**Weaponizing Culture: A Limited Defense of the Destruction of Cultural Heritage in War**[[1]](#footnote-2)

*Duncan MacIntosh*

I. INTRODUCTION

It is widely thought that the theft of, trade in, and intentional destruction of art and cultural artifacts in time of war are inherently immoral, and that it is right that these actions be treated as war crimes, which, indeed, they currently are.[[2]](#footnote-3) As Mark Bernabei and Giulia Drumbl also argue in this volume, however, oppressive cultures have their heritage and cultural artifacts too, in the form of monuments, sites of worship, and so on; and for the oppressed, these things may be awful reminders of their subordination, and may even perpetuate it.[[3]](#footnote-4) In the U.S., Confederate monuments would be examples.[[4]](#footnote-5) In Canada, statues of the founding Prime Minister of Canada, Sir John A. MacDonald, have come to have this status, because of his role in oppressing and suppressing rebellions of the indigenous peoples of Canada who existed there before colonial conquest.[[5]](#footnote-6) I shall suggest that, since cultural objects can be both tools and symbols of unjust oppression, their theft and destruction ought to be seen as appropriate when this would be a means of overcoming oppression. Whatever current law may say, in these instances, it would be morally inappropriate to count such acts as war crimes.

I shall also make an additional point, one in reaction to what is currently permitted as means of war fighting. At present, it is legal to fight wars by such methods as one soldier killing another (under the principle of combatant immunity), and even by military maneuvers that result in death to civilians (as collateral damage), provided that such death is either unforeseen, or if foreseen, unintended and justifiable by principles of necessity and proportionality. These things are legal even though the theft and destruction of cultural property are not. I find this bizarre given that killing seems worse than property destruction and theft. I therefore further argue that, where possible, it would be better for conflicts to be fought using threats and acts of cultural property destruction rather than by the killing of soldiers and by other actions that may be expected to involve collateral killing of innocent civilians. The same goes for the theft of artifacts when used systematically as part of a war effort, such as to finance operations.[[6]](#footnote-7)

In the course of defending these proposals, I shall respond to the standard objections to using theft and destruction of cultural property as a method of warfare, including objections premised in the assumed transcultural, timeless value of these objects and in the conceptual assimilation of their theft or destruction to an obviously objectionable kind of genocide.

II. THE STANDARD ARGUMENTS AGAINST CULTURAL HERITAGE DESTRUCTION OR THEFT

Looting and illicit trade in cultural artifacts from conflict zones is objected to on various grounds: it incentivizes theft from and desecration of archeologically significant sites; it results in undocumented removal of artifacts from their historical sites, making their scientific investigation more difficult[[7]](#footnote-8); it deprives nations and peoples of their cultural heritage[[8]](#footnote-9); and it allows terrorists to finance their operations by sale of artifacts on the black market.[[9]](#footnote-10)

The intentional destruction of cultural artifacts in war is also generally disapproved of.[[10]](#footnote-11) In the case of occupying armies, such actions are condemned on grounds of being militarily gratuitous, or worse, self-defeating, interfering with winning hearts and minds. The unintended but foreseen destruction of such artifacts by army action is objected to on similar grounds—better to take extreme care against military clumsiness in respecting the objects around which cultures are organized.[[11]](#footnote-12) When destruction is engaged in by terrorists with political motivation, it is condemned for obliterating cultures in a way that is comparable to the genocide of a people. Destruction of cultural property is also objectionable for being destructive of the archeological record and therefore of the scientific value of these things, and for being aesthetically injurious. The theft and destruction of cultural artifacts comprise, therefore, unjustifiable harms to people, to cultures, and to scientific and aesthetic value. And so they are actions worth the risk of loss of life to prevent, meriting the status of war crimes.

There are some extant arguments for exceptions to these views: on some rare occasions the destruction of cultural artifacts may be regrettably necessary to some valuable military or humanitarian end, or their preservation may be too costly in lives and materiel. There are also exceptions to be made when trade in artifacts encourages the discovery and protection of items that would otherwise be forgotten or damaged in war, or will result in repatriating items to their originating people or nations as part of the unwinding of colonialism, or will bring about the restoration of stolen property after war. Trading in cultural objects by museums is also sometimes defended, since the presentation of these items by museums creates a majestic exhibition of human creativity through history and allows a wider audience to appreciate their beauty and significance—a consideration that may in some cases countermand the argument for repatriation. For instance, James Cuno, President and CEO of the J. Paul Getty Trust, one of world's most powerful art institutions, argues that we should aspire to cultural cosmopolitanism, representing all cultures in various museums rather than repatriating cultural artifacts to their native sites, the latter being a problematic nationalistic idea.[[12]](#footnote-13)

For some sorts of cultural objects, namely, curios, there is simply not much objection to their trade. After all, they are large in number, well-understood archeologically, and not particularly essential to the identity of any extant culture. In this case, why not permit the activity as something that contributes to the economy by providing employment and that allows the indulgence of the tastes of collectors? Further, there are situations where regulating trade would fetishize these artifacts in ways unhealthy for their originating populations. Finally, in some cases the improbable odds of implementing successful regulatory practices make the game not worth the candle.

Despite these considerations, the dominant if not sole attitude is that theft and intentional destruction of cultural property constitute inherently bad actions.

III. WHEN CULTURAL ARTIFACTS ARE OPPRESSIVE AND HEGEMONIC

The foregoing positions both undersell and oversell the meaning of cultural artifacts in certain ways; therefore, we need to reconfigure the debate in starker terms. My main argument is that, like the cultures that create them, some artifacts have oppressive and hegemonic effects (eg when they represent and valorize mass atrocities). When this is the case, they should be fair game for targeted destruction in war by those peoples whom they oppress.

Art and cultural objects are infrastructures and transmitters of cultures. Cultures, in turn, are partly comprised of rules for the distribution of goods and for the assigning of entitlements. This is why cultures matter, morally and politically, and it is also one of the reasons their artifacts matter. Cultures which disentitle some of their people are understandable targets for the discontented. The destruction of oppressive cultural infrastructure, along with direct hostilities against ordinary members and agents of oppressing cultures, provide methods of combat and redress for the disentitled when the methods approved of within civilization have failed. To these people, typically members of minority cultures, the memes, art and artifacts of the cultures that oppress them are weapons against them. And the destruction of these things is a counter-weapon. Indeed, for people without much power in civilization, this is often their only counter-weapon.

War is often due to a clash of cultures over who is entitled to what. Since each culture’s artifacts can constitute symbols of contested and often oppressive negative value to the other, far from being an evil or something rightfully classed as a crime, sometimes the theft or destruction of cultural artifacts is morally appropriate.

Consider Nazi architecture, art, costumes, and literature. There is a strong case that the combatting of Nazism required the destruction of its cultural artifacts, and that their preservation would have been the continuation of Jewish oppression. There is more than just hate speech; there are also such things as hate architecture and monuments. Thus, there could have been no well-founded objection had Jewish resistance fighters blown up Nazi statuary and edifices in World War II. Moreover, had there then been a market for Nazi memorabilia, there would have been a case for theft of and trade in its artifacts as a means of financing the resistance to the Nazi agenda. The opposite, however, would be true of Nazi destruction of Jewish cultural objects to advance the Nazi agenda, and of theft of Jewish memorabilia by Nazis to finance that agenda—both would be wrong sorts of actions.

