable CPP program across an organization as massive as the US Department of Defense is an extraordinary undertaking and must necessarily compete with the other priorities for the mission and for effective protection of all personnel engaged in a conflict zone. Evaluation of over fifty specific cases where property was damaged and more importantly where property was saved, combined with statistical analysis of violent retribution associated with property damage now offers the opportunity to examine the cost and potential value of identifying and saving cultural property on the battlefield; providing the data necessary to evaluate these efforts against the costs and benefits of additional and alternative mission priorities. At the very least, when heritage and military professionals share the goal of saving cultural property, there is an opportunity for thoughtful research, meaningful discourse, and most importantly, building peace.



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Is there a Cultural Right to Possess?

Daniel Attas

The Parthenon Marbles are a collection of Classical Greek sculptures removed from the Parthenon in the Athens Acropolis in early 19th century by Lord Elgin and eventually acquired by the British Museum where they have been on exhibit ever since. The Dead Sea Scrolls are Second Temple Judean manuscripts, mostly in Hebrew, found in the late 1940s and early 1950s in caves near Qumran on the north-western coastline of the Dead Sea, the majority of which are currently in possession of the Israel Antiquities Authority. The ownership of both of these cultural treasures has been repeatedly contested. The former by the government of Greece or by groups claiming to represent the Greek people, with the demand that the Parthenon Marbles be returned to Greece and reinstated close to their place of origin. The latter by the government of Jordan and by the Palestinian National Authority, with the demand that they be turned over to their (re)possession. Many people feel that the Greeks and the Jews (or Israel) have a special moral claim to the possession of, respectively, these two objects of huge cultural value. They assume that, whatever the valid legal position may be, there are good moral reasons for the Parthenon Marbles to be repatriated, that is, moved back to Athens and placed under Greek ownership; and for the Dead Sea Scrolls to remain in Jewish/Israeli hands and not transferred to Palestinian or Jordanian control. Even if inconclusive these reasons are perceived such that, much like the default custodianship of children by their biological parents, they can be overridden only in exceptional cases where serious harm would otherwise be forthcoming. Indeed, on this view, international law ought to incorporate such concerns.

I ask what special claim or interest of the Greeks and the Jews/Israelis could justify repatriation in the first case and retention in the second? And in investigating this question I hope to gain some insight into the more general question of how one should think of ownership of cultural heritage and how one might argue for a cultural group's right to a cultural artefact or monument? I assume for the sake of argument that modern Greeks and Israelis/Jews are the cultural heirs of Classical Greece and Second Temple Judea respectively. Or at least that no other group has a better claim to such status than they do. Also, that the legal case, though in reality far from settled, sides unequivocally with the British in the first case and with the Jordanians or Palestinians in the second. The question then becomes: should cultural inheritance override legal possession?

I examine the cosmopolitan view (Merryman, 1986) that free market of cultural heritage should be arranged to the benefit of humankind, and not in the exclusive interests of national, religious or ethnic groups, and I assess its cogency. I argue that though it highlights many important considerations, the legal structure this rationale recommends fails to take adequate account of important interests such as the intrinsic aesthetic and historical value of the artefact. Next, I examine the cultural inheritance view, which the best way to understand is as a claim based on attachment. I examine the attempts to extend Margaret Radin's framework of Personal Property to the notion of collective or communal cultural property (Radin, 1993; Moustakas, 1989; George, 2005), and argue that it fails to ground the sort of presumptive claim Greeks and Israelis may want to make in favour of their possession and control of these exceptional works of cultural heritage. I propose a basis for claims of attachment that may plausibly ground such presumptive rights to some artefacts and monuments, but probably not to the Marbles or the Scrolls.



Finally, I sketch an argument based on the idea of regaining collective self-respect that I believe animates the Greek and Jewish claims for the respective artefacts. This raises some questions on the very coherence of collective self-respect and on whether such a claim can ground a presumptive right of possession.

Reparations for Defiling Cultural Sites

Saba Bazargan-Forward

When an artifact or structure of profound cultural value is wrongly destroyed in the course of a war, we want to know what reparative duties the perpetrators have toward the victims. This issue yields a constellation of philosophical problems, not the least of which is this: cultural value might be incomparable to or incommensurate with other kinds of value thus making it seemingly impossible to properly compensate the victim, where compensation requires making the victim as well off as she would have been absent the wrong. But I will focus instead on a different, but closely related issue: sometimes, in the course of war, a party wrongly uses a site of cultural value in a way that defiles it but does not damage it. Imagine, for example, soldiers who bivouac near a sacred cemetery upon which they build temporary latrines. What reparative duties do they have? I will consider three competing models and settle on one of them according to which monetary compensation and sincere apology are insufficient forms of reparation in cases where sites embodying cultural heritage are defiled.

Back to Basics: the What, Where and How, of Cultural Property Protection in War

Emma Cunliffe

The last 30 years of conflict have resulted in colossal heritage destruction, and led to great strides in cultural property protection. These include a new international treaty, signed by 82 States – almost half the world, a growing number of cultural protection units in military forces, increased training, and new CPP organisations, such as the Blue Shield – an interdisciplinary NGO devoted to heritage protection in conflict and following disasters, whose approaches, recent research, and work to realise CPP are presented here.

Despite these advances, an unwillingness remains amongst nations to deal with two of the most fundamental issues. The first concerns the pressing need for proactive protection developed in peacetime, including the preparation of in situ protection measures and refuges for moveable cultural property, noting the focus of the international community on first aid following disaster. By using examples and case studies, I will examine the importance and the difficulties in implementing the recommended safeguarding measures, and suggest a reoriented approach.

However, it is extremely difficult to protect cultural property in conflict without knowing what it is and where it is. This fundamental issue was so pressing that although it is an implied task in the 1954 Hague Convention (art 3), it was felt that it should be stated explicitly in the 1999 Second Protocol (art 5) as part of the suite of safeguarding measures. Yet, few states have created such an inventory, or affixed blue shields. This presentation will identify potential reasons for this, before discussing the development of standards for inventories of heritage. These standards firstly cover



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practical issues such as how to record heritage in light of best-practice international standards, given CPP inventories require different information to traditional heritage management or research inventories. Secondly, I discuss what should be recorded, briefly touching on the tiered value system in the Hague Convention of general, special, and enhanced protection, in light of their current use. Thirdly, I will consider the problematic questions of who has the right to choose what is marked for protection, considering contested notions of ownership within international treaty law such as the Hague Convention, which conflicts with a human rights-based approach. These issues can only become more pressing as increasing numbers of refugees flee their homelands, all still stakeholders in the heritage they left behind, as demonstrated by the complex issues raised by the Iraq Jewish Archive in the USA. I will finally showcase suggested workflows that consider the difficult issue of how to populate and share inventories during conflict, given the sensitive nature of the contents, drawing upon parallels from the humanitarian sphere and elsewhere.

These key discussions are framed by recently developments in Blue Shield International approaches to conducting CPP with armed forces, using examples from recent training. The approaches discussed are ultimately practical, but are also bounded by international law, noting the gaps in implementation of current legislation. In particular, I note the gap between implementation measures for the 1954 Hague Convention, and the earlier cultural property protection legislation of the 1907 Hague Regulations (reiterated in the 1977 Additional Protocols to the Geneva Conventions), and the void of discussions around LOAC, which is key to the interpretation of these treaties. I suggest that we have created silos of work that greatly hinder our ability to conduct effective CPP. By returning to basics – considering the what, where and how, of cultural property protection in war – from a practitioner’s perspective, I propose a number of improvements to our current standards of CPP.

Cultural Heritage, Agent-Relative Value, and War Jeremy Davis

One of the most central questions in debates about cultural heritage concerns the issue of ownership. Perhaps the most well-known historical example is the Parthenon (or Elgin) Marbles, which were taken from Greece over 200 years ago and have been housed in the British Museum ever since. Many—chief among them, the Greeks—believe the marbles ought to be returned to Greece, as the Greek people are their rightful owners. While this debate is often framed in terms of a legalistic conception of ownership rights, the controversy ultimately rests on questions concerning the value that certain pieces of cultural heritage (e.g., the marbles) have for certain cultural groups (e.g., the Greeks), as well as for humanity more broadly.

Another important question in the literature on cultural heritage concerns its role in war. This question came into clear focus in 2015, after ISIS decimated the city of Palmyra in Syria, including temples and other architectural wonders dating back to the 2nd century. Philosophers have only recently begun to consider the conditions governing whether and when states or other groups can prevent such destruction of cultural heritage from occurring. In particular, how does an unjust threat to cultural heritage impact a group’s moral permissions in wartime?

In this essay, I will explore an issue at the intersection of these two debates that has not yet received much attention in the philosophical literature. To wit, certain pieces of cultural heritage have



a special kind of value for some groups that they do not have for others; and this type of value plays an important role in shaping the morality of protecting that heritage—that is, what may or must be done in defense of it, and by whom.

I argue that the key to capturing this insight lies in the distinction between agent-relative and agent-neutral value. I argue that both types of value, but especially agent-relative value, generates reasons, which are sometimes weighty enough to generate moral permissions, and thus impacts what can be permissibly done in defense of such heritage in war.

Much of the literature on cultural heritage views it through the lens of property rights. This approach makes sense when discussing issues directly related to ownership—e.g., where to house artifacts like the Parthenon Marbles. But this approach is much less helpful when we look to the broader question of preservation. It tells us only who has (or perhaps ought to have) exclusive (or near-exclusive) legal right to use, sell, alter, or perhaps destroy something. The issue of ownership, however, does not reliably track who has reason to value that piece of cultural heritage, and thus, who has reason to seek its preservation.

Instead, I argue, we ought to understand cultural heritage in terms of its agent-relative and agent-neutral value. Some cultural heritage only has agent-relative value: these items have special value for some that they don't have for others; apart from this special value, they do not have much, if any, other value. Perhaps some examples are very specific pieces of a nation's history. But many other items of cultural heritage have both agent-relative value and significant agent-neutral value. That is, while they do have special value for some that they do not have for others, they also have a more general value that is not specific to any particular group. Many more items of cultural heritage have both types of value; the ruins in the ancient city of Palmyra are one clear example.

Once we see that the value of cultural heritage can be understood in two different ways, our next question is to ask how it comes to have these different types of value and how the two types relate and differ. There are many elements to answering this question, which I canvass in greater detail in the paper. In short, agent-relative value stems in large part from the role the given item of cultural heritage plays in the history, self-identity, and way of life of that particular culture, nation, or state. And agent-neutral value emerges from the same sources, albeit at the level of our common human heritage. With a given piece of cultural heritage, its agent-relative value tends to grow and deepen over time, as the item becomes further enmeshed in the way of life of that community, or serves a more unique role in tying them to their shared history. But often, the same is true of an item's agent-neutral value: over time, its role in our common human heritage grows for similar reasons. Indeed, in some cases the agent-neutral value of a given item of cultural heritage might eclipse, or at least equal, its agent-relative value for a given group.