Confederate monuments in the U.S. are further examples of cultural artifacts that would be understandable targets in overcoming oppression. As the American Historical Association says[[13]](#footnote-14):

The bulk of the [building of Confederate monuments] took place not in the immediate aftermath of the Civil War but from the close of the 19th century into the second decade of the 20th. Commemorating not just the Confederacy but also the “Redemption” of the South after Reconstruction, this enterprise was part and parcel of the initiation of legally mandated segregation and widespread disenfranchisement across the South. Memorials to the Confederacy were intended, in part, to obscure the terrorism required to overthrow Reconstruction, and to intimidate African Americans politically and isolate them from the mainstream of public life. A reprise of commemoration during the mid-20th century coincided with the Civil Rights Movement and included a wave of renaming and the popularization of the Confederate flag as a political symbol. Events in Charlottesville and elsewhere indicate that these symbols of white supremacy are still being invoked for similar purposes.[[14]](#footnote-15)

A related, plausibly just pretext for theft of and trade in cultural artifacts would be this. Suppose some artifacts were constructed on the backs of oppressed peoples. An example would be where one race has profited from the enslavement of another, as in the U.S. Another example would be where one religion has dominated another, securing for its members greater rights, freedoms and wealth at the expense of practitioners of other religions, something exemplified in the different balances between, for example, Sunni and Shia Muslims in different countries in the Middle East.[[15]](#footnote-16) Yet further, perhaps more contestable examples, would be in the relations between the Christian West and the Muslim Middle East, especially as expressed in conflicts over control of resources in the Middle East, and as continuing conflicts dating back to The Crusades. Also suppose it is the rebellion by the enslaved or dominated peoples that is the occasion of war. Then these people seizing the artifacts of the oppressor culture (religious artifacts, venerated cultural objects) and selling them to finance their war of liberation is arguably morally defensible. Such motivation is claimed by some of those looting and selling cultural artifacts in Syria, for example.[[16]](#footnote-17)

In the Nazi art and the Confederate monuments cases, it seemed defensible to destroy cultural products for their in effect legitimizing the unfair treatment of a group of people. A rather different scenario that makes it problematic to universally condemn the politically motivated, strategically targeted destruction of cultural artifacts is when a given culture’s artifacts compete for space with possibly morally superior artifacts, as in occupying contested ground in competing myths of the primal right of the peoples who created these artifacts to the land on which they have been constructed. If one culture has better title to this ground than the other, arguably they have a right to destroy the intruder’s artifact and replace it with one of their own. There may well be examples in the Israel-Palestine conflict. Suppose Jewish settlers build a synagogue on land whose ownership is contested by followers of Islam. One can imagine the impulse to destroy the synagogue and replace it with a mosque as being part of the contesting of these claims. (I take no side here on that conflict.)

Sometimes an item may have both the status of being a cultural artifact and of being something materially part of oppression. For example, arguably the Twin Towers, while icons of architectural achievement in the West, were also the site of financial transactions by businesses in the petrochemicals industry, some of which have extensive interests in Middle Eastern oil, and the defence industries, some of which profit from sales to U.S. supported regimes in the Middle East. And some Muslim factions in the Middle East see U.S. actions there as illegitimate, as in effect kleptocratic, and has having the result of oppressing Muslim people—taking their rightful oil wealth and coercively determining their destinies. Under that description it could seem that the destruction of the Twin Towers was a just assault on an unjust culture by means of assault on one of its central cultural artifacts.[[17]](#footnote-18)

The justice of the attack in this case is of course contestable. Nevertheless, the general point remains that it is doubtful whether we can decide that the destruction of a given piece of cultural property by an agent of one side in a conflict is bad without first deciding which side in the conflict is just. Sometimes it will be morally permissible for oppressed peoples and their allies to destroy some artifacts, as in the Nazi case. But sometimes preservation of cultural artifacts will be morally appropriate, as in saving indigenous art from erasure by the cultures that have sought to conquer indigenous peoples. (There is much more to say, case by case, about who has rights and duties to do what here, how much human risk and materiel the parties involved should undertake, what the rights and duties of bystanders would be, and so on.[[18]](#footnote-19)) More generally, the question of the status of the destruction of artifacts should depend on whether the effects of their existence are morally good or bad. This could, in some cases, require the preservation of an artifact of an unjust and oppressive culture—for instance if its preservation would have good effects by virtue of being a cautionary example. The preservation of Nazi death camps could be such a case—more below.

Given that cultural artifacts can be oppressive and hegemonic, the dominant attitude that theft and intentional destruction of cultural property constitute inherently bad actions appears to be flawed. The truth is more complex. Sometimes theft and trade of one culture’s items should be encouraged as a way of helping another culture overcome unjust oppression, or as a way of safeguarding items of a just culture that would otherwise be lost; sometimes theft and trade should be forbidden for being an aid to an oppressing culture. Sometimes we would be right to protect certain artifacts, those under attack from oppressive cultures. Sometimes we do evil if we would protect certain artifacts, oppressive artifacts that would be well destroyed.

There will be cases, however, where even some oppressive cultural objects should be preserved for their historical or aesthetic value, provided they can be prevented from having their toxic effects. One way this might be achieved is by removing the objects from the situation where they are oppressive and re-contextualizing them with the benefit of critical analysis and historical and political perspective in museums. There, the artifacts can be surrounded in symbols that reveal them as morally problematic. If the objects are to remain *in situ*, however, a similar effect might be achieved by affixing of plaques, or by the artifacts being broadly condemned. Ensconcing these objects in museums, giving them context with plaques, and condemning them in public discourse, are a bit like isolating a computer virus: we prevent something from having its designed effect—in the case of cultural artifacts we prevent them from transmitting hate, or from perpetuating in-group out-group distinctions. Thus just because an artifact has a tainting past or a problematic political consequence now, does not mean it must permanently have it. Just as there can be negotiations between cultures to attain a moral rapprochement in morally asymmetrical conflict, cultural artifacts can be re-contextualized so their transcultural value comes to be the most salient fact about them. And this may make their preservation permissible. In some cases, their preservation may be a good thing not for their aesthetic value, or for their being part of the historical record, but because it is *morally* required that we keep these things around as warnings and reminders. (Think of the UNESCO resolution mandating preservation of Nazi concentration camps from World War II.[[19]](#footnote-20)) While the continued existence, or at least omnipresence, of some of these things might seem tantamount to hate-speech, there would be some of the usual arguments from defenses of free speech for preserving them: we need to know these ideas are out there in order to continually evaluate them and continually refute them for those who encounter them for the first time.[[20]](#footnote-21)

Creating safe contexts for these objects will often be controversial. This is due again to (and further proof of) art and cultural artifacts having the power of weapons, so that their destruction or preservation, their theft or safeguarding, can be powerful means of war. Suppose a given artifact valorizes one of the sides in a conflict. Then people who take different sides on the substantive matter of the conflict will likely now reprise that conflict in disagreements about what to do with the artifact. Think of the controversies over whether or how to preserve commemorative statues of people who were both founders of cities and oppressors of black or indigenous peoples in the US and Canada. Should these statues remain where they are, or does respect for the oppressed require that they be destroyed or put in museums? If a plaque is to be affixed, giving the proper history of the statue and the person it represents, which side gets to write the plaque?

IV. THEFT AND DESTRUCTION OF CULTURAL ARTIFACTS AS A BETTER MEANS OF WARFARE THAN KILLING

I suggest, further, that the threat of theft and destruction of cultural artifacts can be a more humane means of leveraging towards victory in war than threats to debase, damage or destroy human life. Therefore, such theft and destruction ought not necessarily to be conceived as war crimes. Instead these actions should be seen as a more ideal, more humane form of warfare than that form which involves taking the lives of soldiers. Indeed, it would be a happy fantasy to imagine a war fought only by violence against things, not people. True, some killing is likely inevitable. For wars are only over when people stop fighting, and some people will stop fighting only when they are dead. A sociological factor to consider in deciding whether one’s side in a given conflict can be advanced by attacking cultural property instead of people would be whether this will really advance the war effort, or only make one’s opponent fight harder. Still, it would seem to be ideal to displace the locus of destruction onto inanimate things so far as possible.

We designate classes of actions war crimes when they are so evil that we especially want to disincentives them. Well, do we really want to disincentivize combat by means of theft of, trade in, or destruction of cultural artifacts? Do we want to disincentivize it compared to, say, killing? Surely we would rather have wars be conducted by theft and destruction of cultural artifacts.

In what follows I will discuss seven different objections to this proposal, seven arguments for why the theft and destruction of cultural artifacts should be a war crime when ordinary killing premised on combatant immunity or military proportionality of harm is not: a) They are worse crimes. b) They are not worse crimes but there is less good justification for engaging in them, and greater risk of them being engaged in for non-political reasons, so engaging in them should be more punished. c) The people who typically engage in them do not have the same sort of authorization to do these things as people who engage in killings, perhaps because they tend to be non-state actors who therefore do not have the authorization of a state for what they do. d) The crimes are ones more able to be deterred by being counted as war crimes than would be the deterring of, say, killing. For example, killing might be thought of as passion-motivated and therefore not deterrable by having war-crime status, while theft is more coldly engaged in and therefore deterrable. e) The crimes are, by virtue of their nature, redressable by being considered war crimes in a way that killing is not—property stolen can be restored to its owner, while a life taken is permanently lost. f) They are crimes which cannot be addressed in any other way than by seeing them as war crimes while killing is not like this. g) They are crimes for which, as a matter of *real politick*, greater agreement about doing something about them is possible, perhaps because, in many conflicts, all sides benefit from the preservation of cultural artifacts no matter who prevails.