In addition to helping illustrate the different sorts of value a given piece of cultural heritage might have, the agent-relative/agent-neutral distinction also explains the intuitive thought that some parties—namely, those for whom the cultural heritage in question has considerable agent-relative value—are permitted to do more to protect it than others. This is because there is a close and widely accepted connection between agent-relative value, agent-relative reasons, and agent-relative permissions. Agent-relative permissions allow certain agents—e.g., the governing body (or perhaps individual citizens) of the nation or state to whom that agent-relative value applies—to give greater weight to those things with agent-relative value in their moral deliberations. This is based in the thought that our best theory of morality should accommodate individuals' and groups' sincere moral



attachments: it is clearest in the case of special interpersonal relationships, but it also applies to objects that are important sources of value.

This has significant implications in the context of armed conflict. Briefly, agent-relative value impacts what a state may permissibly (or perhaps must) pursue as a just cause, the proportionality calculus, the permissibility of risking soldiers' and civilians' lives, and a host of post-war obligations.

To take one example, suppose Aggressor threatens to destroy the cultural heritage in Victim without justification. All else being equal, Victim's reasons to defend it with force are greater than if it were either simply ordinary property or the cultural heritage of another group and located elsewhere—i.e., without significant agent-relative value. Victim's defensive permissions stem from the significant agent-relative value that this particular piece of cultural heritage has for Victim; neither ordinary property nor others' cultural heritage necessarily has that value.

This has several important implications. Significant agent-relative value might mean that Victim's defensive war for the sake of their cultural heritage satisfies the just cause condition. It is plausible that Victim even has a strong pro tanto duty to fight the war, provided the other conditions are also met. The proportionality calculation is also impacted: the value of cultural heritage means its destruction poses a greater cost, which can effectively offset other harms in the war. This might justify a greater amount of cost, damage to soldiers' and perhaps civilians' lives, and so on.

Recall, however, the above points concerning the ways agent-neutral value grows alongside agent-relative value. If this idea is correct, then the cases where the value of cultural heritage will have the greatest impact on the various conditions on just war, such as those just mentioned, apply with similar force to third-parties. This is because the agent-neutral value of Victim's cultural heritage is, by hypothesis, also sufficiently high. Thus, one important—and, I think, intuitively plausible—upshot of this discussion is that, even on a framework that is duly sensitive to the special moral value cultural heritage has for particular groups, war in defense of cultural heritage will be easiest to justify when the endangered items are taken to be part of our common human heritage.

Culture as a Human Right

Joanne Dingwall McCafferty

In an era epitomised by the rise of identity politics and increasing fractionalisation, cultural heritage is often used as a tactical tool in many global conflicts to usurp another's cultural identity and history. Cultural heritage as a human right is therefore now high on the international agenda. Over the past few years, it has played an increasingly important role in the human rights agenda by both academics and policy makers, yet we remain a long way from achieving universal adherence on viewing cultural heritage as a human right. This conference paper aims to reflect on recent cultural rights debates and to identify key challenges which prevent the catalyzing the view of cultural heritage as a human right into a global dialogue with universal adherence and directive leadership.

In the Nordic Center for Cultural Heritage and Armed Conflict SPS Report to NATO, Frederik Rosén (2017), acknowledges that “[t]he rise of identity politics and transnational conflicts further fuels the focus on [cultural heritage].” Rosén's report urges the military to reconsider the role of cultural heritage in armed conflict. He stresses the new role of identity politics as a key driver of armed conflicts”, with other factors such as the globalization [and] urbanization of conflict, the rise of so-called hybrid warfare, and the rapidly evolving transnational market for illicit antiquities, as



enabling armed groups to more easily profit from looting and antiquities trafficking. (Rosén, 2017) It is in such modern conflicts that heritage assumes this negative value in that it can be used against an opposition, undermining the validity of their culture. As Rosén (2017) states “[cultural heritage] tends to be enmeshed in political struggles to legitimise or delegitimise cultures”. The fact that cultural heritage destruction is used as a tactic in so many global conflicts to demoralise and eradicate a group’s identity, reaffirms its immense value to society.

According to Helle Porsdam (2019) “[c]ulture permeates all human activities, including legal systems, in all communities. Yet the area of culture and cultural rights has traditionally been underappreciated.” The legal basis for cultural rights can be found in international human rights instruments; the International Covenant on Economic, Social and Cultural Rights of 1996 stipulates under Article 15, the right “to take part in cultural life” and “to benefit from the protection of the moral and material interests” resulting from one’s scientific, literary or artistic production. (Porsdam, 2019) Moreover, such “rights were already enshrined in Articles 26 and 27 of the Universal Declaration of Human Rights” of 1948. (Ibid) It is clear that at the core of the discourse on cultural heritage as a human right, is social value; cultural heritage is integral to the preservation of a society. It is crucial for the continuing development in the field of cultural rights, that we are able to understand the link between human rights and cultural heritage in armed conflict situations. With ‘cultural cleansing’ and ‘cultural genocide’ becoming common phrases to hear when discussing modern conflicts, there should be a greater universal effort made by international organisations, governments and military forces to provide better protection to cultural heritage. Heritage destruction is not just collateral damage, but ethnic cleansing and the eradication of identity and dignity

The language on the importance of cultural heritage to society continues to develop. The appointment of the first UN Special Rapporteur in the field of cultural rights in 2009 with Farida Shaheed, who was succeeded by Karima Bennouna in October 2015, is indicative of the international community’s new recognition of cultural heritage’s integral role in the functioning of society. In April 2019, NATO hosted a conference on Cultural Property Protection: Embracing New Challenges in the Era of Identity Wars, and UNESCO hosted the International Conference on the 20th anniversary of the 1999 Second Protocol to the 1954 Hague Convention. From such conferences, it has become evident the international commitment to safeguarding cultural heritage during armed conflict and the recognition of its value to society. However, it is now necessary to utilize this common ground between these two key international organisations, to promote universal acknowledgment of cultural heritage as a human right, and fully integrate it into military operations.

Viewing cultural heritage as a human right could act as the much-needed catalyst for renewed international commitment in ensuring effective cultural heritage protection during armed conflict. At the aforementioned UNESCO Conference in Geneva, Karima Bennouna (2019) stated, “[i]t is impossible to separate cultural heritage and those to whom it belongs. The place and activity or tradition are inseparable, and therefore when we speak about the tangible, we speak of the intangible. Cultural heritage reflects the lived experience.” If we go back to 1994, Chris Johnston defined six benefits of social value and the ‘collective attachment to place’. According to Johnston (1994), cultural heritage as place can “provide a sense of connection with the past, tie the past affectionately to the present, provide an essential reference point in a community’s identity or sense of itself, help give a disempowered group back its history, provide a sense of collective attachment to place and loom large in the daily comings and goings of life’ and are ‘places where people gather”. Johnston perfectly illustrates how integral the Place and cultural heritage is to the preservation of a



society and consequently for that society to have the means necessary to recover post-conflict in the most basic way, meaning having the ability to function in their day-to-day lives.

Beyond Authenticity Politics and Ideology in Heritage Conservation.

Lisa Giombini

Over the past few decades, heated debates among practitioners have probed the principles underpinning art and architectural conservation (see Clavir 2002; Muñoz-Viñas 2005; Jokilehto 2007; Richmond&Bracker 2009, among the others). Though controversy may be partly justified by the intrinsic complexity of the profession, the discipline's main problem is arguably lack of rigorous self-analysis – i.e., of an understanding of why the activity is performed in the first place. At a time when preservation of cultural heritage is promoted as a universal duty, a sort “of popular cult, almost a religious faith” (Lowenthal 1998, pp. 6-7), philosophers are urged to re-examine the conceptual assumptions that guide heritage conservation practice.

In this paper, I put some of these assumptions under the spotlight to test their conceptual consistency. I argue that a notion of conservation as a “truth-based” activity grounds many codes of ethics around the world (consider for instance the 2012 UNESCO Guidelines for World Heritage and is widespread in much ordinary discourse. From this perspective, conservation's primary aim is to help maintain or reveal an artwork's *true, authentic, original* nature (Muñoz-Viñas 2005). However familiar this conception may seem, it is nonetheless philosophically puzzling. Which material state is the “authentic” state of an object? What condition deserves to be called “original”? What “truth” are we trying to restore?

In the context of examples of artworks that have undergone restoration, de-restoration or re-restoration (particularly, the case of the Aegina marbles in the Glyptothek in Munich, the altar piece in Saint George's Church at Nördlingen, Germany, and Mario Sironi's fascist fresco in the Aula Magna of La Sapienza University, in Rome), I discuss different social and political stances that may impact the technical and aesthetic arguments that are used to justify a certain approach to conservation. Restorations executed in the name of truth or authenticity often result from the expectations determined by the cultural framework that is predominant at a certain time in a society (Diebold 1995). Modifying an object cannot be done for the sake of authenticity, even if the subjects who choose this modification are bound to respect this principle.

Despite the alleged objectivity of the language used to describe it, thus, conservation is driven by ideological considerations, decisions and values. Choosing one or another solution depends upon *interpreting* which meaning of an artwork should prevail at the expense of the others (the historical over the aesthetic, the functional over the archeological, etc.). To this extent, as Brandi (1950; 2005) and Philippot (1982, 1989) put it, conservation has a *critical* rather than *technical* mission. Rather than reducing the profession to a matter of personal tastes or subjective preferences, redeeming a critical notion of conservation, I argue, help us open up conceptual space for rethinking how we understand, create and present opportunities for the experience of our cultural heritage, possibilities that are prevented when the relevance of ‘authenticity’ is promoted beyond necessity.



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What Does Cultural Heritage Preservation Preserve?

Erich Hatala Matthes

In recent years, there has been substantial international mobilization around efforts to safeguard cultural heritage threatened by armed conflict (Matthes 2018b). However, separate from, and arguably prior to, debates about the permissibility of intervention to protect cultural heritage in war, there is another fundamental normative question that needs to be asked: what is the aim of preservation? Who is it for and what does it achieve? Different ways of answering this question promise to have significant implications for how we treat other moral and political questions about the role of cultural heritage in war.