I shall moot these objections in no particular order in the following general discussion. I begin with two items that can be quickly disposed of. About d), that killing is motivated by passion and therefore not deterrable, while stealing and trading are done coldly and therefore are deterrable, I would point out that some killing in war is perfectly cold and calculated and to that degree deterrable; and some theft and trade of objects is motivated by passion. About e), that property can be restored to its owner but killings cannot be undone, therefore the former should be a war crime, the latter not, I suggest that killings can be compensated for, whether by just retribution—a life for a life, for example—or by the murderer owing a conciliatory payment to the bereaved. So killing can be treated as a redressable crime.

Now on to matters needing more discussion. First, are theft and destruction of cultural property greater crimes than killing? Arguably not. Things should matter less than lives, so if anything should be a war crime, it should be the taking of life, not the destruction or theft of property. Things can in some sense have greater value than lives. The insured value of a building might be twenty million dollars, the insured value of a life one million. But it does not necessarily follow that someone who destroys a building has done something twenty times worse than someone who takes a life. In any case, it would be consistent with the proposal to make theft a war crime that someone who steals or destroys something worth, say, fifty thousand dollars, something with much less insured value than a single human life, should be considered guilty of a war crime, while someone who takes a single human life would not be so considered; and this seems absurd enough.

There is a connection between this issue and the question whether destruction of cultural property ought to have comparable standing as a war crime to such other war crimes as rape. Even if both are bad, arguably the latter is worse. And if prosecutorial resources are limited, they should go to penalizing violations of persons, not destruction of artifacts. This issue was raised vividly when, in 2016, the International Criminal Court (ICC) convicted Ahmad Al Faqi Al Mahdi of intentionally directing attacks against religious and historic buildings in Timbuktu, Mali during the 2012 occupation by Ansar Dine and Al-Qaeda in the Islamic Maghreb. There ensued controversy over why crimes against artifacts were prioritized for prosecution over other crimes. For this was “the first case at the ICC arising from the 2012 Mali conflict … And it was the first time that the ICC had brought a war crimes charge against a defendant for the destruction of cultural sites.”[[21]](#footnote-22)

In their two commentaries on this issue,[[22]](#footnote-23) Brian Daniels and Helen Walasek, respectively, argue that while it may seem problematic to have the destruction of cultural property prosecuted as a war crime while things like rape go unprosecuted, the destruction of cultural property should not be minimized, since it amounts to erasing the identities of peoples and should therefore be seen as analogous to the crime of genocide, which everyone agrees is an atrocity in all meanings of the term. As explained by Martin Hamilton in this volume, the drafters of the Genocide Convention planned to include the concept of cultural genocide in the Convention, but the concept was taken out just before the last draft.[[23]](#footnote-24) Still, this supports the idea that even if we are right to insist that respect for persons should be primary in war time, arguably part of respecting persons would be respecting the cultural edifices into which persons have poured their labor and money, edifices they have invested with symbolic value, and which support the social infrastructure within which they live their lives.

Among the many reasons there are for protecting such things, one is because sometimes surviving cultural property is the only means by which dispossessed peoples can reconnect to the aspects of their culture they need in order to overcome the trauma of cultural assault. The indigenous peoples of Canada, for example, have experienced generations of direct and vicarious trauma. They retain enough cultural memory to feel that it is natural for them to exist in ways not approved of by the conquering culture, but many of these people do not retain enough memory to feel strong and worthy in their differences from that culture. The only way they can rehabilitate is by accessing their languages, traditions, and art works, the very things their oppressors tried to obliterate. Once indigenous peoples have access to these items, they can see that their struggles are not their fault, but owe to them having valid impulses not honored by the conquering culture; their self-esteem can be restored by them seeing how they are descendants of a culture worthy in its own right, especially if it can be revived enough that the impulses towards living in certain ways these people feel can find a context in which to be expressed and by which to be affirmed.[[24]](#footnote-25)

Nevertheless, I would argue that a person’s body and freedom should be protected over their material creations; for people can reorient their commitments to cultural objects in ways they cannot to their physical welfare and freedom. It would still seem true, therefore, that killing and rape should be prevented/prosecuted first, then the destruction and theft of cultural objects. So the former should have higher status as a war-crime under international criminal law compared the latter.

It might be argued that a person’s body and freedom should have priority only unless they would wish otherwise. I would reply that their wishing otherwise is only an argument if the person is in a position to competently wish otherwise, something made doubtful by their very preference for the preservation of a thing over preservation of themselves.

Of course there is much more to say about all of this. I shall now discuss it further in the context of a proposal to reimagine warfare as ideally fought not by the debasement and destruction of people, but by the theft and destruction of things.

V. OBJECTIONS TO WARFARE BY MEANS OF THEFT AND DESTRUCTION OF CULTURAL ARTIFACTS

Many will object in principle to this means of warfare.[[25]](#footnote-26) They will see it as approving of conduct that is and ought to be conceived as war crime. But why should the destruction of cultural artifacts be a war crime? Because it is an atrocity? Frederik Rosén has offered a victimology of cultural object destruction according to which the destruction inflicts harms beyond material damage, harms based in people’s emotional relations to objects, their value attitudes.[[26]](#footnote-27) This is of course right. But the destruction does not seem to rise to the level of atrocity exemplified in the mass slaughter of actual people. Calling cultural object destruction an atrocity seems too strong a claim when compared to such a paradigm. So when people say theft and destruction of artifacts ought to be a war crime, they do not mean that committing these acts would be atrocious. They just mean that such acts are not things for which you should be legally immunized from prosecution just because there was a war on.

But why not? After all, many of the people who do these things are arguably just soldiers doing what they are told.

And why should even the masterminds be punished? After all, if artifacts have value, then their destruction is a kind of harm to the enemy in war; and why should it not be a permitted harm?

Maybe the argument is that it is gratuitous in war, that it is not justified by military necessity. But arguably anything that people would rather have us not do can be made into a weapon, a thing the doing of which and the threatened further doing of which might bring about the end of the war by inducing surrender. It can also be made into the kind of thing people would dread about war generally, something that might therefore dissuade people from war. That means the following argument should not necessarily be available: that I should get to sue for the return of my grandmother’s art collection because its theft was gratuitous in the fighting of the war. For under the current proposal, it may not have been gratuitous. Theft can be a weapon of war. And how odd if after the war I can sue for the return of an art work, and prosecute its thief, but cannot bring a charge of murder against a soldier for killing someone dear to me (my soldier son, for example, or someone killed as part of collateral damage in an action justified as militarily necessary).

It is true that committing serious *gratuitous* harms in war ought to be a crime; and this would be an objection to permitting random looting or random destruction of art and cultural artifacts. But it would not always be an objection to targeted, strategic looting or destruction. For committing harms by stealing cultural property or by destroying cultural artifacts is not necessarily gratuitous. Not if, for example, it is necessary to advancing a just cause in a just war. To give a less problematic example of such a pretext, everyone allows that sometimes artifacts must be used as bastions from which to fight; and that sometimes these bastions must be destroyed in the course of justified fighting.

We sometimes see the destruction of artifacts as even more shocking than the destruction of persons. Indeed, the destruction of cultural artifacts has been described as a method of 4th generation warfare intended to shock and demoralize.[[27]](#footnote-28) Why such destruction has this effect is not clear. Perhaps we think of artifacts as innocent things, like children, so that their destruction is especially heinous. And yet artifacts have no sentience, so this analogy is not strictly accurate—the artifacts do not suffer in the course of being destroyed, and they do not care whether they are destroyed.

Another possibility is that their destruction has the symbolic value of representing the destruction of the civilization and people that produced them.[[28]](#footnote-29) Since the destruction of artifacts is not inherently the destruction of people, however, nor of the totality of their culture, our reaction of outrage may be strictly out of proportion. This means that not only is this symbolic value not a good objection to such destruction; it actually provides an additional argument in favor of using artifact destruction as a method of warfare. For we can see such destruction as warfare by what I have elsewhere called moral pseudo-injury,[[29]](#footnote-30) that is, by an action that seems to be an injury only to those who believe something demonstrably false, or not demonstrably true, something characteristic, for example, of all religions. Destruction of something wrongly perceived to be important given false or indemonstrably true beliefs, for example, destruction of a religious artifact, is not really a harm, since the thing that would have to exist—a god—in order for it to be a harm, does not exist. (In truth, the artifact was not created or beloved by a god, nor bestowed on a people or commanded to be preserved by a god; it does not represent a god that specially deserved representing; destroying it does not disrespect a god.) This may make warfare by moral pseudo-injury morally superior to warfare by actual injury. And warfare by the destruction of cultural products mistakenly invested with meaning may therefore be a morally superior substitute for warfare by the destruction of persons.