In this paper, I argue that one (though not the only) thing that cultural heritage preservation ought to preserve is cultural autonomy, understood in terms of both specificity and group control (Todd 1990). I argue that this is an aim that should be central to heritage preservation given the “living” role of heritage in cultural life. According to many theorists, a defining feature of cultural heritage is the role it plays in the present and future lives of cultural groups (Harrison 2013, Ashworth, Graham, and Tunbridge 2007, Smith 2006). This points us away from an overemphasis on the preservation of material alone (artifacts, monuments, etc.) (Merryman 1986, Warren 1989), and requires that preservation efforts be carefully attuned to questions about the cultural (and political) use of this material, practices surrounding it, and the effects that particular preservation efforts will have on both. When the relevant cultural groups are moreover marginalized or oppressed, especially in post-colonial contexts, the salience of preserving group autonomy increases (Ypi 2013).

One way of understanding this proposal, then, is that preservation efforts themselves should be regarded as part of the practice of heritage itself, rather than just an external, neutral force acting to “save” cultural heritage. (This might productively be compared, for instance, with ritualized heritage preservation practices such as one finds in the reconstruction of Buddhist temples in Laos (Karlstrom 2015)). Based on how preservation facilitates or undermines the autonomy of different groups, it plays a role in shaping the constitution and operation of the groups that claim a particular cultural heritage: one of the main ways that cultural groups are formed and maintained is *through* various group practices and actions, roles and responsibilities (Coleman 2006, Whyte 2016). Insofar as there are moral and political stakes in the maintenance and power of particular cultural groups (Jeffers 2015, Killmister 2011), these moral and political issues thus become internal to the practice of preservation. In other words, moral and political considerations don’t merely *constrain* an amoral preservation practice, the way that business ethics might be thought to constrain the amoral goal of profit-maximization: moral and political aims become part of the relevant goals of heritage preservation itself (Matthes 2016b).

Thus, we can begin to see the implications of this argument for cultural heritage preservation for debates about intervention to safeguard cultural heritage in war. It’s not a matter of one value (cultural heritage preservation) being weighed against other, separate values (political autonomy, colonialism, human lives, etc.): rather, these concerns are more intimately related. This has implications for who ought to be in control of preservation projects, and hence how we should understand charges of appropriation (Matthes 2016a, 2019), as well as what methods properly count as preservation. For instance, there may be cases in which the preservation of cultural heritage,



more broadly construed, is best achieved through allowing material degradation or destruction (Holtorf 2015). We may also discover here novel reasons for viewing digital preservation as successful, at least once we relax an over-emphasis on material preservation as integral to the preservation process (Matthes 2017, 2018a), but in a way that is sensitive to concerns about “digital colonialism” (Thompson 2018). Recognizing cultural autonomy as among the goals of cultural heritage preservation also has implications for common discourses (as found in UNESCO and elsewhere) surrounding the “universal value” of cultural heritage (Matthes 2015, 2018b, Smith 2006). By prioritizing the interests, claims, and priorities of particular groups through our preservation practices, we shape the future of cultural groups themselves. For instance, consider how white nationalists create and maintain a cultural group through preservation of a particular ethnonationalist heritage, as represented in Confederate monuments (Matthes 2018c), or how Myanmar has sought to obscure oppression of the Rohingya through the imprimatur of UNESCO World Heritage designation (Kanji 2019). There is thus far more on the line in cultural heritage preservation than pieces of stone.

The Photograph: Protector of Last-Resort

Peter Jordan-Turner

This paper investigates the central significance of buildings as markers and conveyors of social culture, and how photography can preserve parts of their observable reality in the face of existential threats caused by war, natural disaster or economics-driven destruction. Through an analysis of global, regional and local responses to loss of built heritage, we arrive at a sense of their significance, measured both by the efforts to remove them, and the actions taken to preserve either the objects or their visual likeness, through photographs. It further reveals how photography has become well placed to provide last-resort preservation, replacing the building in a limited way, or to offer data sufficient to inform a reconstruction effort.

Examples from history, and from recent cataclysmic events, show how photography’s perceived ‘exactness’ continues to prompt its use as the basis for institutional and individual archives. The seeming durability of the materials we use to make buildings belies their ephemerality. Armed conflict, neglect and urban redevelopment are responsible for the destruction of buildings, so that the only form in which they survive – if at all – is through photographs or paintings.

This paper considers whether the photographic record is a significant contribution to a cultural memory of lost heritage. In the opening section, I discuss the importance of buildings, both individually and aggregated into the urban environment of towns and cities. In the context of building preservation, I address the issue of who decides what will be built or saved, and how does this relate to the means by which a dominant culture is established? The paper contrasts the assumed durability and longevity of a building with the fact of decay or demolition, and suggests the role of ‘the photograph’ in reconciling this disjoint.

The second section examines the nature and role of the photograph, with emphasis on the mechanisms that have left us with such a vast archive of visual material. Without embarking on a study of photographers’ intent, it establishes possible reasons for the making of the various types of photograph and photographic archive now existing. Appreciation of the nation’s built heritage has waxed and waned over past centuries, and the photographic archive tracks the value placed by a



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culture on its buildings. The act of making a photograph confers a value, even if continuing advances in process mean that the effort in doing so becomes easier over time.

There are several approaches to be considered. Photographers following on from the Romantic artists would choose picturesque or monumental subjects, while others would celebrate the mundane or vernacular building. Many photographs have buildings as a backdrop, with some person or thing as the main subject. These too provide insight into the past life of a building, and can provide extra information about the people who used it.

Buildings are notably three dimensional, and occupy both volumes of space and their planar footprint. Photographs are two dimensional. There is therefore a wealth of experience delivered by a building that is missing from a photograph. The photograph scores in being infinitely distributable, while the building – if it remains – remains static and singular. On the other side, being in the presence of a building allows the viewer to choose from future moments, viewpoints, angles and distances, while the photograph is eternally fixed to the viewpoint, and moment, chosen by the photographer.

The final part of the paper then discusses both the source of the current archive and its future use, drawing on restoration projects, examining the ways in which photographs can be experienced as surrogates for physical presence, and their importance for preservation or restoration. It considers the roles of the Mission Heliographique in post-Revolutionary France, and the National Buildings Record in the UK in recording vulnerable 'immobiliers' – artefacts too large to move to a place of safety in time of war or civil unrest. The paper concludes that the centrality of buildings within a shared heritage makes them particularly important. People who come to rely on their permanence as an anchor in a world where the rate of change increases can experience dissonance, as physical connections which have been taken for granted are lost. The photographic archive becomes significant when this happens, substituting for the lost connection, and allowing viewers to experience at least some of the reality of a lost building. This may take a more tangible form, as photographic records allow buildings to be rebuilt to their former state, as in the reconstruction of pre-Islamic temples near Timbuktu, Mali. Where the decision is not to rebuild, the photograph itself acquires some of the meaning formerly ascribed to its subject.

This paper treats the concept of a 'building' both as an individual entity and as a synonym for 'city'. The reasons for this are twofold: Firstly, in terms of the composition of a city, it is the arrangement of buildings and streets which forms the interior and exterior shape of the urban environment, so that the distinction between 'city' and 'building' is arguably mainly one of scale. Secondly, there is a conflation across the literature of 'architecture', 'building', and 'city' – not universal, but sufficiently widespread for the terms to be interchangeable. The differences are sufficiently minor to be noted and set aside as being beyond the scope of this research.

Stewardship of Cultural Heritage during Armed Conflict

Shawn Kaplan

As traditionally conceived, property titles give holders exclusive rights to use, alter, or exchange said property. It has been proposed in the literature on cultural heritage that traditional conceptions of property produce two problems. The first problem is conceptual. How can places and artifacts of cultural heritage belong exclusively to one group when either: the culture that created the artifact no



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longer exists, or it is difficult to establish the continuity of that culture, or humanity in general has strong interests in those places and artifacts. Second, traditional conceptions of property fail to form the basis for sufficient protections to preserve objects of heritage value. Such exclusive rights claims would make cultural heritage sites, objects, or knowledge entirely vulnerable to the whims of the title holder. Often enough, titles to sites of cultural significance are held by parties outside of that cultural group but, even when the cultural property is held by insiders, the exclusivity of the property rights can undermine their preservation. In addition to not grounding sufficient protections, establishing title claims to cultural heritage could lead to artifacts that have broad or universal value to humanity becoming inaccessible to that broader public. It is argued that exclusive property rights can limit the study of cultural heritage artifacts and, thus, deny humanity valuable knowledge. In addition, for cultural heritage artifacts to be exclusively owned by the originating group undermines our ability to promote cosmopolitan values through the experience of the art and culture of other groups.

To counter these problems, stewardship has been proposed as an alternative model of property where ownership of cultural heritage is not tied to an exclusive set of rights to use, alter, and exchange cultural heritage artifacts. Heritage stewards do not need to show unbroken lineage of title, nor do they hold exclusive claims that can make cultural heritage artifacts vulnerable, nor must they exclude the universal interests of humanity. In addition, stewardship is a much more flexible social relationship and can conceivably exist alongside traditional property titles. For example, the title for places of Native American cultural heritage can be held by the US National Parks Service but stewardship can be held by members of the indigenous group. How these opposing claims can be reconciled is less than clear. Beyond how title and stewardship claims can be reconciled, much of the notion of stewardship remains under-theorized. How can claims to stewardship be grounded and who can rightly assert them? In the context of cultural heritage, must the steward be an internal member of the cultural group, or be recognized by that group somehow, or merely be best capable of serving the role of steward? What authority does a steward of cultural heritage hold and what is its breadth? What obligations does a steward have to the people inside the cultural group, or to humanity in general, or to the cultural heritage artifacts themselves? I suspect that there will not be a single satisfactory answer to these questions regarding ethical stewardship. Stewardship will take on different qualities when the cultural artifacts are primarily of value only to internal members of a culture as opposed to when the value of these artifacts are more universal. Similarly, stewardship will alter when the culture that created the artifact no longer exists.

Working from the assumption that stewardship relationships are needed both for the conceptual clarity of cultural heritage and for generally grounding sufficient protections for cultural heritage, this paper asks whether or not stewardship is a useful model for thinking about protections of cultural heritage locations and artifacts during armed conflict. I will show that, regardless of its general advantages, the model of stewardship for cultural heritage during armed conflict raises some novel problems for identifying who can properly play this role and whether stewardship creates special obligations that might conflict with generic responsibilities during armed conflict.

Stewardship for cultural heritage during armed conflict will look quite different than stewardship during times of peace. During peace, stewardship will include a dynamic element that will determine how cultural artifacts may be used or transferred (e.g. loaned to museums) but stewardship during armed conflict is concerned with preservation. Armed conflict will also disrupt the ability of many who might typically serve as cultural heritage stewards to do so effectively. For example, sub-national cultural groups will typically not have the resources to protect cultural heritage



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from the military power of larger groups. Thus, regardless of who might normally have the authority to serve as stewards for cultural heritage, I will argue that the authority for stewardship during armed conflict will fall upon whomever is best capable of serving the role. We can imagine various players who would be most capable of preserving cultural heritage artifacts during armed conflicts. Unfortunately, the most obvious choices are those who command military forces or those who create the policies that direct these militaries. These parties have the most significant chance of limiting the use of military force so as to preserve cultural heritage locations and artifacts. However, stewardship implies a fiduciary responsibility towards the members of the cultural group who primarily values the artifacts as part of their heritage. Alternatively, stewardship may entail responsibilities of trusteeship towards humanity when the cultural heritage artifacts have more universal value. Military leadership will always have interests that directly conflict with such fiduciary responsibilities, e.g. interests in: winning the conflict, minimizing their own losses, and maintaining proportionate harms to noncombatants. Since a fiduciary agent cannot have interests directly conflicting with their obligations, military leadership cannot serve as adequate stewards for cultural heritage. Similarly, individual combatants also hold interests (e.g. personal survival and military success) that directly conflict with the fiduciary obligations of a cultural heritage steward.

It thus appears as though the fiduciary obligations or responsibilities of trusteeship for cultural heritage artifacts must fall to stewards who are not immediately part of the armed conflict. At the same time, effective stewardship will require the ability to protect cultural heritage from military attack and from it being used to shield military resources. I consider whether this can be done with a coercive legal regime or whether it requires armed protection by a third party? It is fair to be skeptical that a legal regime can effectively be used to preserve cultural heritage during armed conflict given how we presently lack the ability to adequately protect noncombatants from disproportionate harms by threatening legal punishment. If international legal institutions were invigorated so as to serve as an effective coercive force, one likely possibility is that the protection of cultural heritage artifacts would be incorporated within the protocols against disproportionate collateral damage. This would require somehow being able to compare the value of cultural heritage artifacts to the value of human lives and other types of civilian property—a task that might be doomed by problems of incommensurability. On the other hand, establishing an independent and neutral military steward to preserve cultural heritage artifacts would face similar problems. Such stewards would need to be able to compare the value of the cultural heritage locations and artifacts to what might be sacrificed for their preservation. The fiduciary or trustee responsibilities of stewards do not exclude or override their responsibilities to protect innocents and their other property. A question for future investigation is whether these potentially conflicting obligations are weighted solely by comparing the values of the objects in need of protection or whether stewards have special responsibilities towards cultural heritage that alter how these comparisons between conflicting obligations ought to be made.

When Damage Becomes Memorial

Carolyn Korsmeyer

So identified are societies with their artistic and technological accomplishments that, from antiquity to the present, warring parties have destroyed material artifacts almost as much as they have targeted peoples (Gamboni 1997). Today's global sensibilities increasingly cherish the material



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remains of cultures under fire, mourning when artifacts are lost and rallying to preserve them. In certain respects, preservation is an effort to halt degradation that has accrued for centuries, for when an artifact is ancient, the question of what stage of its 'life' should be represented in repair is salient. In recognition of the inevitable destruction of time, some argue that many artifacts damaged in war simply ought to be left to decay. Their injuries are but the latest to be delivered and their erasure not sufficiently reparative to undertake (Scarborough, 2020). While this judgment is doubtless sensible for some artifacts, there are others where visible marks of assault become the very reason to preserve them.

I am concerned with cases where material injury itself is worthy of preservation, that is, when destruction is so dramatically marked that damaged artifacts become memorials. This paper will examine the perception and significance of buildings, ruins, and monuments that have suffered war and that are "objects that carry the scars of their survival" (Fischl 2006). I have in mind examples such as the Genbaku Dome at Hiroshima, artifacts from the World Trade Center Memorial in New York, the bullet holes preserved from the American Civil War at Gettysburg, Pennsylvania, and—in a different category—the replicated Palmyra Arch of Syria.

All of these artifacts bear the 'look' of damage, although the Arch, being a replica, has manufactured that look, retaining the fissures, losses, and erosion of older damage that time had wrought over centuries. The Genbaku Dome and fragments of the World Trade Center are preserved as memorials because their perceptible damage now constitutes their central display and meaning, forcing remembrance of how they came to that state. The bullet holes in the buildings of Gettysburg are not memorials as such, though they command attention and summon curiosity and chill, and in this respect their apprehension is similar to encounters with memorials.² All of these examples serve to remind us of what happened during grievous conflict, and that reminder is more than incidental; it is the very purpose of the objects.

A memorial is an object that is publically presented to summon remembrance and to evoke affective attitudes such as respect, sorrow, and awe. (As Arthur Danto has noted: "We erect monuments so that we shall always remember and build memorials so that we shall never forget."³) There are different ways that an object might serve as a memorial, and when a memorial is also the very object damaged in war, it takes on a particular symbolic function. Following Nelson Goodman and Catherine Elgin, I examine this function in terms of 'exemplification' (see also Young 2020). The schemata of representation and expression that Goodman developed in *Languages of Art* and Elgin amplified in *With Reference to Reference* will inform my analysis. While their approach to symbolic relations may sound rather bloodless in the abstract, I have found their methods useful to distinguish the different representational functions that similar-appearing objects possess, thereby furnishing insight as to the particular power of damaged objects.

Something that exemplifies both possesses a property and refers—calls attention to—that property. The property in question here is *being damaged*, showing the evidence of partial

² Although this example has also become a kind of macabre curiosity, for tourists are invited to see the bullet hole and the bloodstained floor where the one civilian casualty of the battle fell. "Jenny Wade, Bread Martyr: See the Bullet Hole," <https://www.roadsideamerica.com/story/31407>. Accessed 28.8.2019.

³ Danto, Arthur C., "The Vietnam Veterans Memorial," *The Nation* Vol. 241 (August 1985), p. 152.



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destruction. Although the marks of that destruction can be copied and even exactly replicated, the symbolic function of exemplification cannot. This fact distinguishes actual objects damaged in conflict from replicas. Moreover, it calls into question a notion that has informed philosophy of art for some decades now, namely that exact copies can be perceptually indiscernible from their originals (Danto 1980). I intend to argue that two things can superficially *appear* the same and yet *be* so different that upon deeper reflection their appearance also alters. One purpose of this paper is to examine the relationship between the way an artifact appears, what it actually is, and its memorial function.

My grounding assumption relies on the intuition that the perception of damage entails recognition of an object's prior condition, which might range from new and pristine to ancient and already ruined. Recognizing that the visible qualities of artifacts have causes is hardly unusual. One implicitly assumes that the design of a building, a tended landscape, or a painting was intentionally brought about. With qualities that signal material injury, that recognition is especially obvious because it is entailed by the very nature of the perceptual property *being damaged*. Cause is embedded in the concept; if one perceives damage, then one recognizes that there was a prior destructive event. The exact nature of that event may be unknown or only vaguely sensed, but the mere notice of damage is *pro tanto* notice of some injurious cause.

This observation about perception is relevant when we consider the aesthetic aspects of artifacts that have fallen victim to conflict. By 'aesthetic aspect' I am not referring to artifacts as sculpture or architecture (and therefore as damaged works of art) but as partially destroyed objects with compelling presence and perceptual impact that rivet attention on the meanings that they embody. When presented as memorials they summon wonder, awe, sorrow, perhaps anger and a host of other difficult emotions as we contemplate what they have survived.

The grounding assumption—that perceiving damage entails recognizing its cause—advises care in replicating heritage artifacts and in the claims made on their behalf. Given the technologies of reproduction now available, it is possible to reproduce an artifact so that it looks exactly like its model original thing. The most famous case at present is probably the replicated Palmyra Arch. In its travels to several cities around the world, the replica arch performs many functions: as tribute to the suffering of Syria, as defiance against IS, and—most relevant for this paper—as a memorial to what was destroyed. But this object is significantly different from a real damaged object, for it cannot exemplify. Rather, its symbolic function refers more remotely by means of imitation of the look of the original arch (now possibly destroyed beyond repair) and allusion to the cause of that destruction.

In sum: damage to valuable cultural artifacts demands reflection on a variety of problems both practical and theoretical. This paper addresses just one aspect of a complex and often heartbreaking state of affairs. I aim to illuminate the role that damaged objects sometimes assume, and to draw attention to the different affective power that 'real things' and replicas of those things can have. They may look alike, but their appearance manifests different modes of reference and achieves different affective power when they stand as memorials to what is lost.

Cultural Heritage's Dimensions as a Right in Hohfeldian Framework

Sanna Lehtinen



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The individual's right to have rights is an essential part of modern democracy and humankind's moral universe. There are many historical, philosophical and sociological theories explaining rights from Immanuel Kant's concept of cosmopolitan right to Hannah Arendt's idea of a right to have rights. The essential question, when analyzing rights from the perspective of cultural heritage, is which legalistic approach is the most applicable instrument to explain the complexity of the issue. In my presentation, I will apply to outline some theoretical guidelines to examine different ways to define cultural heritage as a right by using the theory of Wesley Newcomb Hohfeld.

In a nutshell, Hohfeld recognizes different types of rights that create various corresponding obligations. The structure of the framework is based on eight fundamental legal concepts concerning liberty rights, claim rights, power rights and immunity rights which are grouped in jural correlatives. Hence, each concept has its unique correlative and its unique opposite. Concurrently, each concept is *sui generis*, and yet gains its meaning from its specified relations with the other concepts.

According to Hohfeld, a liberty considered as a legal relation implies a privilege which refers to personal rights relating to mind, body and property. If someone has a liberty, someone else has a no-right. A liberty is the opposite of a duty as well as a no-right is the opposite of a claim which leads us to claim rights: for instance if X has a claim against Y, whereas Y has a duty to X. A liberty and a no-right are each other's correlatives just like a claim and a duty are too. However, when someone has a power, it exists with respect to someone else who has a liability. The final pair of correlatives is immunity rights where an immunity is the correlative of disability – absence of power. The opposite of power is a disability and in the same way, the opposite of an immunity is a liability.

In my presentation, I will explore how the concept of cultural heritage in a legal context could be transplanted into the Hohfeldian framework. Firstly, I will explore the dimensions of cultural heritage from the perspective of Hohfeld's liberty and claim rights. Hohfeld himself used an example of entering or staying off someone's property. To some extent, the example could be applied in the context of cultural heritage law too. Testing of the judicial concept of cultural heritage by using the Hohfeldian framework demonstrates how its legal nature is a combination of public and private rights and responsibilities. Similarly, there exist duplicated and simultaneous right and duty holders.