Perhaps such injury is really more than just pseudo injury, rising instead to the level of some kind of actual injury—after all, feelings get hurt, and so on. But even if this is true, such injury still does not, from a moral value perspective, seem as bad as physically maiming and killing people.

Demanding the preservation of art works and cultural artifacts in war is like advocating war fighting by the functional equivalent of a neutron bomb, a bomb that, notoriously, harms people with radiation, but minimizes blast, thus saving property. And demanding this before the prosecuting of rape crimes and more thoroughly criminalizing killing in war casts warfare into something with extremely unflattering materialistic motivations. Neutron bomb warfare has been universally condemned, in part for the reasons that it would make warfighting too tempting, and grotesquely cynical and clinical.

But this may give us another possible explanation for why some people seem to favor warfighting by killing over warfighting by theft and destruction of property. The explanation may, strangely, derive from notions of integrity in warfighting: we might think someone could not possibly have a stake in merely killing someone, therefore it must have been done for a higher cause. This is false, however; for one can have a passion for someone’s death on absurd pretexts. Still, someone is more likely to have a personal stake in stealing property—they might derive personal advantage from it. So that method of warfare is prima facie more suspicious.

But what of the destruction of property? It is less obviously something that would typically be done for merely personal gain (unless venting rage counts only as a personal gain, something unlikely in the typical cases, where the rage is more political or religious). At any rate, cannot we distinguish between the thief getting something out of the theft and a nation state or political movement getting something out of it in the course of legitimately conducting war? If so, we might purify this as a method of warfighting by taking steps to ensure that the thieving only advances legitimate political goals, and does not result in illegitimate profit, whether for individuals or states. For example, we might arrange for things stolen in war to be warehoused for some long period (much as we sometimes seal sensitive documents) so that they benefit nobody until enough time has passed that nobody illicitly profits. Would that not safeguard integrity? The distinction between doing something for personal gain—which is the motive of crime—and doing something to advance a political cause, is vital. The former is objectionable in war (crimes of desperation apart), the latter, a prima facie wartime justification for actions that in other contexts would be crimes.

One reason we do not want to damage public property generally in war is that it is needed for people’s lives (think of civilian objects such as houses and critical infrastructure); and if we defeat people by destroying these things, we may wind up indirectly killing more people than necessary. Destroying their things will also cost us more later when we have to help survivors rebuild in the peace-time that follows. But these good issues are not the same issue as the destruction of artifacts that are significant purely aesthetically, historically or scientifically, not functionally.

Maybe then these items should be regarded as like soldiers in armed conflict, namely, as permissible targets during war; and maybe we should regard actions against them as ones afforded the usual combatant immunity—immunity from prosecution after cessation of conflict.[[30]](#footnote-31) But are these not civilian objects, in contrast with, say, military buildings, army trucks, and so on? And is it not inappropriate to target civilian objects, just as it is inappropriate to target civilian persons? As we now think of how wars should be fought, this would be a correct scruple. But I am proposing that those cultural objects that symbolize and promote oppression should be regarded as fair game in war. When it comes to being oppressive, then, the civilian/military distinction seems less the relevant one. I am talking in the first instance about structures of symbolic significance, not critical infrastructure. Although I can imagine a structure being so symbolic and transmitting of oppression, that even if it is also a piece of critical infrastructure for that part of a population that is doing the oppressing, it should be permissible to target it. Maybe it is acceptable to blow up a power station built to look like The Fuhrer, especially if it will be quickly replaced with something more symbolically innocent.

VI. THE OBJECTION FROM CULTURAL GENOCIDE

The greatest objection to systematic theft and destruction of cultural artifacts as a legitimate means of warfare is the idea that to destroy a culture’s artifacts is akin to destroying a people, to genocide. That appears to be the basis for the almost universal abhorrence of the practice. As was mentioned above, this link almost found a legal form in the Genocide Convention.

We can certainly imagine situations in which the destruction of a culture is the destruction of a people, just as we can imagine depriving a person of their right to do all of the things they would ever want to do as equivalent to the destruction of that person. Destruction of a culture is by definition the destruction of a people in the sense that it means no people can be identified as of that culture, losing whatever value and capacity to function in various ways that the identification conferred. Moreover, it can have many of the same effects as the killing of a large number of people, eg the effect of making land available for exploitation—you do not have to kill the people on the land to have this, you just have to deprive them of their cultural sense of entitlement to it, eg by kidnapping their children and indoctrinating them, the next generation of these people, into a different conception of property, or into thinking they are not entitled to be on the land, or do not deserve to live the way they wanted to live on it.[[31]](#footnote-32) (Think again of the indigenous peoples of North America.) Achieving these sorts of effects is among the motives for destroying a culture.

I suspect, however, that in some cases the deployment of the objection that destruction of cultural property is a kind of genocide and so should not be permitted in war, is due to a contestable understanding of the relation between respect for a people and respect for their cultural products.

We may tend to identify a people with its artifacts, making us think that to destroy their physical culture is akin to the destruction of the people, of their souls. But a culture and its objects are only things that structure the lives of a given people at a given time and in a given circumstance. This culture and its objects are not essential to those persons. For persons have a pre-cultural and trans-cultural identity—pre-cultural in that all humans have certain characters and needs dictated by their species membership prior to specific enculturation, trans-cultural in that all cultures share certain features by dint of the roles cultures serve in expressing the former characters and meeting the former needs. And persons can adapt to and create different cultures as their circumstances change. Their adaptations are undertaken with a view to meeting the needs all people have—for food, water, shelter, meaningful relationships, physical safety, and so on—needs that can be satisfied by any number of specific forms of culture. To deny this is to make a kind of fetish out of given cultures, to treat them as more important and valuable than they really are, to make them false ends in themselves.

Moreover, the rights people have to their artifacts and to the culture that produces them are not absolute and are not unconditional. People have a natural right only not to be *unjustly* deprived of these things.

Not all means of their privation is unjust. Think of naturally caused fish migration making the culture of Canadian East Coast fishing villages economically unviable, the culture comprised of boat building, net weaving, the songs and lore of the sea that accompany these things, the expertise in fishing, the community bonds needed to mount fishing enterprises, the architectures that support seaside life, the traditions of property and the handing down of fishing licenses, the deriving of dignity from honest work on the sea. It is sad when these things lose their pretext, but it is not obvious that people have a right to this culture. It is not obvious that they would have a right to be subsidized in it, for example. Arguably instead they should retrain and move on to different work and a different life-style and culture. (If the cause was not natural, but instead environmentally damaging activity of another group, matters would be different, and the fishing community might have rights to prevent, stop, or be compensated for the damage caused by such activity. Likewise if, while the cause was natural, the community was part of an insurance scheme against natural disasters of this sort, something in fact true of the community in question here by virtue of the participation of Canada’s Maritime provinces in Canadian Confederation, which transfers money from have to have not provinces as the fortunes of member provinces vary with time. But these things must be arranged before there are such rights.)

Moving on to other cases of cultures being extinguished but not unjustly, think of a culture coming to an end not by violent conflict but by critical thinking and sound argument (the project conducted and informed by philosophical reflection), as happens when religious and superstitious culture is replaced by secular and scientifically informed culture. Again, this is not obviously unjust. It would be difficult to argue that the people to whom this is happening somehow have a right to repine in their ignorance, or to be forcefully protected from the inexorable advance of knowledge. Certainly the pre-enlightenment culture would have no right to impose their culture on others.

Yet another case would be the extinction of violent, aggressive cultures by justified counter-strikes from those whom such cultures unjustly attack, and from resolutions from within such unjustly aggressive cultures to reform themselves, obvious examples being the renunciation of the militaristic, expansionist cultures of conquest of Japan and Germany after World War II.

Relatedly, not all cultures even prima facie have a right of preservation—again, think of Nazi culture, its, art, monuments, hate speech, and its artifacts of oppression, like gas chambers and concentration camps.

Further, sometimes the perception of people being massively injured by the destruction of cultural artifacts is really the perception of what is only a moral pseudo-injury, which is, recall, something that seems to be an injury only to those who believe something demonstrably false, or not demonstrably true. Think again of religions. Properly seen, the theft and destruction of their “cultural property” is not much different from the theft and destruction of property simpliciter. It is not additionally a violation of the sacred; for if that concept is defined by the relation of the thing in question to a god, and if no god exists, then the concept’s very intelligibility and applicability are questionable.

Matters are different, of course, if a culture has a handle on important moral truths, and if its artifacts’ continued existence, and continued holding in that culture’s hands, are necessary to the attainment of morally important ends. (Think of enlightened legal codes, the documents that incarnate them, the people who hold to them, and the good actions these people then do.) But in that case what makes the preservation of these things (eg the documents of enlightened law) important is not that they are cultural products. It is that they are the incarnations and means of the right and the good.

What counts as that is precisely what is often the matter being contested in times of war. It might be thought that, since it is difficult to adjudicate in conflict between cultures who has the good culture and who the bad, we should just protect all cultures and so all cultural property. I suggest, however, that while this might be good counsel for difficult cases, it is not good counsel for obvious cases. Moreover, it is the commonest thing for observers in a conflict to find it easy to take a side; and it is universal for those engaged in conflict to have strong views about which side is right—their own, of course. This leaves us with the question how best to advance the perceived good side in a conflict. I say it is generally better to fight by attacking things than people. Although I suppose it could in principle happen that immoral people have produced good cultural objects, and that in such cases it is the people who need to go (or be induced to transform), not the objects.

Finally, as a philosopher I believe that, however difficult, there are truths to discern about which side in a conflict is just. We would therefore be abdicating our duty to make a determination if we just said it is difficult and all objects should be protected. For that would be like saying it is too much trouble to serve justice. (I recognize that, just as the Red Cross preserves political neutrality and so is allowed to minister to injuries of civilians on both sides of conflicts, which is good, so there might sometimes be pragmatic justification for a given nation being neutral about which culture in a conflict is the good culture.)

VII. THE OBJECTION FROM THE SUPPOSED TRANS-CULTURAL, TRANS-POLITICAL VALUE OF CULTURAL ARTIFACTS

Some people argue that, regardless of their political significance and moral consequences, the artistic products of a culture have a timeless value, whether sourced in inherent aesthetic qualities of the products, or deriving from their exemplifying human creativity and ingenuity, or from their documentary and scientific importance; and that they should therefore be protected from destruction in war.[[32]](#footnote-33) But these factors may be of lesser importance than the issues already discussed. Thus even if an artwork as such does not occupy a position on the spectrum of morally evaluable items, the effects of its existence can be so evaluated; and if these are bad enough then the destruction of the artwork that is their cause might be warranted. If some artifacts are instrumental to the oppression of a people, why should those people be made to pay the price of having to endure this oppression for the sake of scientific inquiry or aesthetically distanced appreciation? As Alexander A. Bauer suggests, we must always ask for whom the preservation of cultural objects is good, and by what measure.[[33]](#footnote-34) For example, some culturally significant objects were originally designed to deteriorate. Bauer gives this example: “the ‘war gods’ figures made by the Native American Zuni are meant to disintegrate among the elements in order to maintain balance in their lives.”[[34]](#footnote-35) Bauer also points out that sometimes the repatriation of artifacts is sought by groups problematically seeking “to control the discourse about their cultural legacy and suppress unwanted narratives about the objects.”[[35]](#footnote-36)

Powers not directly involved in conflicts must take caution in assessing whether the aesthetic value of cultural artifacts outweighs whatever arguments may be made for their destruction on grounds of them forming part of a context of oppression for one of the parties in the conflict. It is all too easy for us in the West, for example, who may think of the cultural artifacts in the Middle East as merely of aesthetic, historical or scientific interest, rather than as tools of political oppression, to insist on their preservation, not noticing their political toxicity. I can make this point in a logically extreme way: as a high status white man in the West, I have no culture. That is, my culture is invisible to me. Culture is that quaint thing that other people have. What I have is true views, good taste, and well-premised practices. Nevertheless, I like to visit with the quaint artifacts of other cultures.

I am parodying myself here; but we all tend to see our own cultures as privileged in this way and to look upon others with some condescension. This puts us at risk of making an aesthetical, scientific or historical fetish of the artifacts of other cultures, and of putting those values above things that may well have greater value—eg saving people from oppression by these objects. The aesthetic or scientific value the objects may have to humanity at large is at best a competitor value to the values of those directly involved in conflict; and it is not obvious that it should be decisive. Even if there is, say, scientific value in relics, it does not follow that policy around their preservation and trade should be designed to maximize their accessibility to scientific scrutiny.

Arguably science is only one value they serve, and science should yield to other values. There is nothing that makes it preeminent, any more than a scientific interest in my body, say, should automatically trump my rights to control what happens in and to my own body. It is even disputable whether the scientific significance of artifacts has value independently of a culture’s valuing that sort of thing, which certain antiquarian, illiberal, and Luddite cultures ostensibly do not (eg ISIL, Boko Haram). And even if there is such a thing as disinterested value, the value of a thing as viewed from nowhere, As Thomas Nagel has put it, other things would doubtless have that kind of value, too, things like political justice.[[36]](#footnote-37) Scientific value would be merely one value among many, a value whose advancement might displace other, possibly morally more preeminent values. Besides, even were there an objective truth about such matters, and even if there were theoretical agreement about it, this could well separate from what people care about, and from what they are inclined to do. So regardless of whether these value questions are objective, subjective, or relative, people with a scientific interest in cultural artifacts should have to negotiate their preservation and access to them with stakeholders who have other values.[[37]](#footnote-38)

I suspect there is a similar discussion to be had concerning those who would preserve even politically problematic cultural artifacts for their historical value. I would distinguish this from the motive of scientific value, which might want to preserve the object for its usefulness in inspiring sociological or anthropological generalizations. When people want to preserve an object for its historical value, on the other hand, they do so from a love of history qua history: this thing matters because it was the product of this event that happened. And again, we can question whether love of history as a value should automatically trump, say, the value of escape from the oppression that this object may be perpetuating.

I would make a similar reply to those who claim to value artifacts not qua things, but qua carriers of meaning or narrative—for the role they played in the story of a person, a people, or a time, or for the story they tell or can be used to tell. For again, we can imagine these values not holding for some people and being outweighed by other factors even for people who do hold those values. (I was surprised at the vehemence with which preservationist values were expressed by those people I met at the Center for Ethics and the Rule of Law conference, mentioned above, who are in the business of curating cultural objects—museum directors, art dealers, and so on—and who took umbrage to some of the suggestions in this paper. But I am not immune to their values. At one point we were invited to view 5,000 year old Mesopotamian cuneiform tablets. As I looked at these things, carefully lifted off of a rolling tray by a man wearing blue gloves, seeing these things as smaller than cell-phones, and realizing how small therefore were the hands that used them, I found myself weeping.)

I have suggested that some parties in conflicts might be justified in destroying or stealing cultural artifacts, in part because the existence of these things is a harm to them, a part of their oppression, or because their existence yields a profit to others that is a consequence of the oppression of the former people. But America (and perhaps its Western allies) in this case, as in so many others, may have a special status. Just as many of the conflicts in which America finds itself are asymmetrical conflicts, conflicts with people vastly inferior to America in numbers, technology, organization, and situational advantage, so America may find itself in culturally asymmetrical conflicts, ones in which, while its culture and cultural artifacts oppress, or at least trouble, others, the reverse is not true: America is not harmed by the cultures it combats, only by the agents of these cultures. America is not, as a collection of persons and physical things, nor as a culture (ie as a prevailing set of ideas, practices, and institutions), existentially threatened by other cultures. America may therefore have a kind of duty of condescension: since it is not harmed by these things, it would be gratuitous for America to destroy or confiscate them; and so not even the doctrine of military necessity could justify it in doing these things—in America’s case, there is no such necessity. Ironically, the very conceit that America is prone to about its own cultural exceptionalism and superiority can result in America having a duty to obey stricter limits than other cultures on how it fights wars. (For example, Matthew Thurlow complains that American military manuals on protecting cultural artifacts do not go far enough.[[38]](#footnote-39))

This itself raises interesting issues: ought America to feel more threatened than it does by other cultures and their artifacts? Is it from a kind of moral obtuseness that it feels unharmed by them? Is this an instance of the opposite of moral pseudo-injury, namely, moral pseudo-non-injury? After all, America is often slighted in various cultures, perhaps in ways not obvious to America. This may be part of an explanation of why America is sometimes surprised by its being hated: because Americans do not see the problem they get ambushed by anger when it is too late easily to appease it.

I wonder too whether it is not hypocrisy to see cultural artifacts in other people’s conflicts as inherently innocent things therefore needing protection. For we certainly do not so see them when we are in the gun sights of warfare by means of culture. It is just that, when it is happening to us, we cannot see it as mere clash of cultures. We see it as *war*. Think of the impulse to destruction of “un-American” cultural objects in America in the era of paranoia about the influence of that culture which is called communism.