Basically, what is crucial is that the states bear the ultimate liability for culture heritage protection which requires states taking actions within cultural and environmental policy and cultural heritage management. Cultural heritage is already considered vulnerable to conflicts and disasters. In the future, it is likely that the principles and responsibilities concerning complex protection of cultural heritage increase the number of situations where the concerns of many interest groups including private sector collide. Another challenge, now and in the future, is protecting cultural heritage in paramilitary operations or in the time of civil war or in conflicts that are caused by non-state actors like terrorists, rebel groups or freedom fighters. Not to mention adverse effects on cultural heritage caused by climate change and environmental disasters which can destroy and create new heritage to protect. For instance, when sea-level rises will eventually flood coastal areas, new underwater cultural heritage is created. In turn, climate displacement may lead to abandoned and dilapidated cultural heritage sites – who is the responsible for the cultural heritage of the land left behind? These questions about rights and responsibilities concerning cultural heritage are now more present than ever. Even though it has been over a hundred years since Hohfeld's influential essays were published, his theories can still provide a valid tool for defining and analyzing the concept of right.



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Altogether, when looking at responsibilities through Hohfeldian framework, the state has both power and liability to administer cultural heritage. Liability creates new liabilities, for instance when a state or a local authority, who has the liability to manage cultural heritage, provides funding for citizens or an individual to maintain or to renovate cultural property. At the same time, when the state has a power and a liability concerning cultural heritage, it also has a duty not to harm cultural heritage. The same obligations apply to the people too. Although, there are other rights and duties, such as property and business rights, that may be prioritized over the ones in connected with cultural heritage.

The Necessity of Necessity: Military Necessity and Military Consequences of the Bombing of the Abbey of Monte Cassino

Kevin S. Malmquist

All cultural property is threatened by the passage of time, natural disasters, human development, neglect, abuse, and misuse, but arguably the most threatening condition to their continued existence is the deliberate violence inherent to warfare. Armed conflict has always imperiled monuments which lay in the path of war. Throughout the history of war, monuments have been protected, other times they have been intentionally attacked, and other times they were given little extra consideration over the rest of the topography of the battlefield. What are the consequences of these various actions? What are the military consequences when a belligerent military destroys a historical, religious, or cultural monument belonging to either belligerent or an otherwise neutral party? These are some of the main questions that this paper will attempt to answer.

To do so, this paper will examine the bombing of the abbey of Monte Cassino by the Allies during the Second World War. Two separate, but linked issues will be examined; first, whether there was a genuine necessity to bomb the abbey, as defined by contemporary international law and the December 1943 order from General Eisenhower regarding the preservation of monuments. A close examination of the conditions and information available at the time of the decision will demonstrate that an attack on the monastery was necessary and that it conformed with Eisenhower's order. Second, what were the military consequences of the bombing, and were those consequences detrimental or positive for either belligerent's tactical, operational, or strategic ends? With careful consideration to avoid counterfactuals, the evidence indicates that despite certain claims from scholars and contemporary military authorities, the bombing of the abbey bore no significant negative military consequences for the Allies. Instead, the destruction of the monastery had a positive effect on the Allied war effort.

This case study will also serve to address several perceived issues with the current historiography regarding heritage conservation in war. First, it aims to displace criticisms of "military necessity" clauses in international law. This paper does not advocate for the reckless destruction of heritage but seeks to place heritage in context alongside the tactical, operational, and strategic goals of military forces. In doing so, it aims to focus on the humanitarian perspective of heritage preservation.

The second issue the Monte Cassino case helps to address is that much of the discussion surrounding heritage conservation focuses on relatively contemporary examples, such as the cases in Afghanistan, Mali, Iraq, Libya, Syria, and the Balkans. Some studies reach back to the Second



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World War, such as Laurie Rush's "Cultural Property Protection as a Force Multiplier in Stability Operations: World War II Monuments Officers Lessons Learned." (*Military Review* 92, [2012]), but the focus has been predominantly on more contemporary cases. This concentration on recent cases disregards the vast examples provided by history and runs the risk of repeating the folly of "fighting the last war." It is imperative to increase the scope of our investigation by looking further back in history. As mentioned, the Second World War is already part of the discussion, but this paper will expand that discussion and tie its lessons to the present.

Closely tied to the issue of contemporaneity is the focus on asymmetric warfare in juxtaposition to symmetric warfare. The examples coming out of Mali, Iraq, Libya, and Syria are all examples of asymmetric warfare. Symmetric warfare has been largely absent from the global scene as of late, largely overshadowed by asymmetric conflicts. Even the symmetric portion of the initial 2003 invasion of Iraq quickly transitioned into asymmetric warfare as the invasion became an occupation. This is an important distinction to make, but without an examination of the preservation and destruction of monuments in symmetric combat, the picture is incomplete. Scholars who are actively working to change military policy regarding the protection of cultural heritage should not focus solely on examples of asymmetric warfare if they hope to provide a wholistic picture of the benefits of cultural preservation and the hazards of cultural destruction. We require a broader view to recommend flexible options for battlefield commanders in a wide variety of combat scenarios. This case study is an example of symmetric warfare and will help to contrast the heavy focus on asymmetric case studies that currently make up the historiography.

Another issue with the current historiography is the general failure to examine examples of the destruction of heritage at the friction point, that is, when the cultural property becomes involved in the conflict. In each event involving the destruction of a monument there are several points in which preservation efforts can have an effect, from before the event (proactive) to after the event (reactive). Most of the discussions regarding preservation are centered around the aftermath of a destructive event. Nearly the entire corpus of legal treatments focuses on navigating the legal aspects of perceived crimes against cultural property, offering little by way of measures, legal or otherwise, to help preserve cultural heritage before it is damaged or destroyed. Archeologists offer reactive measures to limit degradation of sites and discussions on the best ways to move forward after a destructive event. Scholars have begun to address the issue of how to preserve cultural heritage prior to the conflict. These scholars, such as Laurie Rush and Michael Hallet, have engaged with military structures and ways of thinking to adapt training plans and methodologies which will help soldiers and leaders understand their legal obligations regarding cultural heritage during armed conflict. While these discussions about how to deal with preservation, before and after the event, are important, they fail to discuss the military's perspective as the conflict is unfolding, when the monument or piece of cultural heritage becomes a potential target for military operations. This paper will help address this lacuna.

The last major issue is that scholars have been prone to make broad claims about the consequences of the destruction of cultural heritage but have provided minimal evidence to support these claims. Some have asserted that deliberate preservation can have significant positive effects for the belligerent who preserves the piece of heritage in question, but the supporting evidence is often debatable. These claims generally go unchallenged. It is difficult to believe that the destruction of an important building would not have negative consequences for those responsible for the destruction, or that to win the hearts and minds of an occupied nation, deliberate preservation of



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that nation's monuments could work to the advantage of the occupiers. But the evidence does not always support these arguments. The main question this paper seeks to address deals with this problem head on.

This paper will help to address these issues and will provide a valuable perspective to the ongoing discussion on how to handle heritage during times of conflict. The arguments will challenge the assumptions of strict advocates for the preservation of heritage above all else and remind us of the human element involved in warfare. It is imperative that as scholars of many different disciplines, we not lose sight of the humanitarian aspect of the wider discussion regarding the preservation of heritage. While we should strive to preserve what we determine to be most important, it is paramount that we never place the value of property above the value of human life.

Competing Heritage: Curating the Future Heritage of Post-Conflict Syria

Nour A. Munawar

Since the beginning of the armed conflicts and public uprisings that accompanied and followed the 'Arab Spring' that started in 2010 in Tunisia and continues till this day in Sudan and Algeria, cultural heritage sites have been hit-hard, damaged and often destroyed by different perpetrators. The Syrian armed conflict has resulted in unprecedented damage to cultural heritage sites, monuments, and facilities. The ruination of cultural heritage in Syria has drawn attention to the many studies and organizations that are concerned with the preservation and safeguarding of the country's endangered antiquities. Such asymmetric destruction has provoked observers, politicians, and international and national non-government organizations to debate about the impacts of damaging Syria's "irreplaceable" patrimony and how to safeguard its past from the ongoing destructive actions.

All of these statements and international responses have triggered a significant debate: do not all cultural heritage sites and monuments, whether they be Greek, Roman, or Islamic, contribute to the construction of Syria's identity and memory? If so, why are we currently witnessing an increasing European interest in protecting and reconstructing what radical actors have already destroyed? In particular, this interest has tended to focus on Roman period remains in Syria, such as the replica project of Palmyra's Arch of Triumph. I take a different approach, arguing that heritage is in a constant process of transformation and change over time. When seen in this way, the destruction and loss of heritage sites is not endangering Syria's heritage—it may, in fact, be seen as creating the future heritage of post-war Syria.

This paper investigates the transformation of the terminology of heritage in Syria prior to and during the ongoing conflict, and how the internationally renowned term "heritage" emerged to promote the destruction of Syria's cultural patrimony. This article explores how cultural heritage and collective memories have been utilized by Syria's Ba'ath party from the second half of the twentieth century up to the present. This paper explores the semantics and impacts of the continuous destruction and the ongoing reconstruction plans on the cultural heritage of Syria. To conclude, I argue that the recent intentionally destructive actions have started a process of "*heritagizing*" the present, which will eventually itself become part of the Syrian collective memory. This process has the capacity to make a strong contribution to the rebuilding of national identity in the aftermath of the war.



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A Defence of Queer Culture

Nadia Mehdi

We predominantly think of cultures in national and subnational terms. We speak for instance of British culture, but also of Scottish culture and Afro-Caribbean culture as cultures that exist within Britain and, in many instances, overlap with British culture. Cultural transmission is thought to occur in these cultures fairly simply. In general, one is born or emigrates into a specific culture (or multiple cultures) and through practices of socialisation will, over time, be likely to learn the beliefs, norms, values, practices, rituals, behaviours and so on that make up the culture in question. We also speak of subcultures: cultural groups that exist within a larger cultural group, often holding beliefs or interests at variance with people in the dominant culture. For instance, we might hold that there is goth culture, gamer culture and even model railway culture. Cultural transmission here occurs through an individual being exposed to some element of that subculture and seeking to immerse themselves in the norms and behaviours of the subculture in question.

In this paper, I will argue that there is feasibly a further kind of cultural group that fits neither the sub/trans/national culture nor the subculture categories but, nevertheless, conceivably exist in certain contexts; cultural groups predicated on social identity categories, such as woman, queer or disabled. My focus in this paper will be on presenting certain strands of queer culture as constituting a culture, but I contend that the argument may be applied to further groups. It seems that making the case for social identity groups as, in certain contexts, possessing culture is important for a number of reasons. Primarily it may be a strategy through which to grant already marginalised groups further legal and social protections. Moreover, it seems that elevating the ephemera of such groups to the status of culture goes some way to validating the oft maligned "cultural" materials such groups create.

My strategy here is two-pronged; I will defend the position that there is conceivably a queer culture by aligning it with an account of cultural membership, but I will also attempt to demonstrate that *what is lost* in sustained institutional, interpersonal and structural attacks on queer ways of life is best thought of as cultural heritage, the materials possessed by a culture.

This paper will proceed as follows. In the first section of my talk, I will provide an account of what it is for a group of people to constitute a culture, demonstrating that at least some cases it makes sense to speak of social identity categories as possessing a distinct culture. I will survey a number of accounts that take themselves to be avoiding charges of the *package picture of cultures* (Narayan 2000), that present cultures as essentialised, bounded, determinate static and homogenous. These will include Alan Patten's 'Social Lineage Account' (Patten 2011) and James Young's 'Family Resemblance Account' (Young 2010) but I will argue both are found wanting, both in terms of accounts of cultural membership in general and more specifically in terms of my purposes here. Instead, I will develop C. Thi. Nguyen and Matthew Strohl's 'Intimacy Account' (Nguyen and Strohl 2019) to argue that cultural membership can be based in relations of group intimacy, an intimacy that is generated by engaging, together, in certain practices.

In the second section I will illustrate *what is lost* when members of social identity categories exist under sustained attack by oppressive structures and institutions is best thought of as cultural heritage. Continuing my focus on queer culture, I will centre my attention in particular on the AIDS



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crisis in the United States and Section 28 in the United Kingdom. I will argue that both of these political events led to a concrete loss of the matter that we tend to think of making up a culture - beliefs norms, values, practices, rituals, behaviours and so on - in the USA case, through a staggering loss of life that could have been prevented, alongside a sustained attack on gay men's ways of being – and in the UK case, through a deliberate attempt to prohibit children learning about homosexuality. Moreover, I will argue that when the cultural matter lost in situations akin to war relates so clearly to a social identity, which relies on a unique form of cultural transmission, then the ongoing harm to the culture also takes on a different character: hermeneutic obfuscation, whereby members of a group are effectively estranged from the hermeneutic resources that will help them make sense of their way of being. Cultural transmission is particularly hard in this case. There is not necessarily any marker on one's body or adornment that may signal that they are a member of this social group and so cultural transmission requires identification by oneself with the culture before it can be given by others. Yet if institutions and structures exist to prevent identification with a certain way of life then one is left in a hermeneutical desert. Queer culture is not passed down through ready-made channels of family or community and so there is a need for queer people to seek out their lineage and stream themselves in to it, an infinitely difficult task when forces serve to break this cultural continuity.

Overcoming Ethical Polarisation through the Promotion of a New Dialogue among Heritage Professionals.

Patrizia La Piscopia

We live in a world of extreme polarization; the subtleties of socio-political discourse are being eroded at an alarming rate, thus reducing society to Manichean extremes. As Wallace (2016) explains, binary or dualistic views 'assume that there are only two options or categories. These are the basis upon which systems are created and maintained and require everything and everyone to fit into one of the defined categories'. Binary views pervade modern social dynamics and are paralleled in every field, from gender to politics. A 2014 report from the Pew Center describes how partisan animosity has increased substantially in America in the last twenty years. It describes a nation in which likeminded individuals share highly negative views of the opposition, while those in the centre remain on the edges of the political playing field (2014). Europe is not far behind and polarisation of political views is on the rise. Here too, moderate parties are gradually disappearing, and more extreme positions are now being taken by politicians who seem to promote animosity more than dialogue (Reiljan 2019).

This brief overview of the current climate seems essential in the context of a conference focusing on ethics, heritage and armed conflict. Undoubtedly, our personal ethical principles inform our political choices, and our political and ethical backgrounds affect our professional decisions and academic views. As Meskell so astutely puts it, "ethics and politics are inseparable" (2005, 126). On initial consideration, it may well seem farfetched to compare the relationship between scholars to that of voters or political partisans. However, it appears to me that the same kind of polarising movement has been gaining momentum in the field of heritage protection during armed conflict. With specialists and professionals increasingly asked to take sides. The purpose of this paper is to look at the way in which this same conference has become the vehicle of a polarised debate.



The ethical divide between heritage professionals, and in particular between archaeologists with opposing views, can be traced back to 1999, when the World Archaeological Congress decided to set up a dedicated Task Force to discuss the destruction of cultural property in conflict situations (Ronayne 2000). However, the hiatus was greatly intensified by the controversial British/American invasion of Iraq in March 2003 (La Piscopia 2012). The subsequent rise in anti-war sentiment cast the UK and US armed forces in the role of villain, the evil entity engaged in a war of aggression, the so called 'undemocratic' tool of modern imperialism (Bernbeck 2008). The result of this characterization was the immediate polarisation of discourse as it related to heritage matters in the context of conflict/war (for a timeline see Stone 2011). At the core of the debate was, and still is, the issue of collaboration and dialogue with the military. In the aftermath of the invasion, the academic literature promptly promoted a rhetoric of growing contempt between those who decided to include the armed forces in the discussion, and those who deemed such collaboration unethical, thus frustrating the dialogue between the two parties.

In the last number of years, the debate has waned somewhat. On one side of the divide, those who decided to work with the military have continued with their projects, organising training and providing the necessary tools to comply with International Law. These specialists have remained committed to their mission, and promoted their views from within the armed forces (e.g. Kila 2013; Rush 2018; Rush 2017; Rush 2011; Rush et al. 2009; Wegener 2010), through the medium of the National and International Committees of the Blue Shield (e.g. Cunliffe et al. 2018; Wegener 2008 only to mention some), and within ICCROM (see Tandon 2018; Tandon 2013).

On the other side, some of the harshest critics of co-operation with armed forces have gradually withdrawn from discussions (Albarella 2009; e.g. Bernbeck 2008; Hamilakis 2009; Hamilakis 2003; Pollock 2016; Price et al. 2011) When the call for papers for the current conference appeared on the WAC mailing list, however, old tensions once again bubbled to the surface. One point of controversy was the participation of two key-note speakers with direct professional links to the US military, which drew criticism from some who indirectly accused the conference organisers of bias, citing a failure to include speakers that are critical of so called military-industrial or 'military-archaeology complex' (Hamilakis 2009). In my opinion, this concern over the 'lack of plurality of viewpoints' simply perpetuates the frustration of debate between the two parties. A call for papers in itself creates an open platform for dialogue, thus levelling the field of discourse.

In any case, we should, by now, have moved away from this kind of polemical rhetoric. Global circumstances have changed radically since 2003. When we discuss the training of armed forces today, we no longer refer exclusively to forces of occupation, as was the case then. The situation we now find ourselves in is far more complex. The issue of the engagement with the military remains, and indeed will remain, a contentious one but it should always be considered within its context and not in absolute terms. In this way, it is important to remember that while armies are mobilised during active conflict, they are also deployed in peacetime. Either way, they must be trained to comply with both international humanitarian and cultural heritage legislation if they are to be held accountable.

Undoubtedly, military institutions invoke memories of violence, occupation, colonialism and imperialism. However, the act of demonising an institution is in itself a symptom of intolerance. Armies are not monolithic entities; they are composed of individuals. To cast an overall judgment on each one of them disregards their personal circumstances and distinct motivations. In this respect, I take issue with the radical concept of 'impossibility of innocence' put forward by Startzman (2008). If 'ethics is essentially a theory of social relations rather than a transcendent entity or body of facts'



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(Meskell 2005, 126), it is necessary for us to work more towards the elevation of an open dialogue and the promotion of a climate of understanding, inclusion and respect. As an archaeologist I am fully aware of the fact that, in this field, every professional decision can be intensely politically charged (Trigger 1984; Starzmann 2008) and consequently controversial and open to criticism. Nonetheless, criticism should not necessarily lead to hostility or animosity.

On a personal note, I believe that the controversy surrounding this conference reflects the global climate and perfectly captures the sentiment of the ethical debate in the field of heritage protection during armed conflict. The current paper does not claim to resolve the debate in question, but it does bring to light the value of a moderate viewpoint and the importance of open dialogue.

TBA

Jonathan Peterson

How the 'Monuments Men' Perceived Value: Definitions and Expressions of Cultural Property and its Importance in Second World War Documentation.

Nigel Pollard

During the Second World War, the Monuments, Fine Arts and Archives section of Allied armed forces (the MFAA, 'Monuments Men') was supported in its work of protecting cultural heritage by a range of documentation produced primarily by US academics of the Harvard Group-American Defense and a special committee of the American Council of Learned Societies. These groups produced inventories and maps of cultural sites in a number of European and Asian countries, ranked by a simple star system (zero to three stars), for military use in planning operations and for the purposes of security and protection in occupied countries. This paper draws on a range of contemporary documentation to examine the underlying assumptions and motivations regarding culture, history and heritage of the academics involved. The inventories and maps themselves are important in this regard, but correspondence and reports of the committees concerned highlight debates and discussions between their members relating to motivations and definitions, as do materials relating to lectures produced by the ACLS committee for delivery in university-based schools of military government. What factors led them to attribute particular values to categories and specific examples of cultural property?

Key questions addressed include:

- the sources of information used (typically European guidebooks such as those of the Touring Club Italiano and Baedeker), but also personal knowledge and wide-ranging questionnaires
- the backgrounds of the individuals involved, many of whom were European emigres or American scholars displaced from institutions in Europe such as the American Academy at Rome



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- contemporary definitions of cultural property, from traditional categories encompassing historic buildings and monuments perceived as of global cultural significance, to aspects of material culture of more local significance and of importance in defining cultural identities of nations, communities and ethnic and social groups
- the influence of contemporary educational structures and academic cultures in shaping the nature and the value systems that underlay the inventories, particularly the role of the 'Western Civilization' survey classes popular in American universities from the First World War onwards.

While the final versions of lists and maps used by Allied armed forces were quite predictable in their conservatism in defining cultural property worthy of protection, the background discussion revealed in contemporary documents shows a growing appreciation of the complexity and diversity of cultural property as a concept, and of the value systems applied to it. For example, concepts that the importance of cultural property is best defined by its users, and of intangible cultural property, both of which are prominent in international humanitarian legislation from the 1954 Hague Convention onwards, are raised and discussed in wartime documents too.