So it is contestable (and contested by some of the parties in the conflicts that occasion this debate) that there is a trans-cultural, trans-political value to cultural artifacts; and the idea that there is such a thing may be a delusion of us in the West, a stance of privilege, and a condescension committed by people who see themselves as above the cultures and conflicts whose artifacts they prize and admire—an attitude that vanishes when we find ourselves embroiled in conflict with cultures who truly do threaten us, whence we righteously seek destruction of these cultures’ artifacts. And even if there is such a trans-cultural, trans-political value, it should yield to more pressing political and moral concerns in war time.

VIII. THE OBJECTION FROM BOTH SIDES IN A CONFLICT HAVING AN INTEREST IN PRESERVING CULTURAL ARTIFACTS, REGARDLESS OF WHICH SIDE WINS

Perhaps one idea behind the criminalization of deliberately destroying cultural artifacts in war from a political motive is that they have value for both sides, so both want these objects to survive in case they win and then get to exploit the objects. This idea is amenable to a game-theoretic analysis: since each party would like to win the conflict, thence to have exclusive use of the cultural artifacts, but since all parties benefit from the artifacts after the war regardless of who wins (even if the losing party benefits a bit less), the parties are in a kind of Prisoner’s Dilemma with each other about them. In a Prisoner’s Dilemma, one party can do very well only if the other party does very poorly, but both can do quite well by making and keeping an agreement to cooperate and respect each other’s interests, this shareable benefit sometimes called the cooperative surplus, while both will do quite poorly if both violate this agreement. If the relations between warring parties and cultural artefacts is as to the cooperative surplus sought in Prisoners’ Dilemmas, there may be rationality to pledges to preserve artifacts, and so to laws that require punishment for their destruction. An example might be a part of a town in the Middle East with religious significance for two competing religious groups.

On the other hand, if you want something, I can harm you by actually destroying it and can control you by threatening to destroy it. Ironically the argument that cultural artifacts are cared about by one or all sides, or that they have high intrinsic value, is an argument for both sides regarding them as potential military targets, not against. For to the degree that these things are seen as having value, to that degree the threat of their theft or destruction can be an effective extortion; and extortion, after all, is the very method of warfare.

Here we have the classic Deterrence Dilemma: can it be rational to form and fulfill a threat to do something not only other-harming but also self-harming if the other does not comply with some demand? There is academic controversy about this (centered on the theories of David Gauthier[[39]](#footnote-40)), but since at least some students of the issue think the answer is yes, let us assume the yes answer for the sake of argument. In that case, it can be leveraged in war: one side can win if it manages credibly to convert the situation from an Assurance Game (whose structure is that each of us will refrain from doing a thing harmful to us both if each of us can be sure the other will refrain) into a Deterrence Dilemma (whose structure is that one party threatens to do something harmful to both parties unless the other party gives a concession)—the threatener must only manage to present as sincere and therefore likely to fulfill the threat. Of course, the other party can reply likewise; and if the reply is credible, then the two parties are in a Mexican Standoff (a situation where neither side can gain an advantage by means of threat) or a Game of Chicken (where each side has an incentive to veer off from its threat strategy in order to avoid the catastrophe of mutual defeat and so of self-defeat). In that event, both sides have an incentive to reconfigure the situation as a Prisoner’s Dilemma and to solve it by seeing it as an Assurance Game, thereby to back off the other party and to preserve the object valued by both in the conflict.

But one problem with this sort of thinking is that it presumes cultural objects have value to both sides no matter who wins. This is not a relevant consideration for the most outrageous of the destroyers of cultural artifacts, namely, ISIL. ISIL does not have a stake in the preservation of cultural artifacts since it opposes them as idolatry. So there is not the Prisoner’s Dilemma argument for non-destruction in that conflict.

IX. THE ARGUMENT AGAINST THEFT AND DESTRUCTION OF CULTURAL ARTIFACTS FROM THEIR UNIQUENESS AND IRREPLACEABILITY

It might be argued that stealing or destroying property is worse than killing for some less tangible reason than, say, the matter of its insurable replacement value. It might be, for example, that it destroys a culture or that it symbolizes a disrespect for a culture. But this would only be an argument because a culture matters to someone. Obviously cultures matter to those who participate in them, and this should count for something. But again, it is questionable whether it should count for more than the death of a person. (Remember, we are here debating whether destroying cultural objects should be a war crime when killing a person—a soldier—is not.)

Suppose someone destroys the central relic of some religion, meaning that this relic can no longer be the thing around which certain cultural practices rotate. Perhaps a copy of the relic could be built, but arguably this would result in a different and less good culture, one centered on the duplicate rather than the original. Imagine some people met regularly to reminisce about John F. Kennedy Jr. while passing around the quarter that was in his pocket when he was shot. Then someone destroys the quarter. One cannot pass around the original quarter anymore, and passing around a quarter just like the original, but that was never in J.F.K.’s pocket, would not be quite the same.

Now let us make the quarter something the size of a small village—some ancient ruins, for example—and let us make the number of people who participate in the culture the size of a small nation. Again, the destruction of this object might mean that a culture centered on some replacement object might in some sense be a different, maybe even less good culture.

Let us call such objects haecceity objects, objects which are such that their identity makes them necessarily unique—a copy of the object would not be able to play the same role as the original, because, say, of the object’s singular place in history. Haecceity is a term from that sub-field of Philosophy called Metaphysics, and it refers to the essential this-ness of an object, meant as picking out whatever it is that distinguishes the object from all other objects. Not all objects are haecceity objects. The J.F.K. quarter apart, money has no haecceity—a given dollar bill is as good as another, and if one is damaged or destroyed, another will do just as well. This property of dollars—the complete value replacebility of one by another—is called fungibility. Many of us have haecceity values—we care about the necessary uniqueness of certain things in our cultures. Nevertheless, in certain contexts this can seem a kind of fetish, something that should yield to other things of greater value—saving life and saving the dignity of lives.

Haecceity values are dangerous things to hold since they make one less resilient—one can be harmed by the destruction of an object one sees as having haecceity in a way that one cannot be harmed if one regards the object as fungible and so replaceable. Of course, some would argue that one’s experiences are necessarily less deep if they all revolve around only fungible objects. Do you love your life partner as much as you might if you regard them as fungible, ie acceptably replaceable by a clone? I am sometimes tempted to conjecture that in the West, few objects are regarded as haecceity objects in comparison with the Middle East. This might be thought a good thing since no object in the West is hostage to destruction in the way some objects in the Middle East are. On the other hand, perhaps the West pays a price in the form of experiencing less meaning. And of course the West/Middle East distinction may be the wrong way to go. Maybe the right contrast is between cultures that see themselves as having a long history versus cultures that see themselves as recent; or between cultures that see themselves as defined around a particular region of land or around an artifact, rather than as around certain social practices. And there is the interesting question whether some of these cultures are therefore in some sense better than others, or whether some are therefore better in some ways, others, in others.

At any rate, suppose we agree that destruction of artifacts is a kind of destruction of a culture, and so of a people: does it follow that it is bad? Only insofar as the culture and its people are good, or at least not bad. And recall too that, in spite of the arguments of communitarians (who think that people cannot have an identity apart from their surrounding culture), it is too quick to identify people with their culture, as if the destruction of the latter is the destruction of the former; for culturally speaking, people are like Turing Machines: they are reprogrammable; and their new culture might satisfy their needs just as well as did the old. This is because, as we noted earlier, many of the needs of people are not culture-relative and culturally generated. Instead the purpose of cultures is to serve the antecedent pre- or trans-cultural and common needs of people.

What of the case of the forcible deprivation of the culture of the children of indigenous peoples in Canada by their mandatory enrollment in the residential school programs of the last two centuries? This was obviously an evil; does it not therefore reduce to absurdity the claim that people can be non-problematically reprogrammed in their cultures? No. What the case shows, and what I certainly do not deny, is that sometimes such reprogramming has unjust pretexts, as in the case of Colonialism; and it is sometimes done in unjust ways, unjust either in means (eg kidnapping), or in failing to provide those who get reprogrammed with the resources to flourish (eg due to them being deprived of the land they need for their traditional livelihoods, or due to them then having to live as second-class citizens among members of the conquering culture); sometimes it involves forcing people to live in ways they simply cannot adapt to given how long they have lived in other ways; and sometimes it amounts to reprogramming people into a worse culture. (Canada’s indigenous peoples had a culture which may have been more sustainable as a consumer of resources, to name just one of its many virtues.)