Destruction of Cultural Heritage in the Majesty of Law. Critical remarks Regarding the “Olive Branch” Operation

Marcin Rau

When on January 20th, 2018 Turkish troops launched a bomb attack on Afrin in northern Syria, killing more than 2200 people and destroying Mesopotamian temples from the UNESCO World Heritage list, the entire international community was outraged by this act of armed aggression. Just over three months later, when the US air force and navy - contrary to the provisions of international law - made similar bombings at research laboratories near Damascus and Homs in Syria, the world leaders described the operation as necessary, right and justified. Although both cases represent actions that are contrary to international law and both meet the characteristics of the crime of aggression, the international community is not unanimous in their assessment. In addition, it does not seem likely that their authors will bear any responsibility for their military foreign policy. Turkey has recognized that it has the right to self-defense, by referring to art. 51 UN Charter, in connection with the activities of terrorist organizations on its territory. It is worth pointing out that the Kurdish conflict is still an unresolved ethnic conflict related to the Kurds' desire to gain independence in the state of Kurdistan. Kurds are a multi-million-strong ethnic group (estimated to have around 27 million Kurds), which mostly live in the Kurdistan region divided between four neighboring countries: Iraq, Iran, Syria and Turkey, having their own culture, language (from the Indo-European group), and the dominant religion is Sunni Islam. Due to their separateness, this group is persecuted by the state between which it is divided.

In January 2014, the three cantons (Afrin, Jazira, Kobani) declared their autonomy, creating the Democratic Federation of Northern Syria, commonly known as Rojava. This resulted in a significant tightening of Turkey's policy towards the Kurdish minority, because Kurds constitute about 20% inhabitants of Turkey and dominate in its south-eastern provinces. The existence of an



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independent Kurdish state at the southern borders of this state would significantly strengthen Kurdish separatism within Turkey itself and for that reason the authorities in Ankara have begun to liquidate attempts to create a Kurdish state with all possible means, also using military forces.

On January 20th 2018, a few hours before the attack, the Chargé d'affaires of the Permanent Mission of Turkey to the United Nations presented to the Secretary-General and the President of the Security Council an official position of the government, in which he informs that "the national security of Turkey has been under direct threat from the Syria-based terrorist organizations, among which Daesh and the PKK/KCK Syria affiliate, PYD/YPG, are at the top of the list (...) and in order to counter this terrorist threat, Turkey initiated a military operation on 20 January 2018 against these terrorist elements". The same day, at 17:00 local time Turkish troops launched an offensive as Operation "Olive Branch" against the People's Protection Units (YPG), a Kurdish militia operating in Syria, which was the official army of the Democratic Federation of Northern Syria. As mention before, Turkey recognizes YPG as a terrorist organization, through its links with the Kurdistan Workers' Party (PKK), which threatens Turkish interests and security in the region. The main aim of the operation was to capture the city of Afrin. Not counting the losses in the Kurdish soldiers, hundreds of civilians have been reported killed since the operation started and more than tens of thousands people were displaced due to the Turkish intervention. But what is the most important from the point of view of this presentation, the attacks aimed at the Kurdish-held city of Afrin, have partially destroyed the 3,000-year-old Ain Dara temple complex built by the Arameans between the 10th and 8th centuries BC (included on UNESCO's World Heritage List).

Why does this temple play such an important role on the archeological map of the Middle East? Among other things, because of the similarities to Biblical description of Solomon's Temple. As noted by archaeologist John Monson, nearly every aspect of the Ain Dara temple (its age, its size, its plan, its decoration) parallels the vivid description of the Temple of King Solomon and has far more in common with the Jerusalem Temple described in the Book of Kings than any other known building. It was also the best-preserved example of Syro-Hittite religious architecture from the late second and early first millennia BCE. Based on video and photographs provided by Hawar News (an online Kurdish news service), as well as DigitalGlobe satellite imagery from January 22 and January 29, 2018, it is likely that more than half of the temple is in ruins. The Britain-based Syrian Observatory for Human Rights said the temple was struck by air strikes and destroyed up to 60% and causing heavy damage to the central and southeastern portions of the building. According to former Syrian antiquities chief Maamoun Abdulkarim, the attack conducted at Ain Dara had the same level of atrocity as ISIS' destruction of Palmyra in 2011, when Islamic State fighters blew up famed tower tombs in Palmyra and also destroyed the statue of the Lion of Athena and the main Temple of Bel. As Meghan Bodette, a Kurdish human rights activist, rightly points out it was clear that Turkey had committed crimes within the ICC's jurisdiction in Afrin and it would be enough if one of the 123 states that have ratified the Rome Statute could have begun collecting evidence to make a referral. In practice, it seems as unlikely as to conduct evidence proceedings, because collecting evidence in this area may give rise to a number of technical problems. Apart from the problems of jurisdiction (neither Turkey nor Syria are parties to the Rome Statute), it is hard to imagine that Turkey will cooperate with any national or international investigators. None of the NATO countries will dare to oppose Turkey, and the best example of such behavior is the statement of the NATO Secretary General Jens Stoltenberg, who in his speech in April 2018 said:



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"(...) my many visits to Ankara reflect the deeply valued role your country plays in the NATO Alliance. And Turkey contributes to our shared security in many different ways. You are an Ally which plays a key role in the Alliance and I thank you for your many contributions. You make essential contributions to NATO operations and to the fight against Daesh. (...) So, Turkey really does a lot for our Alliance, despite facing serious security challenges. No other Ally has suffered as many terrorist attacks as Turkey. And you are the Ally most exposed to the instability in this region. Turkey generously hosts more than 3 and a half million refugees. (...) We also discussed the situation in Syria. Minister Çavuşoğlu briefed me on Operation "Olive Branch". And I am grateful for Turkey's continued transparency on this. But you do not stand alone. NATO stands with you in solidarity."

In conclusion, the main purpose of my presentation will be to answer the following questions: Does the fight against alleged terrorism justify the destruction of the world's cultural heritage? Where are the limits of acting in self-defense? In order to answer them, firstly I will present an existing international legislation for the protection of cultural heritage and discuss its ineffectiveness. Next, I will discuss the Turkish-Kurdish conflict over the last decades, and its climax in the form of the "Olive Branch" Operation. At the end, I will propose a possible scenario of Turkey's criminal responsibility, as well as pessimistic conclusions, especially from the point of view of international criminal law.

Sins of the Father: Cultural Heritage, Non-Identity, and the Starting Gate of Fairness

Michael Robillard

Since the advent of warfare, military leaders have keenly understood the importance that heritage, cultural memory, and modes of cultural transmission have played in sustaining the health of one's own political project and in breaking the political project of one's adversaries. From the Christian desecration of Pagan temples, to early English colonists destruction of the language of the Wampanaug, to recent destruction of Buddhist holy sites at the hands of ISIS, domination over the record of the past along with the artifacts and practices that preserve such records has ranked amongst one of the most important military 'centers of gravity' in conquering another political group, people, or culture. 'Winners write history', so the saying goes, and a forgetful occupied populace make for poor insurgents. Hence, as a conquered group's cultural practices and artifacts become assimilated and subsumed by the cultural practices and heritage of the dominant culture, generational descendants of the assimilated group, after a certain time period, find themselves in a somewhat similar metaphysical position as persons in wrongful life lawsuits. In other words, had the presumed unfair event (unjust invasion, reckless pregnancy) not occurred, then the presently-existing individual or group downstream from that event would not exist at all. Hence, relative to the counterfactual case of not existing at all, it seems that descendants of conquered groups or those downstream from some historically tragic event (Slavery, Holocaust), like those born with birth defects from reckless pregnancies, cannot say they have been harmed in a comparative sense (Smolansky, 2012). Though it nonetheless seems that both parties have been uniquely wronged in some noncomparative sense worth accounting for. Consideration of this *ex ante* version of Parfit's non-identity problem nonetheless generates significant complications for our moral appraisal of presently existing heritage sites, artifacts, and practices specifically as well as problematizes standard Pogge-esque reparative justice arguments more generally. Ought we see presently existing heritage sites, artifacts, and practices of the dominant culture as reminders of karmic injustices warranting repair? Or ought we see them as emblematic of metaphysical baptism



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moments where the 'sins of the father', so to speak, are metaphysically washed away from the collective political project and the starting gate of fairness resets? Lastly, how long must a dominant political project metaphysically exist through time before battles and tragedies between past groups ought to be forgotten or morally discounted completely? This paper will explore some of these major conceptual tensions.

What's the use? Reconstructing cultural property after war

Elizabeth Scarbrough

In this paper, I ask whether and how we should reconstruct cultural material destroyed (or partially destroyed) by war. I will focus my attention on immovable cultural property, e.g., architectural ruins, monuments, and public sculptures. In trying to answer the question of whether to reconstruct immovable cultural property, I will focus on its use-value: What will the site (and structures on the site) be used for? I will argue that ruins have a use-value distinct from memorials and monuments. While their use-value is primarily aesthetic, it is nonetheless important. I will discuss two particular cases where communities had to decide whether to reconstruct, repurpose, or allow immovable cultural heritage to rest in peace, i.e., ruinate. The first case is the A1 kalan at the Mỹ Sơn archaeological sanctuary damaged during the American/Viêt Nam war. The second case is the destruction of the Twin Towers on 9/11. In both cases, decisions had to be made as to what to do with the rubble and surrounding landscape after acts of war.



For Mỹ Sơn, communities decided to preserve the ruins of the tower at A1, while the Twin Towers were turned into a memorial. Despite the different outcome, the use-value of ruins, memorials, and monuments were appropriately weighed in both cases.

Mỹ Sơn Archaeological Sanctuary is the foremost Champa archaeological site and largest archaeological site in Việt Nam. A religious sanctuary protected in a deep valley surrounded by high mountain ranges, the Champa ruins consist primarily of brick temple towers called kalans, built successively from the late 4th/5th centuries until the 13th/14th centuries. Here you can see a drawing by Parmentier of A1, the largest and most majestic kalan in the archaeological complex.

In August of 1969, a bomb dropped by an American B52 bomber struck Mỹ Sơn, reducing this largest temple to rubble. A1 has been left to ruinate. We cannot be sure what existed before the bombing (the records are unreliable, and we know the site had been heavily pillaged). However, we know that what existed after the bombing was a pile of rubble, a crater, and the ceremonial pedestal. There are no placards contextualizing the site currently – no reading material discussing the bombing, although the bomb craters are obvious. The only contextualizing you will find is by local tour guides.

“The National September 11 Memorial & Museum” in New York City memorializes the September 11th attacks, which killed 2,977 people. After a temporary memorial, an open call for proposals was announce to determine the appropriate memorial structure for the site. Martin Filler, the architecture critic for the *New York Review of Books* called it “the most powerful example of



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commemorative design since Maya Lin's Vietnam War Memorial . . . a sobering, disturbing, heartbreaking, and overwhelming masterpiece."

The winning design consists of an outdoor area composed of twin reflecting pools, which mirror the shape and size of the original footprints of the buildings, and an indoor museum. Inside the museum there are several artifacts from the WTC on display. There is the existing slurry wall, the exterior column referred to as "impact steel", and two tridents. These two 80-foot-tall steel columns were once part of the North Tower. World Trade Center architect, Minoru Yamasaki, calls these tridents the "trees."

The design of the outside memorial, incorporates the original footprints of the two felled towers, encased in bronze which are inscribed with the names of the fallen. These recessed pools have been referred to as "memorial voids" by the architects. The bronze is offset by rows of deciduous trees. The architects wanted the footprints to "reflect absence" while exemplifying rebirth of the site through the copse of trees.

These are two successful examples of where communities thought about how to use the fragments and debris of acts of war. The two sites both play with ideas of absence and presence. In both cases there are literal impressions left in the ground Mỹ Sơn left the bomb crater visible while the WTC Memorial outlined the footprint of the building for their "memorial voids." The presence exists in both sites use of remnants, fragments or remains: the pedestal of A1 is still on display in its original location while the remains of the Twin Towers, with the exception of the slurry wall, are on display albeit physically dislocated from their original location.

A1's use-value is of that of a ruin, while the WTC Memorial is (obviously) a memorial. I want to briefly define the use value of three overlapping concepts: monuments, memorials, and ruins – with a particular focus on the differences between memorials and ruins. For this abstract, I will skip over monuments and focus on memorials and ruins.

Sites are important because, among other reasons, they help us feel causally connected to the lives lost there. We care about the real site because it puts us in touch with the past - when we touch 'the real thing' we are part of a temporal causal chain that includes those who created the object, or those who lived or perished on the site. Korsmeyer, in her new book *Things: In Touch With The Past*, calls this "The Transitivity of Touch." Sites and authentic relics have this transitivity.

Public memorials allow for both private and public grief. While their aesthetic qualities may further this goal, their primary goal is not aesthetic. For example, Riegl states, "Memorials designed to impress the viewer often dominate their environs." Dominating the environs – while perhaps an aesthetic quality – is in service of documenting the enormity of the loss. This seems true of the 9/11 memorial. How do you dominate your environs when your environs are lower Manhattan, situated among large skyscrapers? By making large pools that focus your gaze down instead of up.

The sense of time is different in memorials from monuments. As discussed earlier, monuments want us to remember some value or act – bringing it into the present with us. Memorials are more retrospective.

While memorials try to keep a particular moment in time in our minds, ruins evoke ephemerality. Elsewhere I have referred to this as the tripartite nature of ruins – the fact that ruins ask us to reimagine the past, engage with what's on the ground in the present, and project ourselves into the future. In this aspect, ruins stand apart from monuments and memorials. Ruins have a contemplative and aesthetic function distinct from memorials and monuments. Monuments and memorials ask us to remember the past, ruins ask more of us: to imagine those who came before,



to engage in the present, and to project into the future. They are *memento mori*, ephemerality writ large.

I've been arguing that memorials primary function is to evoke a shared mournful experience. Their aesthetic qualities are in service of this primary function. Ruins, as objects in the process of decay, are objects in transition. They do not serve as memorials (or not as well) because they are not static. If ruins are in the process of decay, every time we visit them we will encounter different aesthetic properties. This transience is particularly good at evoking the sort of ruminations I have described (ephemerality, *memento mori*), but transience is not what most memorials are after.

While both sites contain some original materials, there are important differences. In the case of My Son, we have both the original site and materials. WTC we have the original site and materials preserved. The memorial does not preserve the objects, such as the trident, as *ruins* but rather as a fragment of a once grander whole. These fragments are not left to ruin but rather are treated like relics. Importantly these fragments are not ruins in part because they are not in the process of decay but also because they have been dislocated from their original location.

Ruins have a primary aesthetic function, allowing for ruin gazing. Whereas the aesthetic considerations of memorials are in service of the primary function – to mourn. When communities are faced with the debris of war they should consider what the use value of the debris should be going forward. This will guide them in the decision to preserve, conserve, or allow materials to ruin.

An Investment of Ghosts

Edward Winters

Human affairs are not reducible to descriptions of sub-atomic collisions or the fanciness of remote causation – causality at a distance. Rather, my desire, dread, or disgust is most keenly felt in the presence of another human being seen as another centre of consciousness and not as a bundle of molecules.

This is not to deny the stretches of scientific research that unfold truths about the world as it exists in and of itself. It is to affirm only that human affairs remain connected to the world of experience and that in the human world, our understanding is constrained by appearances that are impenetrable by science, its methods, machinations and intrigues.

Emotions, being experiential, urge us on. Desire, dread and disgust flood in upon us. Nothing in science is urgent; in human affairs: all is. Being experiential, emotions colour the world at which we look. There is a phenomenology attendant upon our emotions – a subjective aspect that enshrines our emotional attachment to the bits of the world we identify as home. Our culture is a repository of artefacts that comprise our identity and bind us one to another. In imagination, we project our inner states onto the external world; and in art, we shape the external world in ways that accommodate such projection. Art objects call upon the *sensus communis* for such agreement in experience. When I see another as a centre of consciousness, I project onto him an interiority that has no place in any scientific description of human beings. In seeing him as a fellow, I see him as emotionally motivated and as belonging (or not – as the case may be) to a community within which I have constructed my home.



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Religion and art are the secretions of our struggle to make sense of this subjective aspect of the communal life. 'People of the book,' Jews, Christians and Muslims have common cause, whatever our differences, in conceiving ourselves as monotheistic, ensouled individuals. We take our instructions from, and we shall be judged by, an eternal God. But what are the things that God has to say to us?

Immanence is vitally important. For one thing, it has been thought that we can be in contact with the world beyond through the artifice of depiction. Much blood has been shed over depictions thought sacred by some, profane by others. Religious wars have been waged. The bible warns us,

Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: thou shalt not bow down thyself to them: for I the LORD thy God am a jealous God... (Exodus 20: 4 – 5)

And later,

Ye shall utterly destroy all the places, wherein the nations which ye shall possess served their gods, upon the high mountains, and upon the hills, and under every green tree: and ye shall overthrow their altars, and break their pillars, and burn their groves with fire; and ye shall hew down the graven images of their gods, and destroy the names of them out of that place. (Deuteronomy, 12: 2 – 3)

Such a view of idolatry presumes an enormous power with which the image is invested; perhaps only a shadow of which survives in the modern portrait. Nevertheless, the portrait, possibly more than any other extant form of depiction, has a pervasive magical air.

Icons in Christianity work by (supposedly) bringing in front of us the depicted saint, religious scene or event. We are not only to think of such portraits, scenes or events as pictures, in the ordinary secular sense, but as the immanence of those saints, scenes or events. We are, in some sense, *in contact* with the saint, the scene or the event. Hence, we find that holy shrines are to be found at places where apparitions of Our Lady are given credit as miracles by the See of Rome. What was experienced in these apparitions was not a representation of the Mother of God, but the Holy Virgin *herself*. Otherwise there is no miracle at which to wonder; nothing for our holy fathers to interpret for us. Nothing for our soldiers to defend – other than property.

History has come to an end; or so we are told by historian, Francis Fukuyama – his thought echoing that of philosopher, Georg Hegel, that philosophy had come to an end. We, in the west, have arrived at the end of history; and now, all we must do is wait for the world to catch up. When the rest of the world has caught up, we shall all live happily in a neo-liberal utopia. It is then the gods will desert us; for there will be nothing left for them to oversee or to judge. Oversight and judgement will have been brought down to earth.

Neo-liberalism prides itself on its tolerance and inclusion of others. However, it is hard to think what glue binds *its* members into a coherent people. If religion and art served to bind its congregation into an inter-subjective community, a *sensus communis*, its transparency serves to accentuate the opacity of those arts and religions it accommodates. However tolerant and



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inclusive it may be, it nevertheless forbids harm to be done to others in the name of religion or the art that sustains religion.

What neo-liberalism begets, therefore, is a neutered version of the community values it pretends to tolerate, defend and sustain. It divests these cultures of the realism they require; and, thereby, of the consolation these cultures seek in their religious and artistic practices. Neo-liberalism, in its patronage, regards the various religious practices it protects, not as acts of faith, but in reality as acts of bad faith. Religion, according to the superior secular perspective, is really *mauvais foi*.

Religious practices and their products become objects of curiosity in the cultural museum that tourists attend in order to pass their time. Neo-liberals consume the culture of others by wondering at the skills and beliefs that are anathema to their transparent culture of acquisition. Cars, watches, designer clothes, brooches, technological devices, and constant twitter feeds cannot supplant the place that rituals secure through art and religion in the cultures that neo-liberalism has devoured.

The values that an African mask has in a Yoruba ritual is transformed once it is exhibited in the museum. The magic it once held has evaporated. The tribal war dance of the native American is emasculated once it is displayed on stage to a group of European tourists. It is no longer part of the encouragement it was once for the warrior, providing him with courage before the battle. Its authenticity is denied. His performance is pathetic; even despicable.

Then what value remains that could require the protection of the agencies of neo-liberalism?

The answer to that pressing question is that the value survives only if the practices of the religion and the art involved in that religion are extant. And that is the case only if history has not come to an end and that people remain engaged with deeper questions than can be framed from within the purview of neo-liberalism.

Science and its attendant atheism are ill-equipped to accommodate the very practices of which the museums presume to educate us. Deprived of their souls, the objects of cultural heritage are merely remains.

To re-invest the practices that we value *in and of themselves*, we should not regard works of art as pieces of property, but rather as the fruit of communities' self-regard. It is our respect for a people's faith in their elders and their settled beliefs in the possibilities of a sacred realm, that we should support their practices. This might mean establishing education and training by present practitioners for future practitioners to be able to make art objects that thrive within the historical context of their heritage.

It is worth noting here that many of the arts do not require physical instantiation. Music, theatre, literature (including poetry) do not require for their defence the risk of human life. If the community survives, so too will their traditions of cooking, dressing, writing and music. If the *knowledge* of how to build, paint and sculpt survives, there is no reason to think that a soldier should risk his or her life in the defence of any existing building, painting or sculpture, no matter how beautiful. No artwork is worth that much; unless of course you put a monetary value upon human life, and the monetary value of the proposed piece of heritage is greater.



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