But the opposite is also true: think of helping to socialize someone out of criminal gang culture, or out of adherence to a cult. And think of cases where people reprogram themselves, as when a refugee is accepted into a new country and decides to adopt its culture, to assimilate.

It can be reasonable to demand the destruction of a culture if that culture is evil. This may involve the destruction of that culture’s artifacts. But this need not amount to the destruction of that culture’s people. It need not involve their physical death, for example. And if it involves their reprogramming into a better culture, then if this be cultural genocide, not all cultural genocide is bad.

X. FINAL REFLECTIONS

Let me place my argument alongside one of the most powerful statements of the argument for making the theft and destruction of cultural artifacts war crimes, a statement from former Director General of UNESCO, Irina Bokova.[[40]](#footnote-41) Bokova vividly describes the strategy of terrorism:

These attacks, the destruction, and the persecutions are part of the same global strategy, which I call ‘cultural cleansing,’ intended to destroy identities, tear apart social fabrics, and fuel hatred. Such acts of destruction cannot be decoupled from the killing of people, as violent extremists attack anything that can sustain diversity, critical thinking and freedom of opinion—schools, teachers, journalists, cultural minorities, and monuments. In this context, the protection of heritage is more than a cultural issue: it is a security necessity. We see, with the Islamic State group, how terrorists use such destruction as a tactic of war to paralyze and weaken the social defences of people, to attract and recruit foreign fighters across the globe as well as to promote a fundamentalist agenda. Illicit trafficking of cultural objects is also linked to the financing of terrorism ... It is clearly stated in Article 8 of the Rome Statute of the International Criminal Court that the deliberate destruction of cultural heritage is a war crime, and should be assessed, documented, and investigated so that the perpetrators can be brought to justice in the future.

Bokova also identifies the manifesto of the extremists: “violent extremists say humanity is not a single community that shares values … world heritage does not exist … pre-Islamic heritage is idolatry … diversity is dangerous … tolerance and dialogue are unacceptable.”

Bokova gives the arguments for what is bad about what is done from this manifesto, and for the responses needed to deal with it, including military responses, legal reform, and preemptive relocation of threatened objects.

Even though I object to viewing all theft and destruction of cultural property as war crime, I do not disagree with Bokova’s analysis. But I do point out that the people she is objecting to have a position; they have independent motivations towards taking this position deriving, in some cases, from their own oppression; and Bokova leaves out that, if you really want to counter-act all of this, you need to address the oppressions that have led to it.

Much of the standard positioning that I have been disputing on these issues can be saved by adding in the assumption that we know which side in a conflict is just, and we are speaking only of what is to be done to agents who act against the justice of that side. But here we must be careful. For wars are fought precisely in the disputing of that very matter. And we have our own biases in assessing a given conflict. We are virtually unanimous in treating the conflicts in the Middle East as involving people clearly in the wrong when, arguably, they are people legitimately fighting for righteous status against oppression. Sometimes even when they are in the wrong on a given issue, they may be justified in acting out some private anger or grievance.

No doubt some cultural artifacts have a political status so innocent that the standard arguments against trade in, theft of, and destruction of cultural artifacts go through regarding them. And maybe some artifacts simply are the common treasure of all human kind, and only persons evil or misguided could possibly make themselves the enemy of these objects.

But it would be a mistake to say that of all artifacts in all contexts. It is tempting to see those who would destroy cultural artifacts as madmen, enemies of all people, men who should be dealt with as mere criminals. But if someone is the enemy of all men, then he sees all men as his enemy; and we need to look at how someone could come to feel this way, how someone could come to think that so many of the manifestations of civilization and its history are evil, are oppressive to them. For some of these people, madness is the explanation—they are not in fact oppressed, they only think they are, if they think intelligibly at all. It may be thought that, for others, the explanation is that they believe the tenets of a religion that requires them to destroy anything Western and to kill anyone not allied to their faith. But this in turn would need explanation. For many of us hold religious views that would require extremes of action, and yet we do not so act. A religion may tell you to do a ridiculous thing, or ridiculously tell you not to do what is in reality an innocuous or perfectly wonderful thing. Whether you become a fundamentalist adherent and act on such instruction is another matter. Why have some chosen to act on the more ridiculous, violence-prescribing tenets of the fundamentalism in their religion? For most, the explanation is that they have not been able to secure a dignified life and a fair share of the benefits of civilization. And the explanations for that are not far to seek: racism, sexism, classism, oppression by dominant religions of non-dominant religions, tribalism, colonialism, Kleptocracy, and the rule of law or its perversions that have, sometimes unwittingly, sustained these things. Then there are the people in otherwise healthy societies who for individual reasons have discontents, and who are drawn to conflict as a way to express their anger. There are also people moved to join in conflict from solidarity with the less powerful peoples of the world, peoples who live in what are in effect apartheid polities, and so who are ruled by laws they do not have a full contribution in making. And there are people moved to violence by the idea of a great conflict between good and evil, an evil the inadequacies of their own lives lead them to posit as their cause.

My hope is that we will try better to understand these discontents, and that we will spend less of our effort on policing the preservation of cultural artifacts and art objects, and more on trying to redress the political inequities that lead to them being threatened. For if we do anything other than this, we are merely sustaining the apartheid that has birthed the violent expression of discontent. And we will thereby continue to sow the seeds which grow into violence against people and culture. This means we must, so far as possible, see these actions as political, not criminal, see them as actions of war, even when they are the actions of non-state actors. And this recommends the extension of combatant immunity to what would otherwise be seen as thieves and barbarous vandals.

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2. For the history of treaties, conventions, and so on cumulating to the idea that cultural property theft and destruction ought to be seen as illegal and prosecutable in war and other forms of armed conflict, see Patty Gerstenblith, ‘The Destruction of Cultural Heritage: A Crime Against Property or a Crime Against People?’ *The John Marshall Review of Intellectual Property Law* 15 (2016): 336-393. [↑](#footnote-ref-3)
3. Giulia Bernabei and Mark Drumbl, ‘The International Criminal Court and Cultural Property: What is the Crime?’, this volume. [↑](#footnote-ref-4)
4. See the American Historical Association Statement on Confederate Monuments (August 2017). <https://www.historians.org/news-and-advocacy/aha-advocacy/aha-statement-on-confederate-monuments> (last accessed September 9, 2020). [↑](#footnote-ref-5)
5. See Tristin Hopper, ‘Here is what Sir John A. Macdonald did to Indigenous people’, *National Post*, August 28, 2018 <https://nationalpost.com/news/canada/here-is-what-sir-john-a-macdonald-did-to-indigenous-people> (last accessed September 9, 2020). [↑](#footnote-ref-6)
6. Claire Finkelstein points out to me that in current ways of war fighting and conducting other violent conflicts, cultural property destruction is used more as a kind of magnifier of the effects of fighting by means of violence against persons. In these terms, she suggests that, when the oppressed seek to destroy cultural property in the name of justice, the protection of such property can in effect likewise be a magnifier, a magnifier of violence done to the oppressed, and of their cultural oppression. I agree with all of this. I am proposing, however, that the destruction of cultural property can also be a kind of stand alone method of fighting, that it ought not to be seen as a war crime when used to combat oppression, and that it would be a better state of affairs if conflicts were conducted by means of cultural property destruction than by the killing of people. [↑](#footnote-ref-7)
7. On these first two points, and as exemplified in the case of Syria, see Emma Cunliffe. ‘Damage to the Soul: Syria’s Cultural Heritage in Conflict.’ *Global Heritage Fund* (2012), especially pp. 10-18<http://ghn.globalheritagefund.com/uploads/documents/document_2107.pdf> (last accessed September 10, 2020); and see Patty Gerstenblith. ‘Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past.’ *Chicago Journal of International Law* 8 (Summer 2007): 169-195. [↑](#footnote-ref-8)
8. Irina Bokova, ‘Culture on the Front Line of New Wars.’ *Brown Journal of World Affairs* 22, no. 1 (2015): 289-296, especially 292-293. [↑](#footnote-ref-9)
9. Amr Al-Azm, ‘The Pillaging of Syria’s Cultural Heritage.’ *Middle East Institute* (May 22, 2015) <https://www.mei.edu/publications/pillaging-syrias-cultural-heritage> (last accessed September 10, 2020). [↑](#footnote-ref-10)
10. See Richard Goldstone, ‘The War Crime of Destroying Cultural Property’, *International Judicial Monitor*, Summer, 2016, for many good examples of war fighting by means of destroying cultural property, and for some of the standard rationales against this—eg its demoralizing effect and its affront to human dignity. <http://www.judicialmonitor.org/summer2016/globaljudicialperspective.html> [↑](#footnote-ref-11)
11. Laurie Rush, ‘Working with the military to protect archaeological sites and other forms of cultural property.’ *World Archaeology* 44, no. 3 (2012): 359-377. [↑](#footnote-ref-12)
12. See James Cuno, ‘Culture War: The Case Against Repatriating Museum Artifacts’, *Foreign Affairs* 93, no. 6 (Nov./Dec. 2014): 119-124. [↑](#footnote-ref-13)
13. The American Historical Association Statement on Confederate Monuments (August 2017). <https://www.historians.org/news-and-advocacy/aha-advocacy/aha-statement-on-confederate-monuments> (last accessed September 9, 2020). [↑](#footnote-ref-14)
14. On the Charlottesville reference see Meghan Keneally, ‘What to know about the violent Charlottesville protests and anniversary rallies’, *abc News*, August 8, 2018. Keneally writes: “On Aug. 12, 2017, a ‘Unite the Right’ rally in Charlottesville turned deadly when a 20-year-old Ohio man allegedly accelerated his car into a crowd of counter-protesters, killing 32-year-old Heather Heyer and leaving 19 others injured, five critically … Charlottesville had been in a months-long battle over what to do with a statue of Gen. Robert E. Lee, who led the Confederate army during the Civil War.” <https://abcnews.go.com/US/happen-charlottesville-protest-anniversary-weekend/story?id=57107500> (last accessed September 9, 2020). [↑](#footnote-ref-15)
15. See ‘Sunnis and Shia: Islam's ancient schism’, bbc News, January 4, 2016 <https://www.bbc.com/news/world-middle-east-16047709> (last accessed September 11, 2020). For extensive documentation of these asymmetries and their effects in the Middle East, see generally Sarah Chayes, *Thieves of State: Why Corruption Threatens Global Security* (New York: W.W. Norton & Company, 2015). [↑](#footnote-ref-16)
16. See Terrence K. Kelly, James Dobbins, Barbara Sude, and Ben Connable, ‘Knowing the Enemy: Understanding the Islamic State and Principles for Defeating It’, The Rand Corporation, Perspectives series, 2017 <https://www.rand.org/pubs/perspectives/PE200.html> (last accessed September 11, 2020). [↑](#footnote-ref-17)
17. In *Thieves of State* (2015) Chayes writes: “Perhaps Al Qaeda’s main intent was not to kill a large number of Americans so much as to visit a spectacular symbolic punishment upon the manifestations of what it saw as a criminal kleptocracy that controlled the most powerful instruments of force on earth”, p. 183. [↑](#footnote-ref-18)
18. For a start on this complex issue, see Helen Frowe and Derek Matravers, ‘Conflict and Cultural heritage: A Moral Analysis of the Challenges of Heritage Protection’. *J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy*, No.3 (2019), Getty Publications, Los Angeles. [↑](#footnote-ref-19)
19. See *Resolution adopted by the General Assembly on the Holocaust Remembrance (A/RES/60/7, 1 November 2005)* https://www.un.org/en/holocaustremembrance/docs/res607.shtml [↑](#footnote-ref-20)
20. My thanks to LW for suggesting many of the points in this paragraph. The classic defense of free speech is John Stuart Mill, *On Liberty*. [↑](#footnote-ref-21)
21. I quote from Brian I. Daniels in Brian I. Daniels and Helen Walasek, ‘Is the destruction of cultural property a war crime?’ *Apollo: International Art Magazine*, November 28, 2016. <http://www.apollo-magazine.com/is-the-destruction-of-cultural-property-a-war-crime/> [↑](#footnote-ref-22)
22. Daniels and Walasek, ‘Is the destruction…’ [↑](#footnote-ref-23)
23. Martin Hamilton, ‘The Concept of Cultural Genocide’, this volume. [↑](#footnote-ref-24)
24. Thanks to Max Dysart and L.W. for discussion on this point. For a First Nations perspective on the matter see Daniel N. Paul, *We Were Not The Savages*, Third Edition (Fernwood Publishing, 2006). And see the Government of Canada official commission review, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (The Truth and Reconciliation Commission of Canada, 2015).

    <http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf> (last accessed May 20, 2020). [↑](#footnote-ref-25)
25. We considered earlier the practical objection that, in a given case, deliberate destruction of cultural objects will not advance the cause sought, but will merely make one’s opponent fight harder and so would be self-defeating. In this section, however, I am only interested in objections to the effect that warfare by cultural heritage destruction is wrong in itself, and so should not be used even if it would work. [↑](#footnote-ref-26)
26. Frederik Rosén, ‘Mission Impossible: The Laws of Armed Conflict and Weighing Cultural Property Against

    Human Lives’, this volume, Ch. 3. [↑](#footnote-ref-27)
27. Department of Defense, [Cultural Property Protection - Theory.](https://www.cemml.colostate.edu/cultural/09476/chp03iraqenl.html) (n.d.)., Part 1. Retrieved March 31, 2020. [↑](#footnote-ref-28)
28. For some interesting reservations about whether cultural destruction and looting ought to be seen as a war crime, and as a basis for intervention under the idea of Right to Protect, see Frederik Rosén, Senior Researcher, The Danish Institute for International Studies “PAPER for UNESCO expert group meeting on Cultural Heritage Destruction and R2P” in Paris, 26 - 27 November 2015. <http://pure.diis.dk/ws/files/402500/Frro_paper_paris.pdf> [↑](#footnote-ref-29)
29. See Duncan MacIntosh, ‘PTSD Weaponized: A Theory of Moral Injury’, paper mooted at the Center for Ethics and the Rule of Law conference, ‘Preventing and Treating the Invisible Wounds of War: Combat Trauma and Psychological Injury’, University of Pennsylvania Law School, December 3-5, 2015. [↑](#footnote-ref-30)
30. How would we then distinguish between “combatant” cultural heritage and “civilian” cultural heritage, especially given that the combatant/civilian distinction is not usually seen as aimed at minimizing oppression so much as at protecting civilian populations.? (Thanks to Claire Finkelstein for the question.) This is a subtle matter. When two countries set their armies at each other in war, it is expected that the armies will fight it out in ways minimizing hazards to the civilian populations of both countries. But when one group in effect sets its *culture* at “war” with a population, it may not seem that there is a corresponding civilian thing to protect. I may be stretching the metaphor here, but perhaps combatant heritage is heritage implicated in oppression, while civilian heritage is neutral on that matter. Or maybe civilian heritage is whatever heritage is the unjustly oppressed one. Either way I suggest that oppressive cultural objects are fair game. [↑](#footnote-ref-31)
31. Thanks to L.W. for this insight. [↑](#footnote-ref-32)
32. Eg see Leila Amineddoleh, ‘Protecting Cultural Heritage by Strictly Scrutinizing Museum Acquisitions’, *Media and Entertainment Law Journal* 24 (3) 2014: 729-781. [↑](#footnote-ref-33)
33. Alexander A. Bauer, ‘New Ways of Thinking about Cultural Property: A Critical Appraisal of the Antiquities Trade Debates’, 31 *Fordham Int'l L.J.*, Volume 31 (2007-2008): 690-724. [↑](#footnote-ref-34)
34. Bauer, ‘New Ways of Thinking…’, p. 701. [↑](#footnote-ref-35)
35. Bauer, ‘New Ways of Thinking…’, pp. 710-711. [↑](#footnote-ref-36)
36. Thomas Nagel, *The View From Nowhere* (Oxford: Oxford University Press, 1986). [↑](#footnote-ref-37)
37. A claim, eg that science is more important than justice, is said to be objective if it is possible for a given opinion to be wrong about it, subjective if its truth is just a matter of opinion or preference so that one cannot be wrong about it, and relative if its truth varies depending on the standpoint of the person making the judgment. [↑](#footnote-ref-38)
38. See Matthew Thurlow, ‘[Protecting Cultural property in Iraq: How American Military Policy Comports with International Law](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1050&context=yhrdlj)’, *Yale Human Rights and Development Journal,* *8* (1) (2005): 153-187. [↑](#footnote-ref-39)
39. For an introduction to this debate, see Duncan MacIntosh, ‘Assuring, Threatening, a Fully Maximizing Theory of Practical Rationality, and the Practical Duties of Agents’, *Ethics*, Vol 123, No. 4 July (2013): 625-656. [↑](#footnote-ref-40)
40. Irina Bokova, ‘Fighting Cultural Cleansing: Harnessing the Law to Preserve Cultural Heritage’, *Harvard International Review* 36, no. 4 (Summer 2015): 40-45. [↑](#footnote-ref-41